Pages 505–635

FEDERAL REGISTER

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Contents

(Continued on next page)

Codification Guide

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, appears at the end of each issue beginning with the second issue of the month.

Monthly, quarterly, and annual cumulative guides, published separately from the daily issues, include the section numbers as well as the part numbers affected.

3 CFR

PROCLAMATIONS:
3279 (modified by Proc. 3389) ---- 507
3290 (see Proc. 3389) ---- 507
3328 (see Proc. 3389) ---- 507
3386 (see Proc. 3389) ---- 507
3389 ---- 507
3390 ---- 507
EXECUTIVE ORDERS:
10575 (see EO 10912) ---- 509
10584 (amended by EO 10913) ---- 510
10716 (amended by EO 10912) ---- 509
10738 (superseded in part EO 10906) ---- 508
10865 (amended by EO 10909) ---- 508
10893 (see EO 10912) ---- 509
10906 ---- 508
10907 ---- 508
10908 ---- 508
10909 ---- 508
10910 ---- 509
10911 ---- 509
10912 ---- 509
10913 ---- 510

6 CFR

421 (3 documents) ---- 576, 577
446 ---- 577

7 CFR

6 ---- 577
52 ---- 578
914 ---- 581
953 ---- 581
1031 (3 documents) ---- 581, 582
PROPOSED RULES:
1019 ---- 620

14 CFR

60 ---- 570
600 (5 documents) ---- 572, 573
601 (12 documents) ---- 572–575
602 ---- 576
608 (3 documents) ---- 572, 573, 576
PROPOSED RULES:
507 ---- 624
601 ---- 625

15 CFR

371 ---- 583

16 CFR

13 ---- 584

21 CFR

PROPOSED RULES:
121 (2 documents) ---- 621

26 CFR

1 (5 documents) ---- 512, 514, 518, 524, 546
19 ---- 524
25 ---- 548
31 ---- 552
48 ---- 556
49 ---- 557
148 ---- 557
301 (5 documents) ---- 562, 566, 567, 570
PROPOSED RULES:
1 (5 documents) ---- 586, 589, 603, 615
48 ---- 620

50 CFR

33 (2 documents) ---- 584, 585

Presidential Documents

Title 3—THE PRESIDENT

Proclamation 3389

MODIFYING PROCLAMATION NO. 3279[1] OF MARCH 10, 1959, ADJUSTING IMPORTS OF PETROLEUM AND PETROLEUM PRODUCTS

By the President of the United States of America

A Proclamation

WHEREAS, pursuant to section 2 of the act of July 1, 1954, as amended by section 8 of the Trade Agreements Extension Act of 1958 (72 Stat. 678, 19 U.S.C. 1352a), I found and declared that adjustments must be made in the imports of crude oil, unfinished oils, and finished products so that such imports would not threaten to impair the national security and by Proclamation No. 3279 of March 10, 1959 (24 F.R. 1781), I proclaimed such adjustments; and

WHEREAS I modified such adjustments by Proclamation No. 3290 of April 30, 1959 (24 F.R. 3527), Proclamation No. 3388 of December 10, 1959 (24 F.R. 10133), and Proclamation No. 3386 of December 24, 1960 (25 F.R. 13945); and

WHEREAS I find that historically imports of residual fuel oil to be used as fuel into the continental United States have principally been made into the East Coast area; and

WHEREAS I find that in order to permit the entrance of new importers and equitable adjustments of allocations in a manner which will insure that adequate supplies of residual fuel oil to be used as fuel will be distributed to normal users, it is necessary to authorize the Secretary of the Interior to revise the system of allocating imports into the East Coast areas of residual fuel oil to be used as fuel:

NOW, THEREFORE, I, DWIGHT D. EISENHOWER, President of the United States of America, acting under and by virtue of the authority vested in me by the Constitution and the statutes, including section 2 of the act of July 1, 1954, as amended, do hereby proclaim that Proclamation No. 3279 of March 10, 1959, as amended by Proclamation No. 3290 of April 30, 1959, Proclamation No. 3328 of December 10, 1959, and Proclamation No. 3386 of December 24, 1960, is hereby further amended as follows:

1. Subparagraph (2) of paragraph (a) of section 2 is amended to read as follows:

"(2) In District I the imports of residual fuel oil to be used as fuel shall not exceed the level of imports of that product into that district during the calendar year 1957. In Districts II–IV the imports of residual fuel oil to be used as fuel shall not exceed the level of imports of that product into those districts during the calendar year 1957."

2. Paragraph (e) of section 2 is amended to read as follows:

"(e) The Secretary of the Interior shall keep under review the imports into District I, Districts II–IV, and District V of residual fuel oil to be used as fuel and the Secretary may make, notwithstanding the levels prescribed in paragraphs (a) and (b) of this section and on a monthly basis if required, such adjustments in the maximum levels of such imports as he may determine to be consonant with the objectives of this proclamation."

3. Subparagraph (4) of paragraph (b) of section 3 is amended to read as follows:

"(4) With respect to the allocation of imports of finished products, other than residual fuel oil to be used as fuel, into Districts I–IV, District V, and Puerto Rico, such regulations shall, to the extent possible, provide (i) for a fair and equitable distribution of imports of such finished products among persons who have been importers of such finished products into the respective districts or Puerto Rico during the respective base periods specified in section 2 of this proclamation, and (ii) for the granting and adjustment of allocations of imports of such finished products in accordance with procedures established pursuant to section 4 of this proclamation."

4. A new subparagraph (5) is added to paragraph (b) of section 3 as follows:

"(5) With respect to the allocation of imports of residual fuel oil to be used as fuel into Districts II–IV, District V, and Puerto Rico, such regulations shall, to the extent possible, provide for a fair and equitable distribution of imports of residual fuel oil to be used as fuel among persons who have been importers of that product into the respective districts or Puerto Rico during the respective base periods specified in section 2 of this proclamation. With respect to the allocation of imports into District I of residual fuel oil to be used as fuel, such regulations shall, to the extent possible, provide on and after April 1, 1961, for a fair and equitable distribution of imports of residual fuel oil to be used as fuel among persons who have been importers of that product into such district during the calendar year 1957 and among persons who are in the business in District I of selling residual fuel oil to be used as fuel and who have had inputs of that product to deep-water terminals located in District I, in relation to such terminal inputs. With respect to the allocation of imports of residual fuel oil to be used as fuel into District I, Districts II–IV, District V, and Puerto Rico, such regulations shall also provide, to the extent possible, for the granting and adjustment of allocations of imports of residual fuel oil to be used as fuel in accordance with procedures established pursuant to section 4 of this proclamation."

5. Section 9 is amended by redesignating present paragraphs (b), (c), (d), (e), and (f) as paragraphs (d), (e), (f), (g), and (h), respectively, and by adding to that section two new paragraphs reading as follows:

"(b) 'District I' means the States of Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Maryland, Delaware, West Virginia, Virginia, North Carolina, South Carolina, Georgia, and Florida, and the District of Columbia.

"(c) 'Districts II–IV' means all of the States of the United States except those States within District I and District V."

6. This amendatory proclamation shall not be deemed to affect the adjustments made by the Secretary of the Interior in the level of imports into Districts I–IV for the period January 1, 1961, through March 31, 1961, of residual fuel oil to be used as fuel or the allocations made for such period.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the United States of America to be affixed.

DONE at the City of Washington this 17th day of January in the year of our Lord nineteen hundred and sixty-one, and of the Independence of the United States of America the one hundred and eighty-fifth.

[SEAL]

DWIGHT D. EISENHOWER

By the President:

CHRISTIAN A. HERTER,
Secretary of State.

[F.R. Doc. 61–669; Filed, Jan. 19, 1961; 2:07 p.m.]

[1] 24 F.R. 1781; 3 CFR, 1959 Supp., p. 23.

Proclamation 3390

TERMINATING THE HONDURAN TRADE AGREEMENT IN PART

By the President of the United States of America

A Proclamation

WHEREAS, under the authority vested in him by section 350(a) of the Tariff Act of 1930, amended by the act of June 12, 1934, entitled "An Act To Amend the Tariff Act of 1930", 48 Stat. 943, the President entered into a trade agreement with the President of the Republic of Honduras on December 18, 1935, 49 Stat. 3851, and proclaimed such trade agreement by proclamation dated February 1, 1936, 49 Stat. 3851; and

WHEREAS the Government of the United States of America and the Government of the Republic of Honduras have agreed to terminate the schedules of concessions of such trade agreement and the provisions related thereto as of the beginning of February 28, 1961; and

WHEREAS paragraph (6) of section 350(a) of the Tariff Act of 1930, as amended, authorizes the President to terminate, in whole or in part, any proclamation carrying out a trade agreement entered into under such section:

NOW, THEREFORE, I, DWIGHT D. EISENHOWER, President of the United States of America, acting under and by virtue of the authority vested in me by the Constitution and the statutes, including section 350(a)(6) of the Tariff Act of 1930, as amended, do hereby proclaim that the aforesaid proclamation dated February 1, 1936 shall terminate insofar as it relates to the schedules of concessions in the trade agreement and the provisions related thereto, as of the beginning of February 28, 1961.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the United States of America to be affixed.

DONE at the City of Washington this 18th day of January in the year of our Lord nineteen hundred and [SEAL] sixty-one, and of the Independence of the United States of America the one hundred and eighty-fifth.

DWIGHT D. EISENHOWER

By the President:

CHRISTIAN A. HERTER,
Secretary of State.

[F.R. Doc. 61-665; Filed, Jan. 19, 1961; 12:13 p.m.]

Executive Order 10906

INSPECTION BY CERTAIN CLASSES OF PERSONS AND STATE AND FEDERAL GOVERNMENT ESTABLISHMENTS OF RETURNS MADE IN RESPECT OF CERTAIN TAXES IMPOSED BY THE INTERNAL REVENUE CODE OF 1954

By virtue of the authority vested in me by sections 6103(a) and 6106 of the Internal Revenue Code of 1954 (68A Stat. 753, 756; 26 U.S.C. 6103(a), 6106), it is hereby ordered that returns made in respect of the taxes imposed by chapters 1, 2, 3, 5, 6, 11, 12, 23, and 32, subchapters B, C, and D of chapter 33, and subchapter B of chapter 37 of such Code shall be open to inspection by certain classes of persons and State and Federal Government establishments in accordance and upon compliance with the rules and regulations prescribed by the Acting Secretary of the Treasury in the Treasury decision relating thereto approved by me this date.

This order shall become effective upon its filing for publication in the FEDERAL REGISTER, and shall on that date supersede Executive Order No. 10738 of November 15, 1957, to the extent that such order is applicable to inspection by State tax officials after the effective date of this order of estate and gift-tax returns made under the Internal Revenue Code of 1939 or the Internal Revenue Code of 1954.

DWIGHT D. EISENHOWER

THE WHITE HOUSE,
January 17, 1961.

[F.R. Doc. 61-564; Filed, Jan. 18, 1961; 2:08 p.m.]

Executive Order 10907

INSPECTION BY RENEGOTIATION BOARD OF INCOME TAX RETURNS MADE UNDER THE INTERNAL REVENUE CODE OF 1954

By virtue of the authority vested in me by section 6103(a) of the Internal Revenue Code of 1954 (68A Stat. 753; 26 U.S.C. 6103(a)), it is hereby ordered that income tax returns made under the Internal Revenue Code of 1954 shall be open to inspection by the Renegotiation Board. Such inspection shall be in accordance and upon compliance with the rules and regulations prescribed by the Acting Secretary of the Treasury in the Treasury decision approved by me this date, relating to the inspection of such returns by the Renegotiation Board.

This Executive order shall become effective upon its filing for publication in the FEDERAL REGISTER.

DWIGHT D. EISENHOWER

THE WHITE HOUSE,
January 17, 1961.

[F.R. Doc. 61-565; Filed, Jan. 18, 1961; 2:08 p.m.]

Executive Order 10908

INSPECTION BY FEDERAL TRADE COMMISSION OF INCOME TAX RETURNS OF CORPORATIONS MADE UNDER THE INTERNAL REVENUE CODE OF 1954

By virtue of the authority vested in me by section 6103(a) of the Internal Revenue Code of 1954 (68A Stat. 753; 26 U.S.C. 6103(a)), it is hereby ordered that income tax returns of corporations made under the Internal Revenue Code of 1954 shall be open to inspection by the Federal Trade Commission as an aid in executing the powers conferred on such Commission by the Federal Trade Commission Act of September 26, 1914 (38 Stat. 717). Such inspection shall be in accordance and upon compliance with the rules and regulations prescribed by the Acting Secretary of the Treasury in the Treasury decision approved by me this date, relating to the inspection of such returns by the Federal Trade Commission.

This Executive order shall become effective upon its filing for publication in the FEDERAL REGISTER.

DWIGHT D. EISENHOWER

THE WHITE HOUSE,
January 17, 1961.

[F.R. Doc. 61-566; Filed, Jan. 18, 1961; 2:08 p.m.]

Executive Order 10909

AMENDMENT OF EXECUTIVE ORDER NO. 10865,[1] SAFEGUARDING CLASSIFIED INFORMATION WITHIN INDUSTRY

By virtue of the authority vested in me by the Constitution and statutes of the United States, and as President of the United States, and as Commander in Chief of the armed forces of the United States, Executive Order No. 10865 of February 20, 1960 (25 F.R. 1583), is hereby amended as follows:

SECTION 1. Section 1(c) is amended to read as follows:

"(c) When used in this order, the term 'head of a department' means the Secretary of State, the Secretary of Defense, the Commissioners of the Atomic Energy Commission, the Administrator of the National Aeronautics and Space Administration, the Administrator of the Federal Aviation Agency, the head of any other department or agency of the United States with which the Department of Defense makes an agreement under subsection (b) of this section, and, in sections 4 and 8, includes the Attorney General. The term 'department' means the Department of State, the Department of Defense, the Atomic Energy Commission, the National Aeronautics and Space Administration, the Federal Aviation Agency, any other department or agency of the United States with which the Department of Defense makes an agreement under subsection (b) of this section, and, in sections 4 and 8, includes the Department of Justice."

SEC. 2. Section 6 is amended to read as follows:

"SEC. 6. The Secretary of State, the Secretary of Defense, the Administrator of the National Aeronautics and Space Administration, the Administrator of the Federal Aviation Agency, or his representative, or the head of any other department or agency of the United States with which the Department of Defense makes an agreement under section 1(b), or his representative, may issue, in appropriate cases, invitations and requests to appear and testify in order that the applicant may have the opportunity to cross-examine as provided by this order. Whenever a witness is so invited or requested to appear and testify at a proceeding and the witness is an officer or employee of the executive branch of the Government or a member of the armed forces of the United States, and the proceeding involves the activity in connection with which the witness is employed, travel expenses and per diem are authorized as provided by the Standardized Government Travel Regulations or the Joint Travel Regulations, as appropriate. In all other cases (including non-Government employees as well as officers or employees of the executive branch of the Government or members of the armed forces of the United States not covered by the foregoing sentence), transportation in kind and reimbursement for

[1] 25 F.R. 1583.

actual expenses are authorized in an amount not to exceed the amount payable under Standardized Government Travel Regulations. An officer or employee of the executive branch of the Government or a member of the armed forces of the United States who is invited or requested to appear pursuant to this paragraph shall be deemed to be in the performance of his official duties. So far as the national security permits, the head of the investigative agency involved shall cooperate with the Secretary, the Administrator, or the head of the other department or agency, as the case may be, in identifying persons who have made statements adverse to the applicant and in assisting him in making them available for cross-examination. If a person so invited is an officer or employee of the executive branch of the Government or a member of the armed forces of the United States, the head of the department or agency concerned shall cooperate in making that person available for cross-examination."

SEC. 3. Section 8 is amended by striking out the word "or" at the end of clause (5), by striking out the period at the end of clause (6) and inserting "; or" in place thereof, and by adding the following new clause at the end thereof:

"(7) the deputy of that department, or the principal assistant to the head of that department, as the case may be, in the case of authority vested in the head of a department or agency of the United States with which the Department of Defense makes an agreement under section 1(b)."

DWIGHT D. EISENHOWER

THE WHITE HOUSE,
January 17, 1961.

[F.R. Doc. 61-567; Filed, Jan. 18, 1961; 2:08 p.m.]

Executive Order 10910

PROVIDING FOR THE DESIGN AND AWARD OF THE NATIONAL MEDAL OF SCIENCE

By virtue of the authority vested in me by the act of August 25, 1959, entitled "An Act To Establish a National Medal of Science To Provide Recognition for Individuals Who Make Outstanding Contributions in the Physical, Biological, Mathematical, and Engineering Sciences" (73 Stat. 431), and as President of the United States, it is ordered as follows:

SECTION 1. *Specifications of Medal.* Consonant with recommendations submitted by the National Science Foundation pursuant to the first section of the said act of August 25, 1959, the National Medal of Science established by that act, hereinafter referred to as the Medal, shall be of bronze, shall be of the design hereto attached, which is hereby made a part of this order, and shall have suitable accompanying appurtenances. Each medal shall be suitably inscribed. Each individual awarded the Medal shall also receive a citation, on parchment, descriptive of the award.

SEC. 2. *Award of Medal.* (a) The President shall award the Medal on the basis of recommendations received by him in accordance with the provisions of this order to individuals who in his judgment are deserving of special recognition by reason of their outstanding contributions to knowledge in the physical, biological, mathematical, or engineering sciences:

(b) In addition to the criterion stated in section 2(a) of this order, the following shall govern the award of the Medal:

(1) Not more than twenty individuals may be awarded the Medal in any one calendar year.

(2) No individual may be awarded the Medal unless at the time such award is made he—

(i) is a citizen or other national of the United States; or

(ii) is an alien lawfully admitted to the United States for permanent residence who (A) has filed a petition for naturalization in the manner prescribed by section 334(b) of the Immigration and Nationality Act and (B) is not permanently ineligible to become a citizen of the United States.

(3) The Medal may be awarded posthumously, the provisions of paragraph (2) of subsection (b) of this section notwithstanding. The Medal shall be so awarded only to an individual who at the time of his death met the conditions set forth in item (i) or item (ii) of that paragraph and not later than the fifth anniversary of the day of his death.

DWIGHT D. EISENHOWER

THE WHITE HOUSE,
January 17, 1961.

The medal is struck in Bronze 3¼" over all. Its obverse side has the figure of a man holding a crystal in his left hand as he writes an equation in the sand on which he kneels. Behind him is the sea and there is a star above his shoulder.

Man is portrayed against the background of earth, sea, and heavens.

The inscription of National Medal of Science is around the upper portion of the perimeter of the medal.

[F.R. Doc. 61-568; Filed, Jan. 18, 1961; 2:08 p.m.]

Executive Order 10911

INSPECTION BY DEPARTMENT OF COMMERCE OF INCOME TAX RETURNS MADE UNDER THE INTERNAL REVENUE CODE OF 1954

By virtue of the authority vested in me by section 6103(a) of the Internal Revenue Code of 1954 (68A Stat. 753; 26 U.S.C. 6103(a)), it is hereby ordered that income tax returns made under the Internal Revenue Code of 1954 shall be open to inspection by the Department of Commerce. Such inspection shall be in accordance and upon compliance with the rules and regulations prescribed by the Acting Secretary of the Treasury in the Treasury decision approved by me this date, relating to the inspection of such returns by the Department of Commerce.

This Executive order shall become effective upon its filing for publication in the FEDERAL REGISTER.

DWIGHT D. EISENHOWER

THE WHITE HOUSE,
January 17, 1961.

[F.R. Doc. 61-574; Filed, Jan. 18, 1961; 2:35 p.m.]

Executive Order 10912

AMENDING EXECUTIVE ORDER NO. 10716 [1] OF JUNE 17, 1957

By virtue of the authority vested in me by the International Cultural Exchange and Trade Fair Participation Act of 1956 (22 U.S.C. 1991-2001), by section 301 of title 3, of the United States Code, and as President of the United States, it is ordered that Executive Order No. 10716 of June 17, 1957 (22 F.R. 4345), headed "Administration of the International Cultural Exchange and Trade Fair Participation Act of 1956," be, and it is hereby, amended as follows:

1. By renumbering paragraphs (2), (3), and (4) of section 1(b) as paragraphs (3), (4), and (5), respectively, and by inserting after paragraph (1) thereof the following new paragraph (2):

"(2) The functions so conferred by section 3(3) of the Act (the provisions of section 3(a) of this order notwithstanding), exclusive of the functions delegated by the provisions of section 2(c) of this order."

2. By substituting "section 1(b)(4)" for "section 1(b)(3)" in section 1(d).

3. By substituting for section 1(e) the following:

"(e) The Director of the United States Information Agency shall allocate funds appropriated or otherwise made available to carry out the purposes of the Act to the United States Information Agency, the Department of State, the Department of Commerce, and any other departments or agencies of the Government as the said Director may deem

[1] 22 F.R. 4345; 3 CFR, 1957 Supp., p. 79.

appropriate to carry out the provisions of this order and the purposes of the Act."

4. By substituting for section 2(c) the following:

"(c) The functions so conferred by section 3(3) of the Act to the extent that they pertain to liquidation of affairs respecting the Universal and International Exhibition of Brussels, 1958."

5. By substituting for section 3(a) the following:

"(a) The functions so conferred by section 3(3) of the Act (the provisions of section 1(b)(2) hereof notwithstanding), exclusive of the functions delegated by the provisions of section 2(c) of this order."

6. By substituting for the text "Executive Order No. 10575 of November 6, 1954 (19 F.R. 7249)" in section 5 the following: "Executive Order No. 10893 of November 8, 1960 (25 F.R. 10731)".

7. By amending the catchline of section 6 to read "Definitions", and by adding the following sentence at the end of that section: "References to this order in this order shall be deemed to include references to this order as amended."

DWIGHT D. EISENHOWER

THE WHITE HOUSE,
January 18, 1961.

[F.R. Doc. 61-639; Filed, Jan. 19, 1961; 10:36 a.m.]

Executive Order 10913

AMENDING EXECUTIVE ORDER NO. 10584[1] OF DECEMBER 18, 1954, PRESCRIBING RULES AND REGULATIONS RELATING TO THE ADMINISTRATION OF THE WATERSHED PROTECTION AND FLOOD PREVENTION ACT

By virtue of the authority vested in me by the Watershed Protection and Flood Prevention Act, as amended (16 U.S.C. 1001 *et seq.*), and as President of the United States, it is ordered that Executive Order No. 10584 of December 18, 1954, be, and it is hereby, amended by deleting sections 1, 2, 3, and 4 thereof, by renumbering sections 5 and 6 thereof as sections 6 and 7, respectively, and by substituting the following new sections:

"SECTION 1. *Scope of order.* This order shall apply (a) to the planning, construction, operation, and maintenance of all works of improvement under the authority of the Watershed Protection and Flood Prevention Act (Public Law 566, approved August 4, 1954, as amended; 16 U.S.C. 1001 *et seq.*), hereinafter referred to as the Act, and (b) to other programs and projects of the Department of Agriculture, and to programs and projects of the Department of the Interior, the Department of the Army, and other Federal agencies to the extent that such programs or projects affect, or are affected significantly by, works of improvement provided for in the Act.

"SEC. 2. *General administration.* The Secretary of Agriculture shall have the following-described responsibilities under the Act:

"(a) Approval or disapproval of applications for Federal assistance in preparing plans for works of improvement, and the assignment of priorities for the provision of such assistance.

"(b) Establishing criteria for the formulation and justification of plans for works of improvement and criteria for the sharing of the cost of both structural and land-treatment measures which conform with the provisions of the Act and with policies established by or at the direction of the President for watershed protection, flood prevention, irrigation, drainage, water supply, and related water-resources development purposes.

"(c) Establishing engineering and economic standards and objectives, including standards as to degrees of flood protection, for works of improvement planned and carried out under the authority of the Act.

"(d) Determination and definition of (1) those land-treatment measures and structural improvements for flood prevention and measures for the agricultural phases of conservation, development, use and disposal of water or for fish and wildlife development which are eligible for assistance under the Act, and (2) the nature and extent of such assistance and the conditions under which such assistance shall be rendered.

"(e) Planning and installing works of improvement on lands under his jurisdiction, and arranging for the participation of other Federal agencies in the planning and installation of works of improvement on lands under their jurisdiction. Recommendations of the heads of other Federal agencies for necessary works of improvement on lands under their jurisdiction shall be submitted as an integral part of the plans of the Department of Agriculture for works of improvement. Arrangements for construction, operation, and maintenance of works of improvement on such lands shall be mutually satisfactory to the Secretary of Agriculture and the head of the Federal agency concerned.

"(f) Submitting plans for works of improvement to the State Governor or Governors concerned and to the Federal agencies concerned for review and comment when the Secretary and the interested local organization have agreed on such plans; and, when and as required by the Act, submitting such plans to the Secretary of the Interior and the Secretary of the Army for their review and comment prior to transmission of the plans to the Congress through the President.

"(g) Giving full consideration to the recommendations concerning the conservation and development of fish and wildlife resources contained in any report of the Secretary of the Interior which is submitted to him, in accordance with section 12 of the Act and section 5 of this order, prior to the time he and the local organization have agreed on a plan for works of improvement, and including in the plan such works of improvement for fish and wildlife purposes recommended in the report as are acceptable to him and the local organization.

"(h) Holding public hearings at suitable times and places when he determines that such action will further the purposes of the Act.

"SEC. 3. *Notification.* (a) The Secretary of Agriculture shall:

"(1) Notify in writing the State Governor or Governors concerned, the Secretary of the Interior, the Secretary of the Army, and other Federal agencies concerned of his decision to initiate any survey or field investigation involving water-resources development work, and furnish them with appropriate information regarding the scope, nature, status, and results of such survey or investigation.

"(2) Notify the following, severally, in writing of all approvals or disapprovals of applications for planning assistance: the sponsoring organization, the State Governor or Governors concerned, the Secretary of the Interior, the Secretary of the Army, and other Federal agencies concerned.

"(b) The Secretary of the Interior shall notify in writing the State Governor or Governors concerned, the Secretary of Agriculture, the Secretary of the Army, and other Federal agencies concerned of his decision to initiate any survey or field investigation involving water-resources development work, and furnish them with appropriate information regarding the scope, nature, status, and results of such survey or investigation.

"(c) The Secretary of the Army shall notify in writing the State Governor or Governors concerned, the Secretary of Agriculture, the Secretary of the Interior, and other Federal agencies concerned of his decision to initiate any survey or field investigation involving water-resources development work, and furnish them with appropriate information regarding the scope, nature, status, and results of such survey or investigation.

"SEC. 4. *Coordination.* In order to assure the coordination of work authorized under the Act and the related work of other agencies, so that the proper use, conservation, and development of water and related land resources through Federal programs and financial assistance may be achieved in the most orderly, economical, and effective manner,

"(a) The Secretary of Agriculture, before authorizing planning assistance in response to an application from a local organization for assistance under the Act, shall:

"(1) When an application applies to a watershed located in one of the seventeen western reclamation States or Hawaii and it appears that a major objective is the agricultural phases of the conservation, development, utilization, and disposal of water for irrigation purposes, request the views of the Secretary of the Interior concerning the feasibility of achieving equivalent irrigation benefits by means of works of improvement constructed pursuant to the Reclamation Act of June 17, 1902 (43 U.S.C. 391), and acts amendatory or supplementary

[1] 19 F.R. 8725; 3 CFR, 1954 Supp., p. 99.

thereto, or by means of assistance furnished pursuant to the Small Reclamation Projects Act of 1956, as amended (43 U.S.C. 422a–422k), and authorize planning assistance under the Act only after carefully considering whether works of improvement under the Act would be a more appropriate method of achieving that objective.

"(2) When it appears that a major objective of an application is the reduction of flood damages in urban areas (as defined in the most recent census), request the views of the Secretary of the Army concerning the feasibility of achieving equivalent urban flood protection benefits by means of works of improvement constructed pursuant to the Flood Control Act of March 1, 1917 (39 Stat. 948), the Flood Control Act of May 15, 1928 (45 Stat. 534), the Flood Control Act of June 22, 1936 (49 Stat. 1570), or acts amendatory or supplementary thereto, and authorize planning assistance under the Act only after carefully considering whether works of improvement under the Act would be a more appropriate method of achieving that objective.

"(3) When an application applies to a watershed located in the Tennessee River drainage basin, request the views of the Board of Directors of the Tennessee Valley Authority concerning the feasibility of achieving the objectives of the application by means of works of improvement for flood control or watershed protection constructed under the Tennessee Valley Authority Act of 1933, as amended (16 U.S.C. 831 *et seq.*), and authorize planning assistance under the Act only after carefully considering whether works of improvement under the Act would be a more appropriate method of achieving such objectives; and when such planning assistance is authorized, consult with the Tennessee Valley Authority throughout all phases of project development concerning the relationship of works of improvement under the Act to the unified development and regulation of the Tennessee River system.

"(b) The Secretary of the Interior shall, prior to undertaking any survey or field investigation under the Reclamation Act of June 17, 1902 (43 U.S.C. 391), and acts amendatory or supplementary thereto, or prior to initiating investigations after receipt of a Notice of Intent to apply for a loan under the Small Reclamation Projects Act of 1956, as amended (43 U.S.C. 422a–422k), relating to works of improvement wholly within a watershed or subwatershed area of not more than 250,000 acres, request the views of the Secretary of Agriculture concerning the feasibility of achieving the major objectives of the project proposal by means of Federal assistance furnished pursuant to the Act, and submit a report on such a survey or field investigation or approve such application for assistance only after carefully considering whether works of improvement under his authorities would be a more appropriate method of achieving such objectives.

"(c) The Secretary of the Army shall, prior to undertaking any survey or field investigation pursuant to the Flood Control Act of March 1, 1917 (39 Stat. 948), the Flood Control Act of May 15, 1928 (45 Stat. 534), the Flood Control Act of June 22, 1936 (49 Stat. 1570), and acts amendatory or supplementary thereto, relating to works of improvement wholly within a watershed or subwatershed area of not more than 250,000 acres, request the views of the Secretary of Agriculture concerning the feasibility of achieving the major objectives of the project proposal by means of Federal assistance furnished pursuant to the Act, and submit a report on such survey or field investigation only after carefully considering whether works of improvement under his authorities would be a more appropriate method of achieving such objectives.

"(d) The Board of Directors of the Tennessee Valley Authority shall, prior to undertaking any survey or field investigation under the Tennessee Valley Authority Act of 1933, as amended (16 U.S.C. 831 *et seq.*), relating to works of improvement for flood control or watershed protection to be installed wholly within a watershed or subwatershed area of not more than 250,000 acres, request the views of the Secretary of Agriculture concerning the feasibility of achieving the major objectives of the works of improvement for flood control or watershed protection by means of works of improvement constructed under the Act, and proceed with such survey or investigation only after carefully considering whether works of improvement under the Tennessee Valley Authority Act would be a more appropriate method of achieving such objectives.

"(e) Whenever the foregoing provisions of this section require an agency head to request the views of another agency head, such request shall be effected prior to the making of any commitment to local interests, and local interests shall be informed at the outset of negotiations that any plan resulting therefrom is subject to coordination as required by this section.

"(f) When any agency having responsibilities for water resources development is considering the initiation of surveys or field investigations in a watershed or subwatershed area of not more than 250,000 acres and it appears that the purposes to be served by the project under investigation could more advantageously be met by means of a combination of works of improvement under the statutory authority available to that and other agencies, the appropriate agency head shall consider with the other agency heads concerned and the cooperating local interests the feasibility of preparing a jointly developed plan for coordinated action under available statutory authority.

"SEC. 5. *Fish and wildlife development.* Upon receipt of the notice required by section 12 of the Act and section 3(a)(1) of this order, the Secretary of the Interior, as he desires, may make surveys and investigations and prepare a report with recommendations concerning the conservation and development of fish and wildlife resources and participate, under arrangements satisfactory to the Secretary of Agriculture, in the preparation of a plan for works of improvement which will be acceptable to the local organization and the Secretary of Agriculture."

DWIGHT D. EISENHOWER

THE WHITE HOUSE,
January 18, 1961.

[F.R. Doc. 61–640; Filed, Jan. 19, 1961; 10:36 a.m.]

Rules and Regulations

Title 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER A—INCOME TAX

[T.D. 6540]

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

Certain Options

On December 3, 1960, notice of proposed rule making with respect to the amendments of the Income Tax Regulations (26 CFR Part 1) under sections 61 and 421 of the Internal Revenue Code of 1954 was published in the FEDERAL REGISTER (25 F.R. 12414). After consideration of all relevant matter as was presented by interested persons regarding the rules proposed, the amendments of the regulations as so published are hereby adopted, subject to the following changes:

PARAGRAPH 1. Paragraphs 1 and 2 of the appendix to the notice of proposed rule making are withdrawn and paragraph 3 is renumbered "paragraph 1".

PAR. 2. Section 1.421–6 is changed in the following respects:

(A) By striking the last sentence of paragraph (a)(1).

(B) By revising paragraph (a)(3).

(C) By deleting paragraph (b)(3).

(D) By striking the word "section" from the last sentence of paragraph (d)(1) and substituting the word "paragraph".

[SEAL] DANA LATHAM,
Commissioner of Internal Revenue.

Approved: January 17, 1961.

FRED C. SCRIBNER, JR.,
Acting Secretary of the Treasury.

In order to provide rules for the tax treatment of certain options, the Income Tax Regulations (26 CFR Part 1) are amended as follows:

PAR. 1. Section 1.421-6 is amended to read as follows:

§ 1.421–6 Options to which section 421 does not apply.

(a) *Scope of section.* (1) If an employer or other person grants to an employee or other person for any reason connected with the employment of such employee an option to purchase stock of the employer or other property, and if section 421 is not applicable, then this section shall apply. This section will apply, for example, when an option is not a restricted stock option at the time it is granted (see section 421(d)(1) and § 1.421–2), or when an option is modified so that it no longer qualifies as a restricted stock option (see section 421(e) and § 1.421–4), or when there is a disqualifying disposition of stock acquired by the exercise of a restricted stock option so that section 421 does not apply. When an option is granted for any reason connected with the employment of an employee, this section applies, if section 421 does not apply, irrespective of whether the option is granted by the employer, by a parent or subsidiary of the employer, by a stockholder of any of such corporations, or by any other person, and irrespective of whether the option is granted to the employee, to a member of his family, or to any other person, and irrespective of whether the option is to purchase the stock of the employer, the stock of a parent or subsidiary of the employer, the stock of any other corporation, or to purchase any other property.

(2) This section is applicable only to options granted on or after February 26, 1945, except that this section is not applicable to—

(i) Property transferred pursuant to an option exercised before September 25, 1959, if the property is transferred subject to a restriction which has a significant effect on its value, or

(ii) Property transferred pursuant to an option granted before September 25, 1959, and exercised on or after such date, if, under the terms of the contract granting such option, the property to be transferred upon exercise of the option is to be subject to a restriction which has a significant effect on its value and if such property is actually transferred subject to such restriction. However, if an option granted before September 25, 1959, and on or after February 26, 1945, is sold or otherwise disposed of before exercise, the provisions of this section shall be fully applicable to such disposition.

(3) If an option to which this section applies has a readily ascertainable fair market value when granted, no amount is includible in gross income under this section as compensation by reason of the transfer or exercise of such option, irrespective of whether such value was included in income for the taxable year in which the option was granted, and any deduction which is allowable as a result of the granting of such option is allowable only for the taxable year in which the option is granted. Thus, if an option having a readily ascertainable fair market value to which this section applies was granted in a taxable year for which an assessment of deficiency was barred at the time of the adoption of paragraph (c) of this section as a Treasury decision, no amount is includible in gross income under this section as compensation by reason of the transfer or exercise of such option. However, if there is a determination to which the rules of sections 1311–1314 apply, there may be an adjustment for the taxable year in which the option was granted.

(b) *Meaning and use of certain terms.* (1) For the purpose of this section, the term "option" includes the right or privilege of a person to purchase property from any person by virtue of an offer continuing for a stated period of time, whether or not irrevocable, to sell such property at a stated price, such person being under no obligation to purchase.

(2) As used in this section, the terms "employee", "employment", and "employer" have reference to the legal and bona fide relationship of employer and employee. For rules applicable to the determination whether the employer-employee relationship exists, see section 3401(c) and the regulations thereunder.

(c) *Options with a readily ascertainable fair market value.* (1) If there is granted an option to which this section applies and which has a readily ascertainable fair market value (determined in accordance with subparagraphs (2) and (3) of this paragraph) at the time the option is granted, the employee in connection with whose employment such option is granted realizes compensation at such time in an amount equal to the excess, if any, of such fair market value over any amount paid for the option. If an option to which this section applies does not have a readily ascertainable fair market value at the time the option is granted, the time when the compensation is realized and the amount of such compensation shall be determined under paragraph (d) of this section.

(2) Although options may have a value at the time they are granted, that value is ordinarily not readily ascertainable unless the option is actively traded on an established market. If an option is actively traded on an established market, the fair market value of such option is readily ascertainable for purposes of this section by applying the rules of valuation set forth in § 20.2031–2 of this chapter (the Estate Tax Regulations).

(3)(i) When an option is not actively traded on an established market, the fair market value of the option is not readily ascertainable unless the fair market value of the option can be measured with reasonable accuracy. For purposes of this section, if an option is not actively traded on an established market, the option does not have a readily ascertainable fair market value when granted unless the taxpayer can show that all of the following conditions exist:

(*a*) The option is freely transferable by the optionee;

(*b*) The option is exercisable immediately in full by the optionee;

(*c*) The option or the property subject to the option is not subject to any restriction or condition (other than a lien or other condition to secure the payment of the purchase price) which has a significant effect upon the fair market value of the option or such property; and

(*d*) The fair market value of the option privilege is readily ascertainable in accordance with subdivision (ii) of this subparagraph.

(ii) The fair market value of an option includes the value attributable to the option privilege and may include the value attributable to the right to make an immediate bargain purchase of the property subject to the option. If the option provides an option price which is less than the fair market value of the property subject to the option at the time it is granted, an immediate gain may be realized by exercising the option at the bargain price and selling the property so acquired. However, irrespective of whether there is a right to make an immediate bargain purchase of the property subject to the option, the fair market value of the option includes the value of the option privilege. The option privilege is the opportunity to benefit at any time during the period the option may be exercised from any appreciation during such period in the value of the property subject to the option without risking any capital. Therefore, the fair market value of an option is not merely the difference which may exist at a particular time between the option price and the value of the property subject to the option but also includes the value of the option privilege. Accordingly, for purposes of this section, the fair market value of the option is not readily ascertainable unless the value of the option privilege can be measured with reasonable accuracy. In determining whether the value of the option privilege is readily ascertainable, and in determining the amount of such value when such value is readily ascertainable, it is necessary to consider—

(*a*) Whether the value of the property subject to the option can be ascertained;

(*b*) The probability of any ascertainable value of such property increasing or decreasing; and

(*c*) The length of the period during which the option can be exercised.

(d) *Options without a readily ascertainable fair market value.* If there is granted an option to which this section applies, and if the option does not have a readily ascertainable fair market value at the time it is granted, the employee in connection with whose employment the option is granted is considered to realize compensation includible in gross income under section 61 at the time and in the amount determined in accordance with the following rules of this paragraph:

(1) Except as provided in subparagraph (2) of this paragraph, if the option is exercised by the person to whom it was granted, the employee realizes compensation at the time an unconditional right to receive the property subject to the option is acquired by such person, and the amount of such compensation is the difference between the amount payable for the property and the fair market value of the property at the time an unconditional right to receive the property is acquired. An individual has an unconditional right to receive the property subject to the option when his right to receive such property is not subject to any conditions, other than conditions that may be performed by him at any time. Thus, if an individual who has exercised an option has a right to make payment for the property at any time and to receive the property immediately after making such payment, such individual realizes compensation at the time he exercises the option. However, if an individual who has exercised an option is prevented by the terms of the option contract from making payment immediatcly or from receiving an immediate transfer of the property after making payment, such individual does not realize compensation at the time he exercises the option. Such individual will not realize compensation until he does acquire the right to make payment immediately and to receive an immediate transfer of the property. For purposes of this paragraph, an unconditional right to receive the property subject to the option shall not be considered to have been acquired before the date on which the option is exercised.

(2) (i) If the option is exercised by the person to whom it was granted but, at the time an unconditional right to receive the property subject to the option is acquired by such person, such property is subject to a restriction which has a significant effect on its value, the employee realizes compensation at the time such restriction lapses or at the time the property is sold or exchanged, in an arm's length transaction, whichever occurs earlier, and the amount of such compensation is the lesser of—

(*a*) The difference between the amount paid for the property and the fair market value of the property (determined without regard to the restriction) at the time of its acquisition, or

(*b*) The difference between the amount paid for the property and either its fair market value at the time the restriction lapses or the consideration received upon the sale or exchange, whichever is applicable.

If the property is sold or exchanged in a transaction which is not at arm's length before the time the employee realizes compensation in accordance with this subdivision, any amount of gain which the employee realizes as a result of such sale or exchange is includible in gross income at the time of such sale or exchange, but the amount includible in gross income under this subdivision at the time of the expiration of the restriction or the sale or exchange at arm's length shall be reduced by the amount of gain includible in gross income as a result of the sale or exchange not at arm's length.

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

Example (*1*). On November 1, 1959, X Corporation grants to E, an employee, an option to purchase 100 shares of X Corporation stock at $10 per share. Under the terms of the option, E will be subject to a binding commitment to resell the stock to X Corporation at the price he paid for it in the event that his employment terminates within 2 years after he acquires the stock, for any reason except his death. Evidence of this commitment will be stamped on the face of E's stock certificate. E exercises the option and acquires the stock at a time when the stock, determined without regard to the restriction, has a fair market value of $18 per share. Two years after he acquires the stock, at which time the stock has a fair market value of $30 per share, E is still employed by X Corporation. E realizes compensation upon the expiration of the 2-year restriction and the amount of the compensation is $800. The $800 represents the difference between the amount paid for the stock ($1,000) and the fair market value of the stock (determined without regard to the restriction) at the time of its acquisition ($1,800), since such value is less than the fair market value of the stock at the time the restriction lapsed ($3,000).

Example (*2*). Assume, in example (1), that E dies one year after he acquires the stock, at which time the stock has a fair market value of $25 per share. Since the restriction lapses upon E's death, he realizes compensation of $800 ($1,800 less $1,000) and this amount is includible in E's gross income for the taxable year closing with his death.

Example (*3*). Assume that, pursuant to the exercise of an option not having a readily ascertainable fair market value to which this section applies, an employee acquires stock subject to the sole condition that, if he desires to dispose of such stock during the period of his employment, he is obligated to offer to sell the stock to his employer at its fair market value at the time of such sale. Since this condition is not a restriction which has a significant effect on value, the employee realizes compensation upon acquisition of the stock.

Example (*4*). Assume, in example (3), that the employee is obligated to offer to sell the stock to his employer at its book value rather than at its fair market value. Since this condition amounts to a restriction which has a significant effect on value, the employee does not realize compensation upon acquisition of the stock, but he does realize such compensation upon the lapse of the restriction, such as, for example, his death or the termination of his employment.

(3) If the option is not exercised by the person to whom it was granted, but is transferred in an arm's length transaction, the employee realizes compensation in the amount of the gain resulting from such transfer of the option, and such compensation is includible in his gross income in accordance with his method of accounting.

(4) If the option is not exercised by the person to whom it was granted, but is transferred in a transaction which is not at arm's length, the employee realizes compensation in the amount of the gain resulting from such transfer of the option, and such compensation is includible in his gross income in accordance with his method of accounting. Moreover, the employee realizes additional compensation at the time and in the amount determined under subparagraph (1), (2), or (3) of this paragraph, except that the amount of compensation determined under subparagraph (1), (2), or (3) of this paragraph shall be reduced by any amount previously includible in gross income as a result of such transfer of the option. For example, if in 1960 an employee is granted an option not having a readily ascertainable fair market value to buy a share of stock for $50 at a time when the stock has a fair market value of $100, and later in 1960 the employee transfers, in a transaction not at arm's length, the option to his wife for $10, the employee realizes compensation of $10 in 1960. If in 1961 the wife exercises the option at a time when the stock has a fair market value of $120, the employee realizes additional compensation in 1961 in the amount of $60 (the $70 bargain spread less the $10 taxed as

compensation in 1960). For the purpose of this subparagraph, if a person other than the employee dies holding an unexercised option at a time when the employee is still living, the transfer which results by reason of the death of such person is a transfer in a transaction which is not at arm's length.

(5) If there is granted an option to which this section applies, and the employee dies before realizing the compensation in accordance with the rules of this paragraph, income having the character of compensation is realized at the time and in the amount determined under this paragraph by the person who transfers or exercises the option, or the person who receives the property subject to a restriction which has a significant effect on its value. For example, this subparagraph is applicable:

(i) When an option not having a readily ascertainable fair market value is granted to an employee, and he dies before transferring or exercising the option,

(ii) When an option not having a readily ascertainable fair market value is granted to the employee, and he dies after the transfer of the option in a transaction which is not at arm's length, but before the option is exercised, or

(iii) When an option not having a readily ascertainable fair market value is granted to another person, and the employee dies before realizing all of the compensation which would result from any transfer or exercise of the option. If the option is one which was granted to the employee and he dies before transferring or exercising the option, the option shall be considered a right to receive income in respect of a decedent to which the rules of section 691 apply. In any such case, if the option is transferred, section 691 provides that the amount received for such transfer or the fair market value of the property transferred at the time of transfer, whichever is greater, is income realized at the time of such transfer. Moreover, if a transfer is subject to this rule, it will be treated as a transfer in an arm's length transaction for the purpose of this paragraph.

(6) If an option to which this section applies is exercised in part and transferred in part, the rules of this paragraph shall be applied as if there were two options—one exercised and one transferred.

(7) Notwithstanding the other provisions of this paragraph, if this section is applicable because of a disqualifying disposition of stock acquired by the exercise of a restricted stock option, the taxable year of the employee for which he is required to include in his gross income the compensation resulting from such option is determined under section 421 (f) and paragraph (e) of § 1.421–5.

(e) *Basis.* (1) If an option to which this section applies is exercised by the person to whom it was granted, such person's basis for the property so acquired shall be increased by any amount that is includible in the gross income of the employee under paragraph (d) of this section. If such person transfers such property to a person whose basis is the same as the transferor's basis, such transferee's basis shall also reflect the adjustment made by this paragraph. However, if such property is transferred by either of such persons at death so that its basis is determined under section 1014, the basis so determined shall not be increased by reason of this paragraph.

(2) If an option to which this section applies is transferred in a transaction which is not at arm's length, the transferee who exercises the option shall increase his basis for the property so acquired by any amount that is includible in the gross income of the employee at the time such transferee acquires the property.

(3) If an option to which this section applies is transferred in a transaction which is at arm's length, the basis of the property acquired by an exercise of the option shall not be increased by reason of any amount that is includible in the gross income of the employee under this section.

(4) If an option to which this section applies has a readily ascertainable fair market value at the time it is granted, the basis of such option includes any amount includible in gross income of the employee under paragraph (c) of this section.

(f) *Deductions.* If the employer grants an option to which this section applies, the employer of the employee in connection with whose employment the option is granted is considered to have paid compensation to such employee at the same time and in the same amount as such employee is considered under paragraph (c) or (d) of this section to have realized compensation. The deductibility of the amount considered so paid is determined under section 162 or other provision of the Code which is applicable to such a payment. Whether such amount may be deducted in the taxable year considered so paid, or whether such amount is a capital expenditure which is not deductible or which may be amortized, depends upon the nature of the transaction involved and the facts and circumstances of each case. If this section is applicable because of a disqualifying disposition of stock acquired by the exercise of a restricted stock option, the employer's taxable year for which such compensation is deductible is determined under section 421(f) and paragraph (e) of § 1.421–5.

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

[F.R. Doc. 61–528; Filed, Jan. 19, 1961; 8:48 a.m.]

[T.D. 6534]

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

Carryover of Excess Contributions to Certain Taxable Years of Employer

On November 26, 1960, notice of proposed rule making with respect to the amendments of the Income Tax Regulations (26 CFR Part I) under section 404 of the Internal Revenue Code of 1954 to provide rules with respect to the carryover of excess contributions to certain taxable years of the employer was published in the FEDERAL REGISTER (25 F.R. 11235). After consideration of all such relevent matter as was presented by interested persons regarding the rules proposed, the amendments of the regulations as so published are hereby adopted without change. In addition, in order to provide that rules similar to those contained in such amendments are to be followed in the case of taxable years to which 26 CFR Parts 29 and 39 (Regulations 111 and 118) apply, paragraph 9 as set forth below is included in this Treasury decision.

[SEAL] DANA LATHAM,
Commissioner of Internal Revenue.

Approved: January 16, 1961.

FRED C. SCRIBNER, Jr.,
Acting Secretary of the Treasury.

PARAGRAPH 1. Paragraph (a) of § 1.404 (a)–3 is amended to read as follows:

§ 1.404(a)–3 Contributions of an employer to or under an employees' pension trust or annuity plan that meets the requirements of section 401(a); application of section 404 (a)(1).

(a) If contributions are paid by an employer to or under a pension trust or annuity plan for employees and the general conditions and limitations applicable to deductions for such contributions are satisfied (see § 1.404(a)–1), the contributions are deductible under section 404(a) (1) or (2) if the further conditions provided therein are also satisfied. As used in this section, a "pension trust" means a trust forming part of a pension plan and an "annuity plan" means a pension plan under which retirement benefits are provided under annuity or insurance contracts without a trust. This section is also applicable to contributions to a foreign situs pension trust which could qualify for exemption under section 501(a) except that it is not created or organized and maintained in the United States. For the meaning of "pension plan" as used in this section, see paragraph (b)(1)(i) of § 1.401–1. Where disability pensions, insurance, or survivorship benefits incidental and directly related to the retirement benefits under a pension or annuity plan are provided for the employees or their beneficiaries by contributions under the plan, deductions on account of such incidental benefits are also covered under section 404(a) (1) or (2). See paragraph (a) (3) of § 1.402(a)–1 as to taxability to employees of cost of incidental insurance protection. In order to be deductible under section 404(a)(1), contributions to a pension trust must be paid in a taxable year of the employer which ends with or within a year of the trust for which it is exempt under section 501(a). Contributions paid in such a taxable year of the employer may be carried over and deducted in a succeeding taxable year of the employer in accordance with section 404(a)(1)(D), whether or not such succeeding taxable year ends with or within a taxable year of the trust for which it is exempt under section 501(a). See § 1.404(a)–7 for rules relating to the limitation on the amount deductible in such a succeeding taxable year of the employer. See § 1.404(a)–8 as to conditions for deductions under section 404

(a)(2) in the case of an annuity plan. In either case, the deductions are also subject to further limitations provided in section 404(a)(1). The limitations provided in section 404(a)(1) are, with an exception provided for certain years under subparagraph (A) thereof (see § 1.404(a)–4), based on the actuarial costs of the plan.

PAR. 2. Section 1.404(a)–4 is amended (A) by revising paragraph (a), (B) by revising paragraph (b), and (C) by adding a new paragraph (d) at the end thereof. These amended and added provisions read as follows:

§ 1.404(a)–4 Pension and annuity plans; limitations under section 404 (a)(1)(A).

(a) Subject to the applicable general conditions and limitations (see § 1.404 (a)–3), the initial limitation under section 404(a)(1)(A) is 5 percent of the compensation otherwise paid or accrued during the taxable year to all employees under the pension or annuity plan. This initial 5-percent limitation applies to the first taxable year for which a deduction is allowed for contributions to or under such a plan and also applies to any subsequent year (other than one described in paragraph (d) of this section) for which the 5-percent figure is not reduced as provided in this section. For years to which the initial 5-percent limitation applies, no adjustment on account of prior experience is required. If the contributions do not exceed the initial 5-percent limitation in the first taxable year to which this limitation applies, the taxpayer need not submit actuarial data for such year.

(b) For the first taxable year following the first year to which the initial 5-percent limitation applies, and for every fifth year thereafter, or more frequently where preferable to the taxpayer, the taxpayer shall submit with his return an actuarial certification of the amount reasonably necessary to provide the remaining unfunded cost of past and current service credits of all employees under the plan with a statement explaining all the methods, factors, and assumptions used in determining such amount. This amount may be determined as the sum of (1) the unfunded past service cost as of the beginning of the year, and (2) the normal cost for the year. Such costs shall be determined by methods, factors, and assumptions appropriate as a basis of limitations under section 404(a)(1)(C). Whenever requested by the district director, a similar certification and statement shall be submitted for the year or years specified in such request. The district director will make periodical examinations of such data at not less than 5-year intervals. Based upon such examinations the Commissioner will reduce the limitation under section 404 (a)(1)(A) below the 5-percent limitation for the years with respect to which he finds that the 5-percent limitation exceeds the amount reasonably necessary to provide the remaining unfunded cost of past and current service credits of all employees under the plan. Where the limitation is so reduced, the reduced limitation shall apply until the Commissioner finds that a subsequent actuarial valuation shows a change to be necessary. Such subsequent valuation may be made by the taxpayer at any time and submitted to the district director with a request for a change in the limitation. See, however, paragraph (d) of this section with respect to taxable years to which the limitation under section 404 (a)(1)(A) does not apply.

* * * * *

(d) The limitation under section 404 (a)(1)(A) shall not be used for purposes of determining the amount deductible for a taxable year of the employer which ends with or within a taxable year of the pension trust during which it is not exempt under section 501(a), or, in the case of an annuity plan, during which it does not meet the requirements of section 404(a)(2), or which ends after the trust or plan has terminated. See § 1.404(a)–7 for rules relating to the limitation which is applicable for purposes of determining the amount deductible for such a taxable year of the employer.

PAR. 3. Section 1.404(a)–5 is amended (A) by revising paragraph (a) and (B) by adding a new paragraph (e) at the end thereof. The amended and added provisions read as follows:

§ 1.404(a)–5 Pension and annuity plans; limitations under section 404 (a)(1)(B).

(a) Subject to the applicable general conditions and limitations (see § 1.404 (a)–3), under section 404(a)(1)(B), deductions may be allowed to the extent of limitations based on costs determined by distributing the remaining unfunded cost of the past and current service credits with respect to all employees covered under the trust or plan as a level amount or level percentage of compensation over the remaining service of each such employee except that, as to any three individuals with respect to whom more than 50 percent of such remaining unfunded cost is attributable, the remaining unfunded cost attributable to such individuals shall be distributed evenly over a period of at least five taxable years. See, however, paragraph (e) of this section with respect to taxable years to which the limitation under section 404(a)(1)(B) does not apply.

* * * * *

(e) The limitation under section 404(a)(1)(B) shall not be used for purposes of determining the amount deductible for a taxable year of the employer which ends with or within a taxable year of the pension trust during which it is not exempt under section 501(a), or, in the case of an annuity plan, during which it does not meet the requirements of section 404(a)(2), or which ends after the trust or plan has terminated. See § 1.404(a)–7 for rules relating to the limitation which is applicable for purposes of determining the amount deductible for such a taxable year of the employer.

PAR. 4. Section 1.404(a)–6 is amended to read as follows:

§ 1.404(a)–6 Pension and annuity plans; limitations under section 404 (a)(1)(C).

(a) *Application to a taxable year of the employer which ends with or within a taxable year of the pension trust or annuity plan for which it is exempt under section 501(a) or meets the requirements of section 404(a)(2).* (1) The rules in this paragraph are applicable with respect to the limitation under section 404(a)(1)(C) for taxable years of the employer which end with or within a taxable year of the pension trust for which it is exempt under section 501(a), or, in the case of an annuity plan, during which it meets the requirements of section 404(a)(2). See paragraph (b) of this section for rules relating to the limitation under section 404(a)(1)(C) for other taxable years of the employer.

(2) Subject to the applicable general conditions and limitations (see § 1.404 (a)–3), in lieu of amounts deductible under the limitations of section 404(a)(1)(A) and section 404(a)(1)(B), deductions may be allowed under section 404(a)(1)(C) to the extent of limitations based on normal and past service or supplementary costs of providing benefits under the plan. "Normal cost" for any year is the amount actuarially determined which would be required as a contribution by the employer in such year to maintain the plan if the plan had been in effect from the beginning of service of each then included employee and if such costs for prior years had been paid and all assumptions as to interest, mortality, time of payment, etc., had been fulfilled. Past service or supplementary cost at any time is the amount actuarially determined which would be required at such time to meet all the future benefits provided under the plan which would not be met by future normal costs and employee contributions with respect to the employees covered under the plan at such time.

(3) The limitation under section 404(a)(1)(C) for any taxable year to which this paragraph applies is the sum of normal cost for the year plus an amount not in excess of one-tenth of the past service or supplementary cost as of the date the past service or supplementary credits are provided under the plan. For this purpose, the normal cost may be determined by any generally accepted actuarial method and may be expressed either as (i) the aggregate of level amounts with respect to each employee covered under the plan, (ii) a level percentage of payroll with respect to each employee covered under the plan, or (iii) the aggregate of the single premium or unit costs for the unit credits accruing during the year with respect to each employee covered under the plan, provided, in any case, that the method is reasonable in view of the provisions and coverage of the plan, the funding medium, and other applicable considerations. The limitation may include one-tenth of the past service or supplementary cost as of the date the provisions resulting in such cost were put into effect, but it is subject to adjustments for prior favorable experience.

See § 1.404(a)–3. In any case, past service or supplementary costs shall not be included in the limitation for any year in which the amount required to fund fully or to purchase such past service or supplementary credits has been deducted, since no deduction is allowable for any amount (other than the normal cost) which is paid in after such credits are fully funded or purchased.

(b) *Application to a taxable year of the employer which does not end with or within a taxable year of the pension trust or annuity plan for which it is exempt under section 501(a) or meets the requirements of section 404(a)(2).*

(1) The rules in this paragraph are applicable with respect to the limitation under section 404(a)(1)(C) for taxable years of the employer which end with or within a taxable year of the pension trust during which it is not exempt under section 501(a), or, in the case of an annuity plan, during which it does not meet the requirements of section 404(a)(2), or which end after the trust or plan has terminated. Since contributions paid in such taxable years of the employer are not deductible under section 404(a) (1) or (2) (except as provided in section 404(a)(6)), the limitation under section 404(a)(1)(C) for such taxable years relates only to the amount of any excess contributions that may be carried over to such taxable years under section 404(a)(1)(D).

(2) Subject to the applicable general conditions and limitations (see § 1.404 (a)–3), deductions may be allowed under section 404(a)(1)(C) for taxable years of the employer to which this paragraph applies to the extent of limitations based on past service or supplementary costs of providing benefits under the plan. For definition of the "past service or supplementary cost at any time", see paragraph (a)(2) of this section.

(3) The limitation under section 404 (a)(1)(C) for any taxable year to which this paragraph applies is an amount not in excess of one-tenth of the past service or supplementary cost as of the date the past service or supplementary credits are provided under the plan. The limitation under section 404(a)(1)(C) is subject, however, to adjustments for prior favorable experience. In any case, no amounts are deductible under section 404(a)(1)(C) for any year to which this paragraph applies if the amount required to fund fully or to purchase the past service or supplementary credits has been deducted in prior taxable years of the employer.

PAR. 5. Section 1.404(a)–7 is amended to read as follows:

§ 1.404(a)–7 Pension and annuity plans; contributions in excess of limitations under section 404(a)(1); application of section 404(a)(1)(D).

When contributions paid by an employer in a taxable year to or under a pension or annuity plan exceed the limitations applicable under section 404(a) (1) but otherwise satisfy the conditions for deduction under section 404(a) (1) or (2), then in accordance with section 404(a)(1)(D), the excess contributions are carried over and are deductible in succeeding taxable years of the employer in order of time pursuant to the following rules:

(a) In the case of a succeeding taxable year of the employer which ends with or within a taxable year of the pension trust for which it is exempt under section 501(a), or, in the case of an annuity plan, during which it meets the requirements of section 404(a)(2), such excess contributions are deductible to the extent of the difference between the amount paid and deductible in such succeeding taxable year and the limitation applicable to such year under section 404(a)(1) (A), (B), or (C).

(b) In the case of a succeeding taxable year of the employer which ends with or within a taxable year of the pension trust during which it is not exempt under section 501(a), or, in the case of an annuity plan, during which it does not meet the requirements of section 404(a) (2), or which ends after the trust or plan has terminated, such excess contributions are deductible to the extent of the limitation applicable to such year under section 404(a)(1)(C) (see paragraph (b) of § 1.404(a)–6).

The provisions of section 404(a)(1)(D) are to be applied before giving effect to the provisions of section 404(a)(7) for any year. The carryover provisions of section 404(a)(1)(D), before effect has been given to section 404(a)(7), may be illustrated by the following example for a plan put into effect in a taxable year ending December 31, 1954:

Taxable Year Ending Dec. 31, 1954

Amount of contributions paid in year	$100,000
Limitation applicable to year	60,000
Amount deductible for year	60,000
Excess carried over to succeeding years	40,000

Taxable Year Ending Dec. 31, 1955

Amount of contributions paid in year	$25,000
Carried over from previous years	40,000
Total deductible subject to limitation	65,000
Limitation applicable to year	50,000
Amount deductible for year	50,000
Excess carried over to succeeding years	15,000

Taxable Year Ending Dec. 31, 1956

Amount of contributions paid in year	$10,000
Carried over from previous years	15,000
Total deductible subject to limitation	25,000
Limitation applicable to year	45,000
Amount deductible for year	25,000
Excess carried over to succeeding years	None

PAR. 6. Paragraph (a)(2) of § 1.404 (a)–8 is amended to read as follows:

§ 1.404(a)–8 Contributions of an employer under an employees' annuity plan which meets the requirements of section 401(a); application of section 404(a)(2).

(a) * * *

(2) The contributions must be paid in a taxable year of the employer which ends with or within a year of the plan for which it meets the applicable requirements with respect to discrimination set out in section 401(a) (3), (4), (5), and (6). See §§ 1.401–3 and 1.401–4. Contributions paid in such a taxable year of the employer may be carried over and deducted in a succeeding taxable year of the employer in accordance with section 404(a)(1)(D), whether or not such succeeding taxable year ends with or within a taxable year of the plan for which it meets the requirements set out in section 401(a) (3), (4), (5), and (6). The requirements set out in section 401(a) (3), (4), (5), and (6) are considered to be satisfied for the period beginning with the date on which an annuity plan was put into effect and ending with the fifteenth day of the third month following the close of the taxable year of the employer in which the plan was put into effect, if all provisions of the plan which are necessary to satisfy such requirements are in effect by the end of such period and have been made effective for all purposes with respect to the whole of such period. See section 401(b) and § 1.401–5. It should be noted that the period in which a plan may be amended to qualify under section 401(b) ends before the date taxpayers, other than corporations, are required to file income tax returns.

PAR. 7. Section 1.404(a)–9 is amended (A) by revising paragraphs (a), (b), (c), (d), and (e) and (B) by revising the heading of the illustration in paragraph (g). These amended provisions read as follows:

§ 1.404(a)–9 Contributions of an employer to an employees' profit-sharing or stock bonus trust that meets the requirements of section 401(a); application of section 404(a)(3)(A).

(a) If contributions are paid by an employer to a profit-sharing or stock bonus trust for employees and the general conditions and limitations applicable to deductions for such contributions are satisfied (see § 1.404(a)–1), the contributions are deductible under section 404(a)(3)(A) if the further conditions provided therein are also satisfied. In order to be deductible under the first, second, or third sentence of section 404 (a)(3)(A), the contributions must be paid (or deemed to have been paid under section 404(a)(6)) in a taxable year of the employer which ends with or within a taxable year of the trust for which it is exempt under section 501(a) and the trust must not be designed to provide retirement benefits for which the contributions can be determined actuarially. Excess contributions paid in such a taxable year of the employer may be carried over and deducted in a succeeding taxable year of the employer in accordance with the third sentence of section 404(a) (3)(A), whether or not such succeeding taxable year ends with or within a taxable year of the trust for which it is exempt under section 501(a). This section is also applicable to contributions to a foreign situs profit-sharing or stock bonus trust which could qualify for exemption under section 501(a) except that

it is not created or organized and maintained in the United States.

(b) The amount of deductions under section 404(a)(3)(A) for any taxable year is subject to limitations based on the compensation otherwise paid or accrued by the employer during such taxable year to employees who are beneficiaries under the plan. For purposes of computing this limitation, the following rules are applicable:

(1) In the case of a taxable year of the employer which ends with or within a taxable year of the trust for which it is exempt under section 501(a), the limitation shall be based on the compensation otherwise paid or accrued by the employer during such taxable year of the employer to the employees who, in such taxable year of the employer, are beneficiaries of the trust funds accumulated under the plan.

(2) In the case of a taxable year of the employer which ends with or within a taxable year of the trust during which it is not exempt under section 501(a), or which ends after the trust has terminated, the limitation shall be based on the compensation otherwise paid or accrued by the employer during such taxable year of the employer to the employees who, at any time during the one-year period ending on the last day of the last calendar month during which the trust was exempt under section 501(a), were beneficiaries of the trust funds accumulated under the plan.

For purposes of this paragraph, "compensation otherwise paid or accrued" means all of the compensation paid or accrued except that for which a deduction is allowable under a plan that qualifies under section 401(a), including a plan that qualifies under section 404(a)(2). The limitations under section 404(a)(3)(A) apply to the total amount deductible for contributions to the trust regardless of the manner in which the funds of the trust are invested, applied, or distributed, and no other deduction is allowable on account of any benefits provided by contributions to the trust or by the funds thereof. Where contributions are paid to two or more profit-sharing or stock bonus trusts satisfying the conditions for deduction under section 404(a)(3)(A), such trusts are considered as a single trust in applying these limitations.

(c) The primary limitation on deductions for a taxable year is 15 percent of the compensation otherwise paid or accrued by the employer during such taxable year to the employees who are beneficiaries under the plan. See paragraph (b) of this section for rules for determining who are the beneficiaries under the plan.

(d) In order that the deductions may average 15 percent of compensation otherwise paid or accrued over a period of years, where contributions in some taxable year are less than the primary limitation but contributions in some succeeding taxable year exceed the primary limitation, deductions in each succeeding year are subject to a secondary limitation instead of to the primary limitation. The secondary limitation for any year is equal to the lesser of (1) twice the primary limitation for the year, or (2) any excess of (i) the aggregate of the primary limitations for the year and for all prior years over (ii) the aggregate of the deductions allowed or allowable under the limitations provided in section 404(a)(3)(A) for all prior years. Since contributions paid into a profit-sharing or stock bonus trust are deductible under section 404(a)(3)(A) only if they are paid (or deemed to have been paid under section 404(a)(6)) in a taxable year of the employer which ends with or within a taxable year of the trust for which it is exempt under section 501(a), the secondary limitation described in this paragraph is not applicable with respect to determining amounts deductible for a taxable year of the employer which ends with or within a taxable year of the trust during which it is not exempt under section 501(a), or which ends after the trust has terminated. See paragraph (e) of this section for rules relating to amounts which are deductible in such a taxable year.

(e) In any case when the contributions in a taxable year exceed the amount allowable as a deduction for the year under section 404(a)(3)(A), the excess is deductible in succeeding taxable years, in order of time, in accordance with the following limitations:

(1) If the succeeding taxable year ends with or within a taxable year of the trust for which it is exempt under section 501(a), such excess is deductible in any such succeeding taxable year in which the contributions are less than the primary limitation for that year; but the total deduction for such succeeding taxable year cannot exceed the lesser of (i) the primary limitation for such year, or (ii) the sum of the contributions in such year and the excess contributions not deducted under the limitations of section 404(a)(3)(A) for prior years.

(2) If the succeeding taxable year ends with or within a taxable year of the trust during which it is not exempt under section 501(a), or if such succeeding taxable year ends after the trust has terminated, the total deduction for such succeeding taxable year cannot exceed the lesser of (i) the primary limitation for such succeeding taxable year, or (ii) the excess contributions not deducted under the limitations of section 404(a)(3)(A) for prior years.

In no case, however, are excess contributions deductible in a succeeding taxable year if such contributions were not paid (or deemed to have been paid under section 404(a)(6)) in a taxable year of the employer which ends with or within a taxable year of the trust for which it is exempt under section 501(a).

* * * * *

(g) * * *

Illustration of provisions of section 404(a)(3)(A) for a plan put into effect in the taxable (calendar) year 1954, before giving effect to section 404(a)(7) (all figures represent thousands of dollars and all taxable (calendar) years are years which end with or within a taxable year of the trust for which it is exempt under section 501(a))

* * * * *

PAR. 8. Section 1.404(a)-13 is amended (A) by revising paragraph (a) and (B) by changing the heading of the illustration in paragraph (c). These amended provisions read as follows:

§ 1.404(a)-13 Contributions of an employer where deductions are allowable under section 404(a)(1) or (2) and also under section 404(a)(3); application of section 404(a)(7).

(a) Where deductions are allowable under section 404(a)(1) or (2) on account of contributions under a pension or annuity plan and deductions are also allowable under section 404(a)(3) for the same taxable year on account of contributions to a profit-sharing or stock bonus trust, the total deductions under these sections are subject to the provisions of section 404(a)(7) unless no employee who is a beneficiary under the trusts or plans for which deductions are allowable under section 404(a)(1) or (2) is also a beneficiary under the trusts for which deductions are allowable under section 404(a)(3). The provisions of section 404(a)(7) apply only to deductions for overlapping trusts or plans, i.e., for all trusts or plans for which deductions are allowable under section 404(a)(1), (2), or (3) except (1) any trust or plan for which deductions are allowable under section 404(a)(1) or (2) and which does not cover any employee who is also covered under a trust for which deductions are allowable under section 404(a)(3), and (2) any trust for which deductions are allowable under section 404(a)(3) and which does not cover any employee who is also covered under a trust or plan for which deductions are allowable under section 404(a)(1) or (2). The limitations under section 404(a)(7) for any taxable year of the employer are based on the compensation otherwise paid or accrued during the year by the employer to all employees who, in such year, are beneficiaries of the funds accumulated under one or more of the overlapping trusts or plans. For purposes of the preceding sentence, if the taxable year of the employer with respect to which the limitation is being computed ends with or within a taxable year of any of the overlapping trusts or plans during which any such trust is not exempt under section 501(a) or, in the case of a plan, during which it does not meet the requirements of section 404(a)(2), or if such taxable year of the employer ends after any such trust or plan has terminated, then, with respect to such trust or plan, those employees, and only those employees, who, at any time during the one-year period ending on the last day of the last calendar month during which the trust was exempt under section 501(a), or the plan met the requirements of section 404(a)(2), were beneficiaries of the funds accumulated under such trust or plan shall be considered the beneficiaries of such trust or plan in the taxable year of the employer with respect to which the limitation is being computed. For purposes of this paragraph, "compensation otherwise paid or accrued" means all of the compensation paid or accrued except that for which a deduction is allowable un-

der a plan that qualifies under section 401(a), including a plan that qualifies under section 404(a)(2).

* * * * *

(c) * * *

Illustration of application of provisions of section 404(a)(7) and of treatment of carryovers for overlapping pension and profit-sharing trusts put into effect in 1954 and covering the same employees (all figures represent thousands of dollars and all taxable (calendar) years of the employer are years which end with or within a taxable year of the trust for which it is exempt under section 501(a))

* * * * *

PAR. 9. The amendments of the Income Tax Regulations under section 404 of the Internal Revenue Code of 1954, covering taxable years beginning after December 31, 1953, and ending after August 16, 1954, set forth in this Treasury decision, are hereby made applicable to taxable years covered by 26 CFR Parts 29 and 39 (Regulations 111 and 118).

Because Paragraph 9 of this Treasury decision does not relate to new or different substantive rules but merely provides that the amendments made by the other paragraphs of this Treasury decision (which were published with notice of proposed rule making) shall apply to taxable years covered by 26 CFR Parts 29 and 39 (Regulations 111 and 118), it is found that it is unnecessary to issue this paragraph with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation under section 4(c) of that Act.

(Sec. 7805 of the Internal Revenue Code of 1954; 68A Stat. 917; 26 U.S.C. 7805; secs. 62 and 3791 of the Internal Revenue Code of 1939; 53 Stat. 32, 467; 26 U.S.C. 62, 3791)

[F.R. Doc. 61-511; Filed, Jan. 19, 1961; 8:46 a.m.]

[T.D. 6539]

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

"Dollar-Value" LIFO Method

On December 1, 1960, notice of proposed rule making was published in the FEDERAL REGISTER (25 F.R. 12293) regarding an amendment of the Income Tax Regulations (26 CFR Part 1) under section 472 of the Internal Revenue Code of 1954 to prescribe rules under the so-called "dollar-value" LIFO method. After considering all relevant matter as was presented by interested persons regarding the proposed rules, the regulations as so proposed are hereby adopted for taxable years beginning after December 31, 1953, and ending after August 16, 1954, except where otherwise provided, and subject to the following changes:

Section 1.472-8 is amended by revising subparagraph (1), subdivision (i) of subparagraph (2), and subdivisions (i)(*a*), (i)(*c*), and (ii) of subparagraph (3) of paragraph (b); paragraph (d); subparagraph (1), and example (2) of subdivision (v) of subparagraph (2) of paragraph (e); subparagraph (1) of paragraph (f); and subparagraph (1) of paragraph (h).

[SEAL] DANA LATHAM,
Commissioner of Internal Revenue.

Approved: January 16, 1961.

FRED C. SCRIBNER, Jr.,
Acting Secretary of the Treasury.

In order to prescribe rules under the so-called "dollar-value" LIFO method, such regulations are amended as follows:

PARAGRAPH 1. Paragraph (1) of § 1.472-1 is amended to read as follows:

§ 1.472-1 Last-in, first-out inventories.

* * * * *

(1) If a taxpayer uses consistently the so-called "dollar-value" method of pricing inventories, or any other method of computation established to the satisfaction of the Commissioner as reasonably adaptable to the purpose and intent of section 472 and this section, and if such taxpayer elects under section 472 to use the LIFO inventory method authorized by such section, the taxpayer's opening and closing inventories shall be determined under section 472 by the use of the appropriate adaptation. See § 1.472-8 for rules relating to the use of the dollar-value method.

PAR. 2. The introductory paragraph of § 1.472-2 is amended to read as follows:

§ 1.472-2 Requirements incident to adoption and use of LIFO inventory method.

Except as otherwise provided in § 1.472-1 with respect to raw material computations, with respect to retail inventory computations, and with respect to other methods of computation established to the satisfaction of the Commissioner as reasonably adapted to the purpose and intent of section 472, and in § 1.472-8 with respect to the "dollar-value" method, the adoption and use of the LIFO inventory method is subject to the following requirements:

PAR. 3. The following new § 1.472-8 is inserted immediately after § 1.472-7.

§ 1.472-8 Dollar-value method of pricing LIFO inventories.

(a) *Election to use dollar-value method.* Any taxpayer may elect to determine the cost of his LIFO inventories under the so-called "dollar-value" LIFO method, provided such method is used consistently and clearly reflects the income of the taxpayer in accordance with the rules of this section. The dollar-value method of valuing LIFO inventories is a method of determining cost by using "base-year" cost expressed in terms of total dollars rather than the quantity and price of specific goods as the unit of measurement. Under such method the goods contained in the inventory are grouped into a pool or pools as described in paragraphs (b) and (c) of this section. The term "base-year cost" is the aggregate of the cost (determined as of the beginning of the taxable year for which the LIFO method is first adopted, i.e., the base date) of all items in a pool. The taxable year for which the LIFO method is first adopted with respect to any item in the pool is the "base year" for that pool, except as provided in paragraph (g)(3) of this section. Liquidations and increments of items contained in the pool shall be reflected only in terms of a net liquidation or increment for the pool as a whole. Fluctuations may occur in quantities of various items within the pool, new items which properly fall within the pool may be added, and old items may disappear from the pool, all without necessarily effecting a change in the dollar value of the pool as a whole. An increment in the LIFO inventory occurs when the end of the year inventory for any pool expressed in terms of base-year cost is in excess of the beginning of the year inventory for that pool expressed in terms of base-year cost. In determining the inventory value for a pool, the increment, if any, is adjusted for changing unit costs or values by reference to a percentage, relative to base-year-cost, determined for the pool as a whole. See paragraph (e) of this section. See also paragraph (f) of this section for rules relating to the change to the dollar-value LIFO method from another LIFO method.

(b) *Principles for establishing pools of manufacturers and processors*—(1) *Natural business unit pools.* A pool shall consist of all items entering into the entire inventory investment for a natural business unit of a business enterprise, unless the taxpayer elects to use the multiple pooling method provided in subparagraph (3) of this paragraph. Thus, if a business enterprise is composed of only one natural business unit, one pool shall be used for all of its inventories, including raw materials, goods in process, and finished goods. If, however, a business enterprise is actually composed of more than one natural business unit, more than one pool is required. Where similar types of goods are inventoried in two or more natural business units of the taxpayer, the Commissioner may apportion or allocate such goods among the various natural business units, if he determines that such apportionment or allocation is necessary in order to clearly reflect the income of such taxpayer. Where a manufacturer or processor is also engaged in the wholesaling or retailing of goods purchased from others, any pooling of the LIFO inventory of such purchased goods for the wholesaling or retailing operations shall be determined in accordance with the rules of paragraph (c) of this section.

(2) *Definition of natural business unit.* (i) Whether an enterprise is composed of more than one natural business unit is a matter of fact to be determined from all the circumstances. The natural business divisions adopted by the taxpayer for internal management purposes, the existence of separate and distinct production facilities and processes, and the maintenance of separate profit and loss records with respect to separate operations are important considerations in determining what is a business unit, unless such divisions, facilities, or accounting records are set up merely because of differences in geographical location. In the case of a manufacturer or processor, a natural business unit ordinarily con-

sists of the entire productive activity of the enterprise within one product line or within two or more related product lines including (to the extent engaged in by the enterprise) the obtaining of materials, the processing of materials, and the selling of manufactured or processed goods. Thus, in the case of a manufacturer or processor, the maintenance and operation of a raw material warehouse does not generally constitute, of itself, a natural business unit. If the taxpayer maintains and operates a supplier unit the production of which is both sold to others and transferred to a different unit of the taxpayer to be used as a component part of another product, the supplier unit will ordinarily constitute a separate and distinct natural business unit. Ordinarily, a processing plant would not in itself be considered a natural business unit if the production of the plant, although saleable at this stage, is not sold to others, but is transferred to another plant of the enterprise, not operated as a separate division, for further processing or incorporation into another product. On the other hand, if the production of a manufacturing or processing plant is transferred to a separate and distinct division of the taxpayer, which constitutes a natural business unit, the supplier unit itself will ordinarily be considered a natural business unit. However, the mere fact that a portion of the production of a manufacturing or processing plant may be sold to others at a certain stage of processing with the remainder of the production being further processed or incorporated into another product will not of itself be determinative that the activities devoted to the production of the portion sold constitute a separate business unit. Where a manufacturer or processor is also engaged in the wholesaling or retailing of goods purchased from others, the wholesaling or retailing operations with respect to such purchased goods shall not be considered a part of any manufacturing or processing unit.

(ii) The rules of this subparagraph may be illustrated by the following examples:

Example (1). A corporation manufactures, in one division, automatic clothes washers and driers of both commercial and domestic grade as well as electric ranges, mangles, and dishwashers. The corporation manufactures, in another division, radios and television sets. The manufacturing facilities and processes used in manufacturing the radios and television sets are distinct from those used in manufacturing the automatic clothes washers, etc. Under these circumstances, the enterprise would consist of two business units and two pools would be appropriate, one consisting of all of the LIFO inventories entering into the manufacture of clothes washers and driers, electric ranges, mangles, and dishwashers and the other consisting of all of the LIFO inventories entering into the production of radio and television sets.

Example (2). A taxpayer produces plastics in one of its plants. Substantial amounts of the production are sold as plastics. The remainder of the production is shipped to a second plant of the taxpayer for the production of plastic toys which are sold to customers. The taxpayer operates his plastics plant and toy plant as separate divisions. Because of the different product lines and the separate divisions the taxpayer has two natural business units.

Example (3). A taxpayer is engaged in the manufacture of paper. At one stage of processing, uncoated paper is produced. Substantial amounts of uncoated paper are sold at this stage of processing. The remainder of the uncoated paper is transferred to the taxpayer's finishing mill where coated paper is produced and sold. This taxpayer has only one natural business unit since coated and uncoated paper are within the same product line.

(3) *Multiple pools*—(i) *Principles for establishing multiple pools.* (a) A taxpayer may elect to establish multiple pools for inventory items which are not within a natural business unit as to which the taxpayer has adopted the natural business unit method of pooling as provided in subparagraph (1) of this paragraph. Each such pool shall ordinarily consist of a group of inventory items which are substantially similar. In determining whether such similarity exists, consideration shall be given to all the facts and circumstances. The formulation of detailed rules for selection of pools applicable to all taxpayers is not feasible. Important considerations to be taken into account include, for example, whether there is substantial similarity in the types of raw materials used or in the processing operations applied; whether the raw materials used are readily interchangeable; whether there is similarity in the use of the products; whether the groupings are consistently followed for purposes of internal accounting and management; and whether the groupings follow customary business practice in the taxpayer's industry. The selection of pools in each case must also take into consideration such factors as the nature of the inventory items subject to the dollar-value LIFO method and the significance of such items to the taxpayer's business operations. Where similar types of goods are inventoried in natural business units and multiple pools of the taxpayer, the Commissioner may apportion or allocate such goods among the natural business units and the multiple pools, if he determines that such apportionment or allocation is necessary in order to clearly reflect the income of the taxpayer.

(b) Raw materials which are substantially similar shall be pooled together in accordance with the principles of this subparagraph. However, inventories of raw or unprocessed materials of an unlike nature may not be placed into one pool, even though such materials become part of otherwise identical finished products.

(c) Finished goods and goods-in-process in the inventory shall be placed into pools classified by major classes or types of goods. The same class or type of finished goods and goods-in-process shall ordinarily be included in the same pool. Where the material content of a class of finished goods and goods-in-process included in a pool has been changed, for example, to conform with current trends in an industry, a separate pool of finished goods and goods-in-process will not ordinarily be required unless the change in material content results in a substantial change in the finished goods.

(d) The requirement that pools be established by major types of materials or major classes of goods is not to be construed so as to preclude the establishment of a miscellaneous pool. Since a taxpayer may elect the dollar-value LIFO method with respect to all or any designated goods in his inventory, there may be a number of such inventory items covered in the election. A miscellaneous pool shall consist only of items which are relatively insignificant in dollar value by comparison with other inventory items in the particular trade or business and which are not properly includible as part of another pool.

(ii) *Raw materials content pools.* The dollar-value method of pricing LIFO inventories may be used in conjunction with the raw materials content method authorized in § 1.472–1. Raw materials (including the raw material content of finished goods and goods-in-process) which are substantially similar shall be pooled together in accordance with the principles of subdivision (i) of this subparagraph. However, inventories of materials of an unlike nature may not be placed into one pool, even though such materials become part of otherwise identical finished products.

(c) *Principles for establishing pools for wholesalers, retailers, etc.* Items of inventory in the hands of wholesalers, retailers, jobbers, and distributors shall be placed into pools by major lines, types, or classes of goods. In determining such groupings, customary business classifications of the particular trade in which the taxpayer is engaged is an important consideration. An example of such customary business classification is the department in the department store. In such case, practices are relatively uniform throughout the trade, and departmental grouping is peculiarly adapted to the customs and needs of the business. However, in appropriate cases, the principles set forth in paragraphs (b) (1) and (2) of this section, relating to pooling by natural business units, may be used, with permission of the Commissioner, by wholesalers, retailers, jobbers, or distributors. Where a wholesaler or retailer is also engaged in the manufacturing or processing of goods, the pooling of the LIFO inventory for the manufacturing or processing operations shall be determined in accordance with the rules of paragraph (b) of this section.

(d) *Determination of appropriateness of pools.* Whether the number and the composition of the pools used by the taxpayer is appropriate, as well as the propriety of all computations incidental to the use of such pools, will be determined in connection with the examination of the taxpayer's income tax returns. Adequate records must be maintained to support the base-year unit cost as well as the current-year unit cost for all items priced on the dollar-value LIFO inventory method, regardless of the method authorized by paragraph (e) of this section which is used in computing the LIFO value of the dollar-value pool. The pool or pools selected must be used for the year of adoption and for all subsequent taxable years unless a change is required by the Commissioner in order to clearly reflect income, or unless per-

mission to change is granted by the Commissioner as provided in paragraph (e) of § 1.446–1. However, see paragraph (h) of this section for authorization to change the method of pooling in certain specified cases.

(e) *Methods of computation of the LIFO value of a dollar-value pool*—(1) *Methods authorized.* A taxpayer may ordinarily use only the so-called "double-extension" method for computing the base-year and current-year cost of a dollar-value inventory pool. Where the use of the double-extension method is impractical, because of technological changes, the extensive variety of items, or extreme fluctuations in the variety of the items, in a dollar-value pool, the taxpayer may use an index method for computing all or part of the LIFO value of the pool. An index may be computed by double-extending a representative portion of the inventory in a pool or by the use of other sound and consistent statistical methods. The index used must be appropriate to the inventory pool to which it is to be applied. The appropriateness of the method of computing the index and the accuracy, reliability, and suitability of the use of such index must be demonstrated to the satisfaction of the district director in connection with the examination of the taxpayer's income tax returns. The use of any so-called "link-chain" method will be approved for taxable years beginning after December 31, 1960, only in those cases where the taxpayer can demonstrate to the satisfaction of the district director that the use of either an index method or the double-extension method would be impractical or unsuitable in view of the nature of the pool. A taxpayer using either an index or link-chain method shall attach to his income tax return for the first taxable year beginning after December 31, 1960, for which the index or link-chain method is used, a statement describing the particular link-chain method or the method used in computing the index. The statement shall be in sufficient detail to facilitate the determination as to whether the method used meets the standards set forth in this subparagraph. In addition, a copy of the statement shall be filed with the Commissioner of Internal Revenue, Attention: T:R, Washington 25, D.C. The taxpayer shall submit such other information as may be requested with respect to such index or link-chain method. Adequate records must be maintained by the taxpayer to support the appropriateness, accuracy, and reliability of an index or link-chain method. A taxpayer may request the Commissioner to approve the appropriateness of an index or link-chain method for the first taxable year beginning after December 31, 1960, for which it is used. Such request must be submitted within 90 days after the beginning of the first taxable year beginning after December 31, 1960, in which the taxpayer desires to use the index or link-chain method, or on or before May 1, 1961, whichever is later. A taxpayer entitled to use the retail method of pricing LIFO inventories authorized by § 1.472–1(k) may use retail price indexes prepared by the United States Bureau of Labor Statistics. Any method of computing the LIFO value of a dollar-value pool must be used for the year of adoption and all subsequent taxable years, unless the taxpayer obtains the consent of the Commissioner in accordance with paragraph (e) of § 1.446–1 to use a different method.

(2) *Double extension method.* (i) Under the double-extension method the quantity of each item in the inventory pool at the close of the taxable year is extended at both base-year unit cost and current-year unit cost. The respective extensions at the two costs are then each totaled. The first total gives the amount of the current inventory in terms of base-year cost and the second total gives the amount of such inventory in terms of current-year cost.

(ii) The total current-year cost of items making up a pool may be determined—

(*a*) By reference to the actual cost of the goods most recently purchased or produced;

(*b*) By reference to the actual cost of the goods purchased or produced during the taxable year in the order of acquisition;

(*c*) By application of an average unit cost equal to the aggregate cost of all of the goods purchased or produced throughout the taxable year divided by the total number of units so purchased or produced; or

(*d*) Pursuant to any other proper method which, in the opinion of the Commissioner, clearly reflects income.

(iii) Under the double-extension method a base-year unit cost must be ascertained for each item entering a pool for the first time subsequent to the beginning of the base year. In such a case, the base-year unit cost of the entering item shall be the current-year cost of that item unless the taxpayer is able to reconstruct or otherwise establish a different cost. If the entering item is a product or raw material not in existence on the base date, its cost may be reconstructed, that is, the taxpayer using reasonable means may determine what the cost of the item would have been had it been in existence in the base year. If the item was in existence on the base date but not stocked by the taxpayer, he may establish, by using available data or records, what the cost of the item would have been to the taxpayer had he stocked the item. If the base-year unit cost of the entering item is either reconstructed or otherwise established to the satisfaction of the Commissioner, such cost may be used as the base-year unit cost in applying the double-extension method. If the taxpayer does not reconstruct or establish to the satisfaction of the Commissioner a base-year unit cost, but does reconstruct or establish to the satisfaction of the Commissioner the cost of the item at some year subsequent to the base year, he may use the earliest cost which he does reconstruct or establish as the base-year unit cost.

(iv) To determine whether there is an increment or liquidation in a pool for a particular taxable year, the end of the year inventory of the pool expressed in terms of base-year cost is compared with the beginning of the year inventory of the pool expressed in terms of base-year cost. When the end of the year inventory of the pool is in excess of the beginning of the year inventory of the pool, an increment occurs in the pool for that year. If there is an increment for the taxable year, the ratio of the total current-year cost of the pool to the total base-year cost of the pool must be computed. This ratio when multiplied by the amount of the increment measured in terms of base-year cost gives the LIFO value of such increment. The LIFO value of each such increment is hereinafter referred to in this section as the "layer of increment" and must be separately accounted for and a record thereof maintained as a separate layer of the pool, and may not be combined with a layer of increment occurring in a different year. On the other hand, when the end of the year inventory of the pool is less than the beginning of the year inventory of the pool, a liquidation occurs in the pool for that year. Such liquidation is to be reflected by reducing the most recent layer of increment by the excess of the beginning of the year inventory over the end of the year inventory of the pool. However, if the amount of the liquidation exceeds the amount of the most recent layer of increment, the preceding layers of increment in reverse chronological order are to be successively reduced by the amount of such excess until all the excess is absorbed. The base-year inventory is to be reduced by liquidation only to the extent that the aggregate of all liquidation exceeds the aggregate of all layers of increment.

(v) The following examples illustrate the computation of the LIFO value of inventories under the double-extension method.

Example (1). (*a*) A taxpayer elects, beginning with the calendar year 1961, to compute his inventories by use of the LIFO inventory method under section 472 and further elects to use the dollar-value method in pricing such inventories as provided in paragraph (a) of this section. He creates Pool No. 1 for items A, B, and C. The composition of the inventory for Pool No. 1 at the base date, January 1, 1961, is as follows:

Items	Units	Unit cost	Total cost
A	1,000	$5	$5,000
B	2,000	4	8,000
C	500	2	1,000
Total base-year cost at Jan. 1, 1961			14,000

(*b*) The closing inventory of Pool No. 1 at December 31, 1961, contains 3,000 units of A, 1,000 units of B, and 500 units of C. The taxpayer computes the current-year cost of the items making up the pool by reference to the actual cost of goods most recently purchased. The most recent purchases of items A, B, and C are as follows:

Item	Purchase date	Quantity purchased	Unit cost
A	Dec. 15, 1961	3,500	$6.00
B	Dec. 10, 1961	2,000	5.00
C	Nov. 1, 1961	500	2.50

(c) The inventory of Pool No. 1 at December 31, 1961, shown at base-year and current-year cost is as follows:

Item	Quantity	Dec. 31, 1961, inventory at Jan. 1, 1961, base-year cost		Dec. 31, 1961, inventory at current-year cost	
		Unit cost	Amount	Unit cost	Amount
A	3,000	$5.00	$15,000	$6.00	$18,000
B	1,000	4.00	4,000	5.00	5,000
C	500	2.00	1,000	2.50	1,250
Total			$20,000		$24,250

(d) If the amount of the December 31, 1961, inventory at base-year cost were equal to, or less than, the base-year cost of $14,000 at January 1, 1961, such amount would be the closing LIFO inventory at December 31, 1961. However, since the base-year cost of the closing LIFO inventory at December 31, 1961, amounts to $20,000, and is in excess of the $14,000 base-year cost of the opening inventory for that year, there is a $6,000 increment in Pool No. 1 during the year. This increment must be valued at current-year cost, i.e., the ratio of $24,250/20,000, or 121.25 percent. The LIFO value of the inventory at December 31, 1961, is $21,275, computed as follows:

Pool No. 1

	Dec. 31, 1961, inventory at Jan. 1, 1961, base-year cost	Ratio of total current-year cost to total base-year cost	Dec. 31, 1961, inventory at LIFO value
		Percent	
Jan. 1, 1961, base cost	14,000	100.00	$14,000
Dec. 31, 1961, increment	6,000	121.25	7,275
Total	20,000		21,275

Example (2). (a) Assume the taxpayer in example (1) during the year 1962 completely disposes of item C and purchases item D. Assume further that item D is properly includible in Pool No. 1 under the provisions of this section. The closing inventory on December 31, 1962, consists of quantities at current-year unit cost, as follows:

Items	Units	Current-year unit cost Dec. 31, 1962
A	2,000	$6.50
B	1,500	6.00
D	1,000	5.00

(b) The taxpayer establishes that the cost of item D, had he acquired it on January 1, 1961, would have been $2.00 per unit. Such cost shall be used as the base-year unit cost for item D, and the LIFO computations at December 31, 1962, are made as follows:

Item	Quantity	Dec. 31, 1962, inventory at Jan. 1, 1961, base-year cost		Dec. 31, 1962, inventory at current-year cost	
		Unit cost	Amount	Unit cost	Amount
A	2,000	$5.00	$10,000	$6.50	$13,000
B	1,500	4.00	6,000	6.00	9,000
D	1,000	2.00	2,000	5.00	5,000
Total			18,000		27,000

(c) Since the closing inventory at base-year cost, $18,000, is less than the 1962 opening inventory at base-year cost, $20,000, a liquidation of $2,000 has occurred during 1962. This liquidation is to be reflected by reducing the most recent layer of increment. The LIFO value of the inventory at December 31, 1962, is $18,850, and is summarized as follows:

Pool No. 1

	Dec. 31, 1962, inventory at Jan. 1, 1961, base-year cost	Ratio of total current-year cost to total base-year cost	Dec. 31, 1962, inventory at LIFO value
		Percent	
Jan. 1, 1961, base cost	14,000	100.00	$14,000
Dec. 31, 1961, increment	4,000	121.25	4,850
Total	18,000		18,850

(f) *Change to dollar-value method from another method of pricing LIFO inventories*—(1) *Consent required.* Except as provided in § 1.472–3 in the case of a taxpayer electing to use a LIFO inventory method for the first time, or in the case of a taxpayer changing to the dollar-value method and continuing to use the same pools as were used under another LIFO method, a taxpayer using another LIFO method of pricing inventories may not change to the dollar-value method of pricing such inventories unless he first secures the consent of the Commissioner in accordance with paragraph (e) of § 1.446–1.

(2) *Method of converting inventory.* Where the taxpayer changes from one method of pricing LIFO inventories to the dollar-value method, the ending LIFO inventory for the taxable year immediately preceding the year of change shall be converted to the dollar-value LIFO method. This is done to establish the base-year cost for subsequent calculations. Thus, if the taxpayer was previously valuing LIFO inventories on the specific goods method, these separate values shall be combined into appropriate pools. For this purpose, the base year for the pool shall be the earliest taxable year for which the LIFO inventory method had been adopted for any item in that pool. No change will be made in the overall LIFO value of the opening inventory for the year of change as a result of the conversion, and that inventory will merely be restated in the manner used under the dollar-value method. All layers of increment for such inventory must be retained, except that all layers of increment which occurred in the same taxable year must be combined. The following examples illustrate the provisions of this subparagraph:

Example (1). (i) Assume that the taxpayer has used another LIFO method for finished goods since 1954 and has complied with all the requirements prerequisite for a change to the dollar-value method. Items A, B, and C, which have previously been inventoried under the specific goods LIFO method, may properly be included in a single dollar-value LIFO pool. The LIFO inventory value of items A, B, and C at December 31, 1960, is $12,200, computed as follows:

Year	Base quantity and yearly increments	Unit cost	Dec. 31, 1960, inventory at LIFO value
Item A			
1954 (base year)	100	$1	$100
1955	200	2	400
1956	100	4	400
1960	100	6	600
Total	500		1,500
Item B			
1954 (base year)	300	6	1,800
1955	100	8	800
1960	50	10	500
Total	450		3,100
Item C			
1954 (base year)	1,000	4	4,000
1955	200	6	1,200
1956	300	8	2,400
Total	1,500		7,600
LIFO value of items A, B, and C at Dec. 31, 1960			12,200

There were no increments in the years 1957, 1958, or 1959.

(ii) The computation of the ratio of the total current-year cost to the total base-year cost for the base year and each layer of increment in Pool No. 1 is shown as follows:

Item	1954 base-year unit cost	Year 1954	Increments		
			1955	1956	1960
A					
Base-year cost	$1.00	$100	$200	$100	$100
LIFO value		100	400	400	600
B					
Base-year cost	6.00	1,800	600		300
LIFO value		1,800	800		500
C					
Base-year cost	4.00	4,000	800	1,200	
LIFO value		4,000	1,200	2,400	
Total—Base-year cost		5,900	1,600	1,300	400
Total—LIFO value		5,900	2,400	2,800	1,100
Ratio of total current-year cost to total base-year cost (percent)		100.00	150.00	215.38	275.00

(iii) On the basis of the foregoing computations, the LIFO inventory of Pool No. 1, at December 31, 1960, is restated as follows:

	Dec. 31, 1960, inventory at base-year cost	Ratio of total current-year cost to total base-year cost	Dec. 31, 1960, inventory at LIFO value
		Percent	
1954 base cost	5,900	100.00	$5,900
1955 increment	1,600	150.00	2,400
1956 increment	1,300	215.38	2,800
1960 increment	400	275.00	1,100
Total	9,200		12,200

Example (2). Assume the same facts as in example (1) and assume further that the base-year cost of Pool No. 1 at December 31, 1961, is $8,350. Since the closing inventory for the taxable year 1961 at base-year cost is less than the opening inventory for that

year at base-year cost, a liquidation has occurred during 1961. This liquidation absorbs all of the 1960 layer of increment and part of the 1956 layer of increment. The December 31, 1961, inventory is $10,131, computed as follows:

	Dec. 31, 1961, inventory at base-year cost	Ratio of total current-year cost to total base-year cost	Dec. 31, 1961, inventory at LIFO value
		Percent	
1954 base cost	5,900	100.00	$5,900
1955 increment	1,600	150.00	2,400
1956 increment	850	215.38	1,831
Total	8,350		10,131

(g) *Transitional rules*—(1) *Change in method of pooling.* Any method of pooling authorized by this section and used by the taxpayer in computing his LIFO inventories under the dollar-value method shall be treated as a method of accounting. Any method of pooling which is authorized by this section shall be used for the year of adoption and for all subsequent taxable years unless a change is required by the Commissioner in order to clearly reflect income, or unless permission to change is granted by the Commissioner as provided in paragraph (e) of § 1.446–1. Where the taxpayer changes from one method of pooling to another method of pooling permitted by this section, the ending LIFO inventory for the taxable year preceding the year of change shall be restated under the new method of pooling.

(2) *Manner of combining or separating dollar-value pools.* (i) A taxpayer who has been using the dollar-value LIFO method and who is permitted or required to change his method of pooling, shall combine or separate the LIFO value of his inventory for the base year and each yearly layer of increment in order to conform to the new pool or pools. Each yearly layer of increment in the new pool or pools must be separately accounted for and a record thereof maintained, and any liquidation occurring in the new pool or pools subsequent to the formation thereof shall be treated in the same manner as if the new pool or pools had existed from the date the taxpayer first adopted the LIFO inventory method. The combination or separation of the LIFO value of his inventory for the base year and each yearly layer of increment shall be made in accordance with the appropriate method set forth in this subparagraph, unless the use of a different method is approved by the Commissioner.

(ii) Where the taxpayer is permitted or required to separate a pool into more than one pool, the separation shall be made in the following manner: First, each item in the former pool shall be placed in an appropriate new pool. Every item in each new pool is then extended at its base-year unit cost and the extensions are totaled. Each total is the amount of inventory for each new pool expressed in terms of base-year cost. Then a ratio of the total base-year cost of each new pool to the base-year cost of the former pool is computed. The resulting ratio is applied to the amount of inventory for the base year and each yearly layer of increment of the former pool to obtain an allocation to each new pool of the base-year inventory of the former pool and subsequent layers of increment thereof. The foregoing may be illustrated by the following example of a change for the taxable year 1961:

Example. (*a*) Assume that items A, B, C, and D are all grouped together in one pool prior to December 31, 1960. The LIFO inventory value at December 31, 1960, is computed as follows:

	Pool ABCD		
	Dec. 31, 1960, inventory at Jan. 1, 1956, base-year cost	Ratio of total current-year cost to total base-year cost	Dec. 31, 1960, inventory at LIFO value
		Percent	
Jan. 1, 1956, base cost	10,000	100	$10,000
Dec. 31, 1956, increment	1,000	110	1,100
Dec. 31, 1958, increment	5,000	120	6,000
Dec. 31, 1960, increment	4,000	125	5,000
Total	20,000		22,100

(*b*) The extension of the quantity of items A, B, C, and D at respective base-year unit costs is as follows:

Item	Quantity	Base-year unit cost	Amount
A	2,000	$2	$4,000
B	1,000	3	3,000
C	1,000	5	5,000
D	4,000	2	8,000
Total			20,000

(*c*) Under the provisions of this section the taxpayer separates former Pool ABCD into two pools, Pool AB and Pool CD. The computation of the ratio of total base-year cost for each of the new pools to the base-year cost of the former pool is as follows:

Item	Total base-year cost	Ratio
Pool AB:		
A	$4,000	
B	3,000	
	7,000	7,000/20,000
Pool CD:		
C	5,000	
D	8,000	
	13,000	13,000/20,000
Total for pool ABCD	20,000	

(*d*) The ratio of the base-year cost of new Pools AB and CD to the base-year cost of former Pool ABCD is 7,000/20,000 and 13,000/20,000, respectively. The allocation of the January 1, 1956 base cost and subsequent yearly layers of increment of former Pool ABCD to new Pools AB and CD is as follows:

	Base-year cost to be allocated	Pool	
		AB	CD
Jan. 1, 1956, base cost	$10,000	$3,500	$6,500
Dec. 31, 1956, increment	1,000	350	650
Dec. 31, 1958, increment	5,000	1,750	3,250
Dec. 31, 1960, increment	4,000	1,400	2,600
Total	20,000	7,000	13,000

(*e*) The LIFO value of new Pools AB and CD at December 31, 1960, as allocated, is as follows:

	Dec. 31, 1960, inventory at Jan. 1, 1956, base-year cost	Ratio of total current-year cost to total base-year cost	Dec. 31, 1960, inventory at LIFO value
Pool AB			
		Percent	
Jan. 1, 1956, base cost	3,500	100	$3,500
Dec. 31, 1956, increment	350	110	385
Dec. 31, 1958, increment	1,750	120	2,100
Dec. 31, 1960, increment	1,400	125	1,750
Total	7,000		7,735
Pool CD			
Jan. 1, 1956, base cost	6,500	100	6,500
Dec. 31, 1956, increment	650	110	715
Dec. 31, 1958, increment	3,250	120	3,900
Dec. 31, 1960, increment	2,600	125	3,250
Total	13,000		14,365

(iii) Where the taxpayer is permitted or required to combine two or more pools having the same base year, they shall be combined into one pool in the following manner: The LIFO value of the base-year inventory of each of the former pools is combined to obtain a LIFO value of the base-year inventory for the new pool. Then, any layers of increment in the various pools which occurred in the same taxable year are combined into one total layer of increment for that taxable year. However, layers of increment which occurred in different taxable years may not be combined. In combining the layers of increment a new ratio of current-year cost to base-year cost is computed for each of the combined layers of increment. The foregoing may be illustrated by the following example:

Example. (*a*) Assume the taxpayer has two pools at December 31, 1960. Under the provisions of this section the taxpayer combines these pools into a single pool as of January 1, 1961. The LIFO inventory value of each pool at December 31, 1960, is shown as follows:

	Dec. 31, 1960, inventory at Jan. 1, 1957, base-year cost	Ratio of total current-year cost to total base-year cost	Dec. 31, 1960, inventory at LIFO value
Pool No. 1			
		Percent	
Jan. 1, 1957, base cost	10,000	100	$10,000
Dec. 31, 1957, increment	2,000	110	2,200
Dec. 31, 1960, increment	1,000	120	1,200
Total	13,000		13,400
Pool No. 2			
Jan. 1, 1957, base cost	5,000	100	5,000
Dec. 31, 1960, increment	3,000	140	4,200
Total	8,000		9,200

(*b*) The computation of the ratio of the total current-year cost to the total base-year

cost for the base year and each yearly layer of increment in the new pool is as follows:

Pool	Base year 1957	Increments	
		Dec. 31, 1957	Dec. 31, 1960
No. 1:			
Base-year cost	$10,000	$2,000	$1,000
LIFO value	10,000	2,200	1,200
No. 2:			
Base-year cost	5,000		3,000
LIFO value	5,000		4,200
Total, base-year cost	15,000	2,000	4,000
Total, LIFO value	15,000	2,200	5,400
Ratio of total current-year cost to total base-year cost (percent)	100	110	135

(c) On the basis of the foregoing computations, the LIFO inventory of the new pool at December 31, 1960, is restated as follows:

	Dec. 31, 1960, inventory at Jan. 1, 1957, base-year cost	Ratio of total current-year cost to total base-year cost	Dec. 31, 1960, inventory at LIFO value
		Percent	
Jan. 1, 1957, base cost	15,000	100	$15,000
Dec. 31, 1957, increment	2,000	110	2,200
Dec. 31, 1960, increment	4,000	135	5,400
Total	21,000		22,600

(iv) In combining pools having different base years, the principles set forth in subdivision (iii) of this subparagraph are to be applied, except that all base years subsequent to the earliest base year shall be treated as increments, and the base-year costs for all pools having a base year subsequent to the earliest base year of any pool shall be redetermined in terms of the base cost for the earliest base year. The foregoing may be illustrated by the following example:

Example. (a) Assume that the taxpayer has two pools at December 31, 1960. Under the provisions of this section the taxpayer combines these pools into a single pool as of January 1, 1961. The LIFO inventory value of each pool at December 31, 1960, is shown as follows:

	Dec. 31, 1960, inventory at Jan. 1, 1956, base-year cost	Ratio of total current-year cost to total base-year cost	Dec. 31, 1960, inventory at LIFO value
Pool No. 1			
		Percent	
Jan. 1, 1956, base cost	7,000	100	$7,000
Dec. 31, 1956, increment	1,000	105	1,050
Dec. 31, 1957, increment	500	110	550
Dec. 31, 1958, increment	500	110	550
Dec. 31, 1960, increment	1,000	120	1,200
Total	10,000		10,350
	Dec. 31, 1960, inventory at Jan. 1, 1958, base-year cost		
Pool No. 2			
Jan. 1, 1958, base cost	3,500	100	$3,500
Dec. 31, 1958, increment	1,000	110	1,100
Dec. 31, 1959, increment	500	115	575
Total	5,000		5,175

(b) The next step is to redetermine the 1958 base-year cost for Pool No. 2 in terms of 1956 base-year cost. January 1, 1956 base-year unit cost must be reconstructed or established in accordance with paragraph (e)(2) of this section for each item in Pool No. 2. Such costs are assumed to be $9.00 for item A, $20.00 for item B, and $1.80 for item C. A ratio of the 1958 total base-year cost to the 1956 total base-year cost for Pool No. 2 is computed as follows:

Item	Quantity	Jan. 1, 1956, base-year unit cost	Jan. 1, 1956, base-year cost
A	250	$9.00	$2,250
B	75	20.00	1,500
C	500	1.80	900
Total			4,650

Item	Quantity	Jan. 1, 1958, base-year unit cost	Jan. 1, 1958, base-year cost
A	250	$10.00	$2,500
B	75	20.00	1,500
C	500	2.00	1,000
Total			5,000

(c) The ratio of the 1956 total base-year cost to the 1958 total base-year cost for Pool No. 2 is 4,650/5,000 or 93 percent. The January 1, 1958 base cost and each yearly layer of increment at 1958 base-year cost is multiplied by this ratio. Such computation is as follows:

	Dec. 31, 1960, inventory at Jan. 1, 1958, base-year cost	Ratio	Dec. 31, 1960, inventory restated at Jan. 1, 1956, base-year cost
		Percent	
Jan. 1, 1958, base cost	3,500	93	$3,255
Dec. 31, 1958, increment	1,000	93	930
Dec. 31, 1959, increment	500	93	465
Total			4,650

(d) The computation of the ratio of the total current-year cost to the total base-year cost for the base year (1956) and each yearly layer of increment in the new pool is as follows:

Pool	Base year 1956	Increments				
		Dec. 31, 1956	Dec. 31, 1957	Dec. 31, 1958	Dec. 31, 1959	Dec. 31, 1960
No. 1:						
Base-year cost	$7,000	$1,000	$500	$500		$1,000
LIFO value	7,000	1,050	550	550		1,200
No. 2:						
Base-year cost as restated			3,255	930	$465	
LIFO value			3,500	1,100	575	
Total, base-year cost	7,000	1,000	3,755	1,430	465	1,000
Total, LIFO value	7,000	1,050	4,050	1,650	575	1,200
Ratio of total current-year cost to total base-year cost (percent)	100.00	105.00	107.86	115.38	123.66	120.00

(e) On the basis of the foregoing computation, the LIFO inventory of the new pool at December 31, 1960, is restated as follows:

	Dec. 31, 1960, inventory at Jan. 1, 1956, base-year cost	Ratio of total current-year cost to total base-year cost	Dec. 31, 1960, inventory at LIFO value
		Percent	
Jan. 1, 1956, base cost	7,000	100.00	$7,000
Dec. 31, 1956, increment	1,000	105.00	1,050
Dec. 31, 1957, increment	3,755	107.86	4,050
Dec. 31, 1958, increment	1,430	115.38	1,650
Dec. 31, 1959, increment	465	123.66	575
Dec. 31, 1960, increment	1,000	120.00	1,200
Total	14,650		15,525

(3) *Change in methods of computation of the LIFO value of a dollar-value pool.* For the first taxable year beginning after December 31, 1960, the taxpayer must use a method authorized by paragraph (e)(1) of this section in computing the base-year cost and current-year cost of a dollar-value inventory pool for the end of such year. If the taxpayer had previously used any methods other than one authorized by paragraph (e)(1) of this section, he shall not be required to recompute his LIFO inventories for taxable years beginning on or before December 31, 1960, under a method authorized by such paragraph. The base cost and layers of increment previously computed by such other method shall be retained and treated as if such base cost and layers of increment had been computed under a method authorized by paragraph (e)(1) of this section. The taxpayer shall use the year of change as the base year in applying the double-extension method or other method approved by the Commissioner, instead of the earliest year for which he adopted the LIFO method for any items in the pool.

(h) *Change without consent in method of pooling*—(1) *Authorization.* Notwithstanding the provisions of paragraph (g) of this section, a taxpayer, for his first taxable year ending after April 15, 1961, may change from one method of pooling authorized by this section to any other method of pooling authorized by this section provided the requirements of subparagraph (2) of this paragraph are met. Also, for such year, if a taxpayer is currently using only a method of pooling authorized by this section, or a method of pooling which would be authorized by this section if additional items were included in the pool, and could change to the natural business unit method, except for the fact he has not inventoried all items entering into the inventory investment for such natural business unit on the LIFO method, he may change to the natural business unit method if he elects under the provisions of § 1.472–3 to extend the LIFO election to all items entering into the entire inventory investment for such natural business unit, provided the requirements of subparagraph (2) of this paragraph are met. The method of pooling adopted shall be used for the

year of change and for all subsequent taxable years unless a change is required by the Commissioner in order to clearly reflect income, or unless permission to change is granted by the Commission as provided in paragraph (e) of § 1.446–1.

(2) *Requirements.* A statement shall be attached to the income tax return for the year of change referred to in subparagraph (1) of this paragraph setting forth, in summary form, the following information:

(i) A description of the new pool or pools,

(ii) The basis for selection of the new pool or pools,

(iii) A schedule showing the computation of the LIFO value of the former pool or pools, and,

(iv) A schedule showing the transition from the former pool or pools to the new pool or pools.

In addition, a copy of the statement shall be filed with the Commissioner of Internal Revenue, Attention: T:R, Washington 25, D.C. The taxpayer shall submit such other information with respect to the change in method of pooling as may be requested.

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

[F.R. Doc. 61–516; Filed, Jan. 19, 1961; 8:47 a.m.]

[T.D. 6535]

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

Life Insurance Companies

On December 10, 1960, notice of proposed rule making regarding amendment of the Income Tax Regulations under sections 809, 810, 811, 812, and 815 of the Internal Revenue Code of 1954, as amended by the Life Insurance Company Income Tax Act of 1959 (73 Stat. 112), relating to life insurance companies, was published in the FEDERAL REGISTER (25 F.R. 12681). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the regulations as so published, subject to the changes set forth below, are hereby adopted. Section 1.809–6 of such regulations supersedes § 19.1–2 of Treasury Decision 6415 (26 CFR Part 19), approved September 10, 1959 (24 F.R. 7373). Section 1.810–4 of such regulations supersedes § 19.1–7 of Treasury Decision 6414 (26 CFR Part 19), approved September 9, 1959 (24 F.R. 7371).

PARAGRAPH 1. Section 1.809–4 is revised—

(A) By deleting the last sentence of paragraph (a)(1)(i).

(B) By inserting the phrase "or credited" after the word "returned" in the first sentence and by deleting the phrase "rebated or" in the second sentence of paragraph (a)(1)(ii).

(C) By revising the last sentence of paragraph (b).

PAR. 2. Section 1.809–5 is revised—

(A) By deleting the word "means" appearing in the last sentence of paragraph (a)(1) and by inserting in lieu thereof "includes".

(B) By revising paragraph (a)(5)(ii).

(C) By deleting the last two sentences of paragraph (a)(6)(ii) and by inserting in lieu thereof a new sentence.

(D) By deleting the last sentence of paragraph (a)(12).

(E) By deleting the word "claimed" both times it appears in the last sentence of paragraph (b) and by inserting both times in lieu thereof "allowed".

PAR. 3. Section 1.810–4 is revised—

(A) By inserting immediately after the second sentence of paragraph (b) a new sentence.

(B) By deleting the second sentence of paragraph (c) and by inserting in lieu thereof a new sentence.

PAR. 4. Section 1.811–2 is revised—

(A) By revising paragraph (c)(1)(ii).

(B) By revising paragraph (c)(4).

PAR. 5. Paragraph (b)(2)(ii) of § 1.812–5 is revised—

(A) By deleting the word *"Example."* appearing immediately following the colon and by inserting in lieu thereof *"(a) Facts."*

(B) By deleting the figure "$11,000,000" appearing in the table as taxable investment income for 1959 and inserting in lieu thereof "$9,000,000".

(C) Subdivision "(a)" is relettered as "(b)".

(D) Subdivision "(b)" is relettered as "(c)".

PAR. 6. Section 1.815–4 is revised—

(A) By revising paragraph (b)(2).

(B) By revising paragraph (b)(3).

PAR. 7. Section 815–6 is revised—

(A) By deleting the first sentence of paragraph (c) and by inserting in lieu thereof a new sentence.

(B) The first table in the example appearing in paragraph (f)(2) is revised by deleting the phrase "Added for year (with regard to election under sec. 815(d)(1))" and by inserting in lieu thereof "Added for year (without regard to election under sec. 815(d)(1))".

PAR. 8. Section 1.816 is revised by adding immediately after subsection (a) of section 816 and before the historical note a subsection (b).

[SEAL] DANA LATHAM,
Commissioner of Internal Revenue.

Approved: January 16, 1961.

FRED C. SCRIBNER, Jr.,
Acting Secretary of the Treasury.

In order to provide regulations under sections 809, 810, 811, 812, and 815 of the Internal Revenue Code of 1954, as added by the Life Insurance Company Income Tax Act of 1959 (73 Stat. 121), the Income Tax Regulations (26 CFR Part 1) are amended as follows:

There are inserted immediately after § 1.807–1 the following new sections:

§ 1.807–2 Taxable years affected.

Section 1.807–1 is applicable only to taxable years beginning after December 31, 1953, and before January 1, 1955, and all references to sections of part I, subchapter L, chapter 1 of the Code are to the Internal Revenue Code of 1954, before amendments.

GAIN AND LOSS FROM OPERATIONS

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

SEC. 809. *In general*—(a) *Exclusion of share of investment yield set aside for policyholders*—(1) *Amount.* The share of each and every item of investment yield (including tax-exempt interest, partially tax-exempt interest, and dividends received) of any life insurance company set aside for policyholders shall not be included in gain or loss from operations. For purposes of the preceding sentence, the share of any item set aside for policyholders shall be that percentage obtained by dividing the required interest by the investment yield; except that if the required interest exceeds the investment yield, then the share of any item set aside for policyholders shall be 100 percent.

(2) *Required interest.* For purposes of this part, the required interest for any taxable year is the sum of the products obtained by multiplying—

(A) Each rate of interest required, or assumed by the taxpayer, in calculating the reserves described in section 810(c), by

(B) The means of the amount of such reserves computed at that rate at the beginning and end of the taxable year.

(b) *Gain and loss from operations*—(1) *Gain from operations defined.* For purposes of this part, the term "gain from operations" means the amount by which the sum of the following exceeds the deductions provided by subsection (d):

(A) The life insurance company's share of each and every item of investment yield (including tax-exempt interest, partially tax-exempt interest, and dividends received); and

(B) The sum of the items referred to in subsection (c).

(2) *Loss from operations defined.* For purposes of this part, the term "loss from operations" means the amount by which the sum of the deductions provided by subsection (d) exceeds the sum of—

(A) The life insurance company's share of each and every item of investment yield (including tax-exempt interest, partially tax-exempt interest, and dividends received); and

(B) The sum of the items referred to in subsection (c).

(3) *Life insurance company's share.* For purposes of this subpart, the life insurance company's share of any item shall be that percentage which, when added to the percentage obtained under the second sentence of subsection (a)(1), equals 100 percent.

(4) *Exception.* If it is established in any case that the application of the definition of gain from operations contained in paragraph (1) results in the imposition of tax on—

(A) Any interest which under section 103 is excluded from gross income,

(B) Any amount of interest which under section 242 (as modified by section 804(a)(3)) is allowable as a deduction, or

(C) Any amount of dividends received which under sections 243, 244, and 245 (as modified by subsection (d)(8)(B)) is allowable as a deduction,

adjustment shall be made to the extent necessary to prevent such imposition.

(c) *Gross amount.* For purposes of subsections (b)(1) and (2), the following items shall be taken into account:

(1) *Premiums.* The gross amount of premiums and other consideration (including advance premiums, deposits, fees, assessments, and consideration in respect of assuming liabilities under contracts not issued by the taxpayer) on insurance and annuity contracts (including contracts supplementary thereto); less return premiums, and premiums and other consideration arising out of reinsurance ceded. Except in the case of amounts of premiums or other consideration returned to another

life insurance company in respect of reinsurance ceded, amounts returned where the amount is not fixed in the contract but depends on the experience of the company or the discretion of the management shall not be included in return premiums.

(2) *Decreases in certain reserves.* Each net decrease in reserves which is required by section 810 or 811(b)(2) to be taken into account for purposes of this paragraph.

(3) *Other amounts.* All amounts, not included in computing investment yield and not includible under paragraph (1) or (2), which under this subtitle are includible in gross income.

Except as included in computing investment yield, there shall be excluded any gain from the sale or exchange of a capital asset, and any gain considered as gain from the sale or exchange of a capital asset.

(d) *Deductions.* For purposes of subsections (b) (1) and (2), there shall be allowed the following deductions:

(1) *Death benefits, etc.* All claims and benefits accrued, and all losses incurred (whether or not ascertained), during the taxable year on insurance and annuity contracts (including contracts supplementary thereto).

(2) *Increases in certain reserves.* The net increase in reserves which is required by section 810 to be taken into account for purposes of this paragraph.

(3) *Dividends to policyholders.* The deduction for dividends to policyholders (determined under section 811(b)).

(4) *Operations loss deduction.* The operations loss deduction (determined under section 812).

(5) *Certain nonparticipating contracts.* An amount equal to 10 percent of the increase for the taxable year in the reserves for nonparticipating contracts or (if greater) an amount equal to 3 percent of the premiums for the taxable year (excluding that portion of the premiums which is allocable to annuity features) attributable to nonparticipating contracts (other than group contracts) which are issued or renewed for periods of 5 years or more. For purposes of this paragraph, the term "reserves for nonparticipating contracts" means such part of the life insurance reserves (excluding that portion of the reserves which is allocable to annuity features) as relates to nonparticipating contracts (other than group contracts). For purposes of this paragraph and paragraph (6), the term "premiums" means the net amount of the premiums and other consideration taken into account under subsection (c)(1).

(6) *Group life, accident, and health insurance.* An amount equal to 2 percent of the premiums for the taxable year attributable to group life insurance contracts and group accident and health insurance contracts. The deduction under this paragraph for the taxable year and all preceding taxable years shall not exceed an amount equal to 50 percent of the premiums for the taxable year attributable to such contracts.

(7) *Assumption by another person of liabilities under insurance, etc., contracts.* The consideration (other than consideration arising out of reinsurance ceded) in respect of the assumption by another person of liabilities under insurance and annuity contracts (including contracts supplementary thereto).

(8) *Tax-exempt interest, dividends, etc.*—(A) *Life insurance company's share.* Each of the following items:

(i) The life insurance company's share of interest which under section 103 is excluded from gross income,

(ii) The deduction for partially tax-exempt interest provided by section 242 (as modified by section 804(a)(3)) computed with respect to the life insurance company's share of such interest, and

(iii) The deductions for dividends received provided by sections 243, 244, and 245 (as modified by subparagraph (B)) computed with respect to the life insurance company's share of the dividends received.

(B) *Application of section 246(b).* In applying section 246(b) (relating to limitation on aggregate amount of deductions for dividends received) for purposes of subparagraph (A)(iii), the limit on the aggregate amount of the deductions allowed by sections 243(a), 244, and 245 shall be 85 percent of the gain from operations computed without regard to—

(i) The deductions provided by paragraphs (3), (5), and (6) of this subsection,

(ii) The operations loss deduction provided by section 812, and

(iii) The deductions allowed by sections 243(a), 244, and 245,

but such limit shall not apply for any taxable year for which there is a loss from operations.

(9) *Investment expenses, etc.* Investment expenses to the extent not allowed as a deduction under section 804(c)(1) in computing investment yield, and the amount (if any) by which the sum of the deductions allowable under section 804(c) exceeds the gross investment income.

(10) *Small business deduction.* A small business deduction in an amount equal to the amount determined under section 804(a)(4).

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

(12) *Other deductions.* Subject to the modifications provided by subsection (e), all other deductions allowed under this subtitle for purposes of computing taxable income to the extent not allowed as deductions in computing investment yield.

Except as provided in paragraph (3), no amount shall be allowed as a deduction under this subsection in respect of dividends to policyholders.

(e) *Modifications.* The modifications referred to in subsection (d)(12) are as follows:

(1) *Interest.* In applying section 163 (relating to deduction for interest), no deduction shall be allowed for interest in respect of items described in section 810(c).

(2) *Bad debts.* Section 166(c) (relating to reserve for bad debts) shall not apply.

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

(A) The limit on the total deductions under such section provided by the first sentence of 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(b)(3) shall be applied.

(4) *Amortizable bond premium.* Section 171 shall not apply.

(5) *Net operating loss deduction.* The deduction for net operating losses provided in section 172 shall not be allowed.

(6) *Partially tax-exempt interest.* The deduction for partially tax-exempt interest provided by section 242 shall not be allowed.

(7) *Dividends received.* The deductions for dividends received provided by sections 243, 244, and 245 shall not be allowed.

(f) *Limitation on certain deductions*—(1) *In general.* The amount of the deductions under paragraphs (3), (5), and (6) of subsection (d) shall not exceed $250,000 plus the amount (if any) by which—

(A) The gain from operations for the taxable year, computed without regard to such deductions, exceeds

(B) The taxable investment income for the taxable year.

(2) *Application of limitation.* The limitation provided by paragraph (1) shall apply first to the amount of the deduction under subsection (d)(6), then to the amount of the deduction under subsection (d)(5), and finally to the amount of the deduction under subsection (d)(3).

(g) *Limitations on deduction for certain mutualization distributions*—(1) *Deduction not to reduce taxable investment income.* The amount of the deduction under subsection (d)(11) shall not exceed the amount (if any) by which—

(A) The gain from operations for the taxable year, computed without regard to such deduction (but after the application of subsection (f)), exceeds

(B) The taxable investment income for the taxable year.

(2) *Deduction not to reduce tax below 1957 law.* The deduction under subsection (d)(11) for the taxable year shall be allowed only to the extent that such deduction (after the application of all other deductions provided by subsection (d)) does not reduce the amount of the tax imposed by section 802(a)(1) for such taxable year below the amount of tax which would have been imposed by section 802(a) as in effect for 1957, if this part, as in effect for 1957, applied for such taxable year

(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, 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)]

§ 1.809–1 Taxable years affected.

Sections 1.809–2 through 1.809–8 are applicable only to taxable years beginning after December 31, 1957, and all references to sections of part I, subchapter L, chapter 1 of the Code are to the Internal Revenue Code of 1954, as amended by the Life Insurance Company Income Tax Act of 1959 (73 Stat. 112).

§ 1.809–2 Exclusion of share of investment yield set aside for policyholders.

(a) *In general.* Section 809 provides the rules for determining the gain or loss from operations of a life insurance company, which amount is necessary to determine life insurance company taxable income. In order to determine gain or loss from operations, a life insurance company must first determine the share of each and every item of its investment yield (as defined in section 804(c) and paragraph (a) of § 1.804–4) set aside for policyholders (as computed under section 809(a)(1) and paragraph (b) of this section), as this share is excluded from gain or loss from operations (as defined in section 809(b) (1) and (2) and paragraphs (a) and (b) of § 1.809–3, respectively). The life insurance company shall then add its share of each and every item of its investment yield to the sum of the items comprising gross amount (as described in section 809(c)

and paragraph (a) of § 1.809–4). From this sum there shall then be subtracted the deductions provided in section 809(d) and paragraph (a) of § 1.809–5. The amount thus obtained is the gain or loss from operations for the taxable year.

(b) *Computation of share of investment yield set aside for policyholders.* Section 809(a)(1) provides that the share of each and every item of investment yield (including tax-exempt interest, partially tax-exempt interest, and dividends received) of any life insurance company set aside for policyholders shall not be included in gain or loss from operations. For this purpose, the percentage used in determining the share of each of these items comprising the investment yield set aside for policyholders shall be determined by dividing the required interest (as defined in section 809(a)(2) and paragraph (d) of this section) by the investment yield (as defined in section 804(c) and paragraph (a) of § 1.804–4). The percentage thus obtained is then applied to each and every item of the investment yield so that the share of each and every item of investment yield set aside for policyholders shall be excluded from gain or loss from operations. However, if in any case the required interest exceeds the investment yield, then the share of any item set aside for policyholders shall be 100 percent.

(c) *Computation of life insurance company's share of investment yield.* For purposes of subpart C, part I, subchapter L, chapter 1 of the Code, section 809(b)(3) provides that the percentage used in determining the life insurance company's share of each and every item of investment yield (including tax-exempt interest, partially tax-exempt interest, and dividends received) shall be obtained by subtracting the percentage obtained under paragraph (b) of this section from 100 percent. For example, if the policyholders' percentage (as determined under section 809(a)(1) and paragraph (b) of this section) is 72.38 percent, then the life insurance company's share is 27.62 percent (100 percent minus 72.38 percent). In such a case, if the amount of a particular item is $200, then the life insurance company's share of such item included in determining gain or loss from operations is $55.24 ($200 multiplied by 27.62 percent) and the share of such item set aside for policyholders (which is excluded from gain or loss from operations) is $144.76 ($200 multiplied by 72.38 percent). For purposes of determining gain or loss from operations, the life insurance company's share of each and every item of investment yield (including tax-exempt interest, partially tax-exempt interest, and dividends received) shall be added to the sum of the items comprising gross amount (as described in section 809(c) and paragraph (a) of § 1.809–4).

(d) *Required interest defined.* (1) For purposes of part I, section 809(a)(2) defines the term "required interest" for any taxable year as the sum of the products obtained by multiplying (i) each rate of interest required, or assumed by the taxpayer, in calculating the reserves described in section 810(c), by (ii) the means of the amount of such reserves computed at that rate at the beginning and end of the taxable year. In the case of the reserves described in section 810(c)(1), such rate of interest shall be the same as that used by the taxpayer for purposes of paragraph (b) of § 1.801–5 (relating to the definition of reserves required by law) with respect to such reserves. In the case of the reserves described in section 810(c)(2) through (5), such rate of interest shall be the same as that actually paid, credited, or accrued by the taxpayer with respect to such reserves. Thus, the required interest for any taxable year includes the elements of interest paid (as defined in section 805(e)) with respect to the reserves described in section 810(c).

(2) For purposes of computing required interest under section 809(a)(2) and subparagraph (1) of this paragraph, the amount of life insurance reserves taken into account shall be adjusted first as required by section 818(c) (relating to an election with respect to life insurance reserves computed on a preliminary term basis) and then as required by section 806(a) (relating to adjustments for certain changes in reserves and assets) before applying the rate of interest required, or assumed by the taxpayer, thereto. However, in the case of the adjustments required by section 810(d) as a result of a change in the basis of computing reserves, the adjustments to any of the reserves described in section 810(c) shall be taken into account in accordance with the rules prescribed in section 810(d) and § 1.810–3.

§ 1.809–3 Gain and loss from operations defined.

(a) *Gain from operations.* For purposes of part I, subchapter L, chapter 1 of the Code, section 809(b)(1) defines the term "gain from operations" as the excess of the sum of (1) the life insurance company's share of each and every item of investment yield (including tax-exempt interest, partially tax-exempt interest, and dividends received), and (2) the items of gross amount taken into account under section 809(c) and paragraph (a) of § 1.809–4, over the sum of the deductions provided by section 809(d) and § 1.809–5.

(b) *Loss from operations.* For purposes of part I, section 809(b)(2) defines the term "loss from operations" as the excess of the sum of the deductions provided by section 809(d) and § 1.809–5 over the sum of (1) the life insurance company's share of each and every item of investment yield (including tax-exempt interest, partially tax-exempt interest, and dividends received), and (2) the items of gross amount taken into account under section 809(c) and paragraph (a) of § 1.809–4.

(c) *Illustration of principles.* The provisions of section 809(b)(1) through (3) and paragraphs (a) and (b) of this section may be illustrated by the following example:

Example. For the taxable year 1958, T, a life insurance company, had investment yield of $900,000, including $150,000 of dividends received from domestic corporations subject to taxation under chapter 1 of the Code, $10,000 of wholly tax-exempt interest, and $78,000 of partially tax-exempt interest. T also had items of gross amount under section 809(c) in the amount of $12,000,000 and deductions under section 809(d) of $6,963,500 (exclusive of any deductions for wholly tax-exempt interest, partially tax-exempt interest, and dividends received). For such taxable year, the share of each and every item of investment yield set aside for policyholders was 80 percent and the company's share of each and every item of investment yield was 20 percent. Based upon these figures, T had a gain from operations of $5,180,000 for the taxable year 1958, computed as follows:

	Col. 1	Col. 2 (80% x Col. 1) exclusion of policyholder's share	Col. 3 (20% x Col. 1) company's share
Interest wholly tax-exempt	$10,000	$8,000	$2,000
Interest partially tax-exempt	78,000	62,400	15,600
Dividends received	150,000	120,000	30,000
Other items of investment yield	662,000	529,600	132,400
Investment yield	900,000	720,000	180,000

Gross amount (sum of items under sec. 809(c))		12,000,000
Total		12,180,000
Less:		
Deductions under sec. 809(d)(8):		
Company's share of interest wholly tax-exempt	$2,000	
30½2 of company's share of interest partially tax-exempt (30½2 × $15,600)	9,000	
85% of company's share of dividends received (but not to exceed 85% of gain from operations as computed under sec. 809(d)(8)(B)) (85% × $30,000)	25,500	
All other deductions under sec. 809(d)	6,963,500	
		7,000,000
Gain from operations		5,180,000

(d) *Exception.* (1) In accordance with section 809(b)(4), if it is established in any case to the satisfaction of the Commissioner, or by a determination of The Tax Court of the United States, or of any other court of competent jurisdiction, which has become final, that the application of the definition of gain from operations contained in section 809(b)(1) results in the imposition of tax on—

(i) Any interest which under section 103 is excluded from gross income,

(ii) Any amount of interest which under section 242 (as modified by section 804(a)(3)) is allowable as a deduction, or

(iii) Any amount of dividends received which under sections 243, 244, and 245 (as modified by section 809(d)(8)(B)) is allowable as a deduction,

adjustment shall be made to the extent necessary to prevent such imposition.

(2) For the date upon which a decision by the Tax Court becomes final, see section 7481. For the date upon which a judgment of any other court becomes final, see paragraph (c) of § 1.1313(a)–1.

§ 1.809–4 Gross amount.

(a) *Items taken into account.* For purposes of determining gain or loss from operations under section 809(b) (1) and (2), respectively, section 809(c) specifies three categories of items which shall be taken into account. Such items are in addition to the life insurance company's share of the investment yield (as determined under section 809(a) (1) and paragraph (c) of § 1.809–2). The three categories of items taken into account are:

(1) *Premiums.* (i) The gross amount of all premiums and other consideration on insurance and annuity contracts (including contracts supplementary thereto); less return premiums, and premiums and other consideration arising out of reinsurance ceded. The term "gross amount of all premiums" means the premiums and other consideration provided in the insurance or annuity contract. Thus, the amount to be taken into account shall be the total of the premiums and other consideration without any deduction for commissions, return premiums, reinsurance, dividends to policyholders, dividends left on deposit with the company, interest applied in reduction of premiums, or any other item of similar nature. Such term includes advance premiums, premiums deferred and uncollected and premiums due and unpaid, deposits, fees, assessments, and consideration in respect of assuming liabilities under contracts not issued by the taxpayer (such as a payment or transfer of property in an assumption reinsurance transaction as defined in paragraph (a) (7) (ii) of § 1.809–5).

(ii) The term "return premiums" means amounts returned or credited which are fixed by contract and do not depend on the experience of the company or the discretion of the management. Thus, such term includes amounts refunded due to policy cancellations or erroneously computed premiums. Furthermore, amounts of premiums or other consideration returned to another life insurance company in respect of reinsurance ceded shall be included in return premiums. For the treatment of amounts which do not meet the requirements of return premiums, see section 811 (relating to dividends to policyholders).

(iii) For purposes of section 809(c) (1) and this subparagraph, the term "reinsurance ceded" means an arrangement whereby the taxpayer (the reinsured) remains solely liable to the policyholder, whether all or only a portion of the risk has been transferred to the reinsurer. Such term includes indemnity reinsurance transactions but does not include assumption reinsurance transactions. See paragraph (a) (7) (ii) of § 1.809–5 for the definition of assumption reinsurance.

(2) *Decreases in certain reserves.* Each net decrease in reserves which is required by section 810 (a) and (d) (1) or 811(b) (2) to be taken into account for the taxable year as a net decrease for purposes of section 809(c) (2).

(3) *Other amounts.* All amounts, not included in computing investment yield and not otherwise taken into account under section 809(c) (1) or (2), shall be taken into account under section 809(c) (3) to the extent that such amounts are includible in gross income under subtitle A of the Code. See section 61 (relating to gross income defined) and the regulations thereunder.

(b) *Exclusion of net long-term capital gains.* Any net long-term capital gains (as defined in section 1222(7)) from the sale or exchange of a capital asset (or any gain considered to be from the sale or exchange of a capital asset under applicable law) shall be excluded from the determination of gain or loss from operations of a life insurance company. However, any excess of net short-term capital gain (as defined in section 1222(5)) over net long-term capital loss (as defined in section 1222(8)) is included in computing investment yield (as defined in section 804(c)) and, to that extent, is taken into account in determining gain or loss from operations under section 809.

§ 1.809–5 Deductions.

(a) *Deductions allowed.* Section 809(d) provides the following deductions for purposes of determining gain or loss from operations under section 809(b) (1) and (2), respectively:

(1) *Death benefits, etc.* All claims and benefits accrued (less reinsurance recoverable), and all losses incurred (whether or not ascertained), during the taxable year on insurance and annuity contracts (including contracts supplementary thereto). The term "all claims and benefits accrued" includes, for example, matured endowments and amounts allowed on surrender. The term "losses incurred (whether or not ascertained)" includes a reasonable estimate of the amount of the losses (based upon the facts in each case and the company's experience with similar cases) incurred but not reported by the end of the taxable year as well as losses reported but where the amount thereof cannot be ascertained by the end of the taxable year.

(2) *Increases in certain reserves.* The net increase in reserves which is required by section 810(b) and (d) (1) to be taken into account for the taxable year as a net increase for purposes of section 809(d) (2).

(3) *Dividends to policyholders.* The deduction for dividends to policyholders as determined under section 811(b) and § 1.811–2. Except as provided in section 809(d) (3) and this subparagraph, no amount shall be allowed as a deduction in respect of dividends to policyholders under section 809(d). See section 809(f) and § 1.809–7 for limitation of such deduction.

(4) *Operations loss deduction.* The operations loss deduction as determined under section 812.

(5) *Certain nonparticipating contracts.* (i) An amount equal to the greater of:

(*a*) 10 percent of the increase for the taxable year in certain life insurance reserves for nonparticipating contracts (other than group contracts); or

(*b*) 3 percent of the premiums for the taxable year attributable to nonparticipating contracts (other than group contracts) which are issued or renewed for periods of 5 years or more.

(ii) For purposes of section 809(d) (5) and this subparagraph, the term "nonparticipating contracts" means those contracts which during the taxable year contain no right to participate in the divisible surplus of the company. For example, if at any time during the taxable year for which the deduction allowed under section 809(d) (5) and this subparagraph is claimed such contracts have rights to dividends or similar distributions (as defined in section 811(a) and paragraph (a) of § 1.811–2), such contracts shall no longer be deemed nonparticipating contracts and, therefore, no deduction shall be allowed. Thus, if a class of contracts having no right to participate in the divisible surplus of the company is in force for nine years and on March 10, 1958, it is announced that such contracts shall be accorded dividend rights as of August 1, 1958, no deduction shall be allowed under section 809(d) (5) and this subparagraph for the taxable year 1958 or any succeeding taxable year, whether or not dividends are actually paid on such contracts. However, if the announcement of March 10, 1958, states that such contracts shall be accorded dividend rights as of January 1, 1959, a deduction under section 809(d) (5) and this subparagraph shall be allowed for the taxable year 1958 but not for any succeeding taxable year.

(iii) For purposes of section 809(d) (5) and this subparagraph, the term "reserves for nonparticipating contracts" means such part of the life insurance reserves (as defined in section 801(b) and § 1.801–4), other than that portion of such reserves which is allocable to annuity features, as relates to nonparticipating contracts (as defined in subdivision (ii) of this subparagraph). The amount of life insurance reserves taken into account shall be adjusted first as required by section 818(c) (relating to an election with respect to life insurance reserves computed on a preliminary term basis) and then as required by section 806(a) (relating to adjustments for certain changes in reserves and assets). In the case of the adjustments required by section 810(d) (relating to adjustment for change in computing reserves), the increase in life insurance reserves attributable to reserve strengthening shall be taken into account in accordance with

the rules prescribed in section 810(d) and § 1.810–3.

(iv) For purposes of section 809(d)(5) and this subparagraph, the term "premiums" means the net amount of the premiums and other consideration attributable to nonparticipating contracts (as defined in subdivision (ii) of this subparagraph) which are taken into account under section 809(c)(1). For this purpose, premiums include only such amounts attributable to such contracts which are issued or renewed for periods of 5 years or more, but does not include that portion of the premiums which is allocable to annuity features. No portion of a premium shall be deemed allocable to annuity features solely because a contract, such as an endowment contract, provides that at maturity the insured shall have an option to take an annuity. The determination of whether a contract meets the 5-year requirement shall be made as of the date the contract is issued, or as of the date it is renewed, whichever is applicable. Thus, a 20-year nonparticipating endowment policy shall qualify for the deduction under section 809(d)(5), even though the insured subsequently dies at the end of the second year, since the policy is issued for a period of 5 years or more. However, a 1-year renewable term contract shall not qualify, since as of the date it is issued (or of any renewal date) it is not issued (or renewed) for a period of 5 years or more. In like manner, a policy originally issued for a 3-year period and subsequently renewed for an additional 3-year period shall not qualify. However, if this policy is renewed for a period of 5 years or more, the policy shall qualify for the deduction under section 809(d)(5) from the date it is renewed.

(v) The provisions of section 809(d)(5) and this subparagraph may be illustrated by the following example:

Example. Assume the following facts with respect to X, a life insurance company, for the taxable year 1958:

Life insurance reserves on nonparticipating contracts without annuity features (other than group contracts) at 1–1–58	$150,000
Life insurance reserves on nonparticipating contracts without annuity features (other than group contracts) at 12–31–58	225,000
Annuity reserves on nonparticipating contracts (other than group contracts) at 1–1–58	48,000
Annuity reserves on nonparticipating contracts (other than group contracts) at 12–31–58	57,000
Premiums on nonparticipating contracts without annuity features (other than group contracts) issued or renewed for 5 years or more	85,000
Premiums on nonparticipating contracts allocable to annuity features (other than group contracts) issued or renewed for 5 years or more	14,000
Return premiums on nonparticipating contracts without annuity features (other than group contracts)	5,000

In order to determine the deduction under section 809(d)(5) (without regard to the limitation of section 809(f)), X would make up the following schedule:

(1) Life insurance reserves on nonparticipating contracts without annuity features (other than group contracts) at 12–31–58	$225,000	
(2) Life insurance reserves on nonparticipating contracts without annuity features (other than group contracts) at 1–1–58	$150,000	
(3) Excess of item (1) over item (2) ($225,000 minus $150,000)	75,000	
(4) 10 percent of item (3) (10% × $75,000)		$7,500
(5) Net premiums on nonparticipating contracts without annuity features issued or renewed for 5 years or more (other than group contracts) (gross premiums on such contracts ($85,000) minus return premiums ($5,000) on such contracts)	80,000	
(6) 3 percent of item (5) (3% × $80,000)		2,400
(7) The greater of item (4) or item (6)		7,500
(8) Tentative deduction under sec. 809(d)(5) (computed without regard to the limitation of sec. 809(f))		7,500

(vi) See section 809(f) and § 1.809–7 for limitation of the deduction provided by this subparagraph.

(6) *Group life, accident, and health insurance.* (i) An amount equal to two percent of the premiums for the taxable year attributable to group life insurance contracts, group accident and health insurance contracts, or group accident and health insurance contracts with a life feature. For purposes of section 809(d)(6) and this subparagraph, the term "premiums" means the net amount of the premiums and other consideration attributable to such contracts taken into account under section 809(c)(1). The deduction allowed by section 809(d)(6) and this subparagraph for the taxable year and all preceding taxable years shall not exceed 50 percent of the net amount of the premiums attributable to such contracts for the taxable year. For example, assume that premiums attributable to group life insurance and group accident and health insurance contracts are $103,000 for the taxable year. Assume further that there are $3,000 of return premiums attributable to such contracts for the taxable year. Under the provisions of section 809(d)(6) and this subparagraph, a deduction (determined without regard to section 809(f)) of $2,000 (2 percent of $100,000 ($103,000 minus $3,000)) is allowed. Assuming that the company continues to receive net premiums of $100,000 attributable to such contracts for 15 years, the cumulative amount of these deductions is $30,000 ($2,000 for 15 years). If, in the sixteenth year, net premiums attributable to such contracts amount to $60,000, no deduction shall be allowed under section 809(d)(6) and this subparagraph since the cumulative amount of these deductions ($30,000) equals 50 percent of the current year's premiums ($60,000) from such contracts.

(ii) In computing the deduction under section 809(d)(6), the determination as to when the 50 percent limitation on such deduction has been reached shall be based upon the amount allowed as a deduction for the taxable year and all preceding taxable years after the application of the limitation provided in section 809(f) and § 1.809–7. Thus, if in the example set forth in paragraph (c) of § 1.809–7 the application of the limitation provided by section 809(f) limited the deduction allowed for the taxable year under section 809(d)(6) to $3,250,000, then for purposes of determining the 50 percent limitation on such deduction, only $3,250,000 (the amount allowed) shall be taken into account.

(iii) For purposes of determining whether the 50 percent limitation applies to any taxable year, the deduction provided by section 809(d)(6) for all preceding taxable years shall be taken into account, irrespective of whether or not the life insurance company claimed a deduction for these amounts for such preceding taxable years.

(iv) See section 809(f) and § 1.809–7 for limitation of the deduction provided by this subparagraph.

(7) *Assumption by another person of liabilities under insurance, etc., contracts.* (i) The consideration (other than consideration arising out of reinsurance ceded as defined in paragraph (a)(1)(iii) of § 1.809–4) in respect of the assumption by another person of liabilities under insurance and annuity contracts (including contracts supplementary thereto) of the taxpayer.

(ii) For purposes of section 809(d)(7) and this subparagraph, the term "assumption reinsurance" means an arrangement whereby another person (the reinsurer) becomes solely liable to the policyholders on the contracts transferred by the taxpayer. Such term does not include indemnity reinsurance or reinsurance ceded (as defined in paragraph (a)(1)(iii) of § 1.809–4).

(iii) The provisions of section 809(d)(7) and this subparagraph may be illustrated by the following example:

Example. During the taxable year 1958, T, a life insurance company, transferred a block of insurance policies and made a payment of $50,000 to R, a life insurance company, under an arrangement whereby R became solely liable to the policyholders on the policies transferred by T. Under the provisions of section 809(d)(7) and this subparagraph, T is allowed a deduction of $50,000 for the taxable year 1958. For the treatment by R of this $50,000 payment, see section 809(c)(1) and paragraph (a)(1)(i) of § 1.809–4. See section 806 (a) and § 1.806–3 for the adjustments in reserves and assets to be made by T and R as a result of this transaction.

(8) *Tax-exempt interest, dividends, etc.* (i) Each of the following items:

(a) The life insurance company's share of interest which under section 103 is excluded from gross income;

(b) The deduction for partially tax-exempt interest provided by section 242 (as modified by section 804(a)(3) and paragraph (d)(2)(i) of § 1.804–2) computed with respect to the life insurance company's share of such interest; and

(c) The deductions for dividends received provided by sections 243, 244, and 245 (as modified by section 809(d)(8)(B) and subdivision (ii) of this subparagraph) computed with respect to the life insurance company's share of the dividends received.

(ii) The modification contained in section 809(d)(8)(B) provides the method for applying section 246(b) (relating to limitation on aggregate amount of deductions for dividends received) for purposes of section 809(d)(8)(A)(iii) and subdivision (i)(c) of this subparagraph. Under this method, the sum of the deductions allowed by sections 243(a) (relating to dividends received by corporations), 244 (relating to dividends received on certain preferred stock), and 245 (relating to dividends received from certain foreign corporations) shall be limited to 85 percent of the gain from operations computed without regard to:

(*a*) The deductions provided by section 809(d)(3), (5), and (6);

(*b*) The operations loss deduction provided by section 812; and

(*c*) The deductions allowed by sections 243(a), 244, and 245.

If a life insurance company has a loss from operations (as determined under section 812) for the taxable year, the limitation provided in section 809(d)(8)(B) and this subdivision shall not be applicable for such taxable year. In that event, the deductions provided by sections 243(a), 244, and 245 shall be allowable for all tax purposes to the life insurance company for such taxable year without regard to such limitation. If the life insurance company does not have a loss from operations for the taxable year, however, the limitation shall be applicable for all tax purposes for such taxable year. In determining whether a life insurance company has a loss from operations for the taxable year under section 812, the deductions allowed by sections 243(a), 244, and 245 shall be computed without regard to the limitation provided in section 809(d)(8)(B) and this subdivision. For an example of the operation of this rule, see paragraph (b) of §1.812-3.

(9) *Investment expenses, etc.* (i) The amount of investment expenses to the extent not allowed as a deduction under section 804(c)(1) in computing investment yield. For example, if a deduction in the amount of $100,000 is claimed for investment expenses, which amount includes general expenses assigned to or included in investment expenses, and due to the operation of the limitation provided by section 804(c)(1) only $85,000 is allowed, then the excess ($15,000) shall be allowed as a deduction under section 809(d)(9) and this subparagraph.

(ii) The amount (if any) by which the sum of the deductions allowable under section 804(c) exceeds the gross investment income. For example, if gross investment income under section 804(b) equals $400,000, and the sum of the deductions allowable under section 804(c) equals $425,000, then the excess ($25,000) shall be allowed as a deduction under section 809(d)(9) and this subparagraph.

(iii) In determining the amount of the deductions allowed under subdivisions (i) and (ii) of this subparagraph, a life insurance company shall first take such deductions to the full extent allowable under section 804(c)(1), and any amount which is allowed as a deduction under section 804(c) shall not again be allowed as a deduction under section 809(d)(9).

(10) *Small business deduction.* The small business deduction as determined under section 804(a)(4).

(11) *Certain mutualization distributions.* The amount of distributions to shareholders actually made by the life insurance company in 1958 and 1959 in acquisition of stock pursuant to a plan of mutualization adopted by the company before January 1, 1958. If such deduction is claimed, there must be attached to the return of the company claiming such deduction a certified copy of the plan of mutualization and proof that such plan was adopted prior to January 1, 1958. See section 809(g) and § 1.809–8 for limitation of such deduction.

(12) *Other deductions.* Except as modified by section 809(e) and § 1.809–6, all other deductions allowed under subtitle A of the Code for purposes of computing taxable income to the extent not allowed as deductions in computing investment yield.

(b) *Denial of double deduction.* Nothing in section 809(d) shall permit the same item to be deducted more than once in determining gain or loss from operations. For example, if an item is allowed as a deduction for the taxable year by reason of its being a loss incurred within such taxable year (whether or not ascertained) under section 809(d)(1), such item, or any portion thereof, shall not also be allowed as a deduction for such taxable year under section 809(d)(2).

§ 1.809–6 Modifications.

Under section 809(e), the deductions allowed under section 809(d)(12) and paragraph (a)(12) of § 1.809–5 (relating to other deductions) are subject to the following modifications—

(a) *Interest.* No deduction shall be allowed under section 163 for interest in respect of items described in section 810(c) since such interest is taken into account in the determination of required interest under section 809.

(b) *Bad debts.* No deduction shall be allowed for an addition to reserves for bad debts under section 166(c). However, a deduction for specific bad debts shall be allowed to the extent that such deduction is allowed under section 166 and the regulations thereunder. In the case of a loss incurred on the sale of mortgaged or pledged property, see § 1.166–6.

(c) *Charitable, etc., contributions and gifts.* (1) The deduction by a life insurance company in any taxable year for a charitable contribution (as defined in section 170(c)) shall be limited to 5 percent of the gain from operations (as determined under section 809(b)(1)), computed without regard to any deductions for:

(i) Charitable contributions under section 170;

(ii) Dividends to policyholders under section 811(b);

(iii) Certain nonparticipating contracts under section 809(d)(5);

(iv) Group life insurance contracts and group accident and health insurance contracts under section 809(d)(6);

(v) Tax-exempt interest, dividends, etc., under section 809(d)(8); and

(vi) Any operations loss carryback to the taxable year under section 812.

(2) In applying the second sentence of section 170(b)(2) (relating to charitable contributions carryovers) as required by section 809(e)(3)(B), 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:

(i) Reduces life insurance company taxable income (computed without regard to section 802(b)(3)) for the purpose of determining the offsets referred to in section 812(b)(2); and

(ii) Increases an operations loss carryover under section 812 for a succeeding taxable year.

(3) The application of the rules provided in section 809(e)(3) and this paragraph may be illustrated by the following example:

Example. Assume that life insurance company P is organized on January 1, 1958, and has a loss from operations for that year in the amount of $100,000 which is an operations loss carryover to 1959. In 1959, company P has a gain from operations and tax base (computed without regard to section 802(b)(3)) of $100,000 before the allowance of a deduction for a $5,000 charitable contribution made in 1959 and before the application of the operations loss carryover from 1958. Under section 170(b)(2), the operations loss carryover from 1958 is first applied to eliminate the $100,000 gain from operations and tax base in 1959 and the $5,000 charitable contribution carryover would (except for the limitation contained in this paragraph) become a charitable contribution carryover to 1960. However, for the purpose of computing the offsets referred to in section 812(b)(2), the $5,000 charitable contribution is applied to reduce the gain from operations and tax base for 1959 to $95,000 before the application of the operations carryover from 1958. Since only $95,000 of the $100,000 loss from operations in 1958 is an offset for 1959, the remaining $5,000 becomes an operations loss carryover to 1960. Accordingly, under the limitation contained in this paragraph, the charitable contributions carryover provided under the second sentence of section 170(b)(2) is eliminated.

(d) *Amortizable bond premium.* No deduction shall be allowed under section 171 for the amortization of bond premiums since a special deduction for such premiums is specifically taken into account under section 818(b).

(e) *Net operating loss deduction.* No deduction shall be allowed under section 172 since section 812 allows an "operations loss deduction".

(f) *Partially tax-exempt interest.* No deduction shall be allowed under section 242 for partially tax-exempt interest since section 809(d)(8) allows a deduction for such interest.

(g) *Dividends received.* No deduction shall be allowed under sections 243, 244, and 245 for dividends received since section 809(d)(8) allows a deduction for such dividends.

§ 1.809–7 Limitation on certain deductions.

(a) *In general.* Section 809(f)(1) limits the deductions under section 809(d) (3), (5), and (6), relating to deductions for dividends to policyholders, certain nonparticipating contracts, and group life, accident, and health insurance contracts, respectively. This limitation provides that the amount of such deductions shall not exceed the sum of (1) the amount (if any) by which the gain from operations for the taxable year (determined without regard to such deductions) exceeds the taxpayer's taxable investment income for such year, plus (2) $250,000.

(b) *Application of limitation.* Section 809(f)(2) provides a priority system for applying the limitation contained in section 809(f)(1) and paragraph (a) of this section. Under this priority system, the limitation shall be applied in the following order:

(1) First to the amount of the deduction under section 809(d)(6) (relating to group life, accident, and health insurance);

(2) Then to the amount of the deduction under section 809(d)(5) (relating to certain nonparticipating contracts); and

(3) Finally to the amount of the deduction under section 809(d)(3) (relating to dividends to policyholders).

(c) *Illustration of principles.* The operation of the limitation and priority system provided by section 809(f) and this section may be illustrated by the following example:

Example. Assume the following facts with respect to M, a life insurance company, for the taxable year 1958:

Gain from operations computed without regard to the deductions under sec. 809(d)(3), (5), and (6)	$100,000,000
Taxable investment income	83,000,000
Tentative deduction for group life, accident, and health insurance under sec. 809(d)(6)	4,000,000
Tentative deduction for certain nonparticipating contracts under sec. 809(d)(5)	6,000,000
Tentative deduction for dividends to policyholders under sec. 809(d)(3)	10,000,000

In order to determine the limitation on the deductions under section 809(d) (3), (5), and (6), M would make up the following schedule:

(1) Statutory amount provided under sec. 809(f)(1)		$250,000
(2) Gain from operations computed without regard to the deductions under sec. 809(d)(3), (5), and (6)	$100,000,000	
(3) Taxable investment income	83,000,000	
(4) Excess of item (2) over item (3)		17,000,000
(5) Limitation on deductions under sec. 809(d)(3), (5), and (6) (item (1) plus item (4))		17,250,000

Since the total tentative deductions under section 809(d) (3), (5), and (6) ($20,000,000) exceeds the limitation on such deductions ($17,250,000), M would make up the following schedule to determine the application of the priority system:

(6) Maximum possible deduction under sec. 809(d)(3), (5), and (6) (item (5))	$17,250,000
(7) Deduction for group life, accident, and health insurance under sec. 809(d)(6) (not in excess of item (6))	4,000,000
(8) Maximum possible deduction under sec. 809(d)(5) (item (6) less item (7))	13,250,000
(9) Deduction for certain nonparticipating contracts under sec. 809(d)(5) (not in excess of item (8))	6,000,000
(10) Maximum possible deduction under sec. 809(d)(3) (item (8) less item (9))	7,250,000
(11) Deduction for dividends to policyholders under sec. 809(d)(3) (not in excess of item (10))	7,250,000

Thus, as a result of the application of the limitation and priority system for the taxable year 1958, M shall be allowed a deduction of $4,000,000 under section 809(d)(6), $6,000,000 under section 809(d)(5), and only $7,250,000 of the $10,000,000 tentative deduction under section 809(d)(3).

§ 1.809–8 Limitation on deductions for certain mutualization distributions.

(a) *Deduction not to reduce taxable investment income.* Section 809(g)(1) limits the deduction under section 809(d)(11) for certain mutualization distributions. This limitation provides that such deduction shall not exceed the amount (if any) by which the gain from operations for the taxable year, computed without regard to such deduction (but after the application of the limitation contained in section 809(f) and § 1.809–7), exceeds the taxpayer's taxable investment income for such year.

(b) *Deduction not to reduce tax below that imposed by 1957 law.* Section 809(g)(2) further limits the deduction under section 809(d)(11). Under section 809(g)(2), such deduction shall be allowed only to the extent that it (after the application of all other deductions) does not reduce the tax imposed by section 802(a)(1) for the taxable year below the amount of tax which would have been imposed for such taxable year if the law in effect for 1957 applied for such taxable year. If such deduction is claimed for 1958 (or 1959), the company shall attach to its return a schedule showing what its tax for 1958 (or 1959) would have been had such tax been computed under the law in effect for 1957.

(c) *Application of section 815.* Section 809(g)(3) provides that any portion of a distribution which is allowed as a deduction under section 809(d)(11) shall not be treated as a distribution to shareholders for purposes of section 815; except that in the case of any distributions made in 1959, such portion shall be treated as a distribution with respect to which a reduction is required under section 815(e)(2)(B) (relating to adjustment in allocation ratio for certain distributions after December 31, 1958).

§ 1.810 Statutory provisons; life insurance companies; rules for certain reserves.

SEC. 810. *Rules for certain reserves*—(a) *Adjustment for decrease.* If the sum of the items described in subsection (c) as of the beginning of the taxable year exceeds the sum of such items as of the close of the taxable year (reduced by the amount of investment yield not included in gain or loss from operations for the taxable year by reason of section 809(a)(1)), the excess shall be taken into account as a net decrease referred to in section 809(c)(2).

(b) *Adjustment for increase.* If the sum of the items described in subsection (c) as of the close of the taxable year (reduced by the amount of investment yield not included in gain or loss from operations for the taxable year by reason of section 809(a)(1)) exceeds the sum of such items as of the beginning of the taxable year, the excess shall be taken into account as a net increase referred to in section 809(d)(2).

(c) *Items taken into account.* The items referred to in subsections (a) and (b) are as follows:

(1) The life insurance reserves (as defined in section 801(b)).

(2) The unearned premiums and unpaid losses included in total reserves under section 801(c)(2).

(3) The amounts (discounted at the rates of interest assumed by the company) necessary to satisfy the obligations under insurance or annuity contracts (including contracts supplementary thereto), but only if such obligations do not involve (at the time with respect to which the computation is made under this paragraph) life, health, or accident contingencies.

(4) Dividend accumulations, and other amounts, held at interest in connection with insurance or annuity contracts (including contracts supplementary thereto).

(5) Premiums received in advance, and liabilities for premium deposit funds.

In applying this subsection, the same item shall be counted only once.

(d) *Adjustment for change in computing reserves*—(1) *In general.* If the basis for determining any item referred to in subsection (c) as of the close of any taxable year differs from the basis for such determination as of the close of the preceding taxable year, then so much of the difference between—

(A) The amount of the item at the close of the taxable year, computed on the new basis, and

(B) The amount of the item at the close of the taxable year, computed on the old basis,

as is attributable to contracts issued before the taxable year shall be taken into account for purposes of this subpart as follows:

(i) If the amount determined under subparagraph (A) exceeds the amount determined under subparagraph (B), 1/10 of such excess shall be taken into account, for each of the succeeding 10 taxable years, as a net increase to which section 809(d)(2) applies; or

(ii) If the amount determined under subparagraph (B) exceeds the amount determined under subparagraph (A), 1/10 of such excess shall be taken into account for each of the 10 succeeding taxable years, as a net decrease to which section 809(c)(2) applies.

(2) *Termination as life insurance company.* Except as provided in section 381(c)(22) (relating to carryovers in certain corporate readjustments), if for any taxable year the taxpayer is not a life insurance company, the balance of any adjustments under this paragraph shall be taken into account for the preceding taxable year.

(3) *Effect of preliminary term election.* An election under section 818(c) shall not be treated as a change in the basis for determining an item referred to in subsection (c) to which this subsection applies. If an election under section 818(c) applies for the taxable year, the amounts of the items referred to in subparagraphs (A) and (B) of paragraph (1) shall be determined without regard to such election. If such an election would apply in respect of such item for the taxable year but for the new basis, the amount of the item referred to in subparagraph (B) shall be determined on the basis which would have been applicable under section 818(c) if the election applied in respect of the item for the taxable year.

(e) *Certain decreases in reserves of voluntary employees' beneficiary associations*—(1) *Decreases due to voluntary lapses of policies issued before January 1, 1958.* For purposes of subsections (a) and (b), in the case of a life insurance company which meets the requirements of section 501(c)(9) other than the requirement of subparagraph (B) thereof, there shall be taken into account only 11½ percent of any decrease in the life insurance reserve on any policy issued before January 1, 1958, which is attributable solely to the voluntary lapse of such policy on or after January 1, 1958. In applying the preceding sentence, the decrease in the reserve for any policy shall be determined by reference to the amount of such reserve as of the beginning of the taxable year, reduced by any amount allowable as a deduction under section 809(d)(1) in respect of such policy by reason of such lapse. This paragraph shall apply for any taxable year only if the taxpayer has made an election under paragraph (3) which is effective for such taxable year.

(2) *Disallowance of carryovers from pre-1958 losses from operations.* In the case of a life insurance company to which paragraph (1) applies for the taxable year, section 812(b)(1) shall not apply with respect to any loss from operations for any taxable year beginning before January 1, 1958.

(3) *Election.* Paragraph (1) shall apply to any taxpayer for any taxable year only if the taxpayer elects, not later than the time prescribed by law (including extensions thereof) for filing the return for such taxable year, to have such paragraph apply. Such election shall be made in such manner as the Secretary or his delegate shall prescribe by regulations. Such election shall be effective for the taxable year for which made and for all succeeding taxable years, and shall not be revoked except with the consent of the Secretary or his delegate.

[Sec. 810 as added by sec. 2, Life Insurance Company Income Tax Act 1959 (73 Stat. 125)]

§ 1.810–1 Taxable years affected.

Sections 1.810–2 through 1.810–4 are applicable only to taxable years beginning after December 31, 1957, and all references to sections of part I, subchapter L, chapter 1 of the Code are to the Internal Revenue Code of 1954, as amended by the Life Insurance Company Income Tax Act of 1959 (73 Stat. 112).

§ 1.810–2 Rules for certain reserves.

(a) *Adjustment for decrease or increase in certain reserve items*—(1) *Adjustment for decrease.* Section 810(a) provides that if the sum of the items described in section 810(c) and paragraph (b) of this section at the beginning of the taxable year exceeds the sum of such items at the end of the taxable year (reduced by the amount of investment yield not included in gain or loss from operations for the taxable year by reason of section 809(a)(1)), the amount of such excess shall be taken into account as a net decrease referred to in section 809(c)(2) and paragraph (a)(2) of § 1.809–4 in determining gain or loss from operations.

(2) *Adjustment for increase.* Section 810(b) provides that if the sum of the items described in section 810(c) and paragraph (b) of this section at the end of the taxable year (reduced by the amount of investment yield not included in gain or loss from operations for the taxable year by reason of section 809(a)(1)) exceeds the sum of such items at the beginning of the taxable year, the amount of such excess shall be taken into account as a net increase referred to in section 809(d)(2) and paragraph (a)(2) of § 1.809–5 in determining gain or loss from operations.

(b) *Items taken into account.* The items described in section 810(c) and referred to in section 810 (a) and (b) and paragraph (a) of this section are:

(1) The life insurance reserves (as defined in section 801(b) and § 1.801–4);

(2) The unearned premiums and unpaid losses included in total reserves under section 801(c)(2) and § 1.801–5;

(3) The amounts (discounted at the rates of interest assumed by the company necessary to satisfy the obligations under insurance or annuity contracts (including contracts supplemental thereto), but only if such obligations do not involve (at the time with respect to which the computation is made under this subparagraph) life, health, or accident contingencies;

(4) Dividend accumulations, and other amounts, held at interest in connection with insurance or annuity contracts (including contracts supplementary thereto); and

(5) Premiums received in advance, and liabilities for premium deposit funds.

For purposes of this paragraph, the same item shall be counted only once and deficiency reserves (as defined in section 801(b)(4) and paragraph (e)(4) of § 1.801–4) shall not be taken into account.

(c) *Special rules.* For purposes of section 810 (a) and (b) and paragraph (a) of this section, in determining whether there is a net increase or decrease in the sum of the items described in section 810(c) and paragraph (b) of this section for the taxable year, the following rules shall apply:

(1) *Computation of net increase or decrease in reserves.* The sum of the items described in section 810(c) and paragraph (b) of this section at the beginning of the taxable year shall be the aggregate of the sums of each of such items at the beginning of the taxable year. The sum of the items described in section 810(c) and paragraph (b) of this section at the end of the taxable year shall be the aggregate of the sums of each of such items at the end of the taxable year. However, in order to determine whether there is a net increase or decrease in such items for the taxable year, the aggregate of the sums of the items at the end of the taxable year must first be reduced by the amount of investment yield not included in gain or loss from operations for the taxable year by reason of section 809(a)(1).

(2) *Effect of change in basis in computing reserves.* Any increase or decrease in the sum of the items described in section 810(c) and paragraph (b) of this section for the taxable year which is attributable to a change in the basis used in computing such items during the taxable year shall not be taken into account under section 810 (a) or (b) and paragraph (a) of this section but shall be taken into account in the manner prescribed in section 810(d) and paragraph (a) of § 1.810–3.

(3) *Effect of section 818(c) election.* If a company which computes its life insurance reserves on a preliminary term basis elects to revalue such reserves on a net level premium basis under section 818(c), the sum of such reserves at the beginning and end of all taxable years (including the first taxable year) for which the election applies shall be the sum of such reserves computed on such net level premium basis.

(4) *Cross references.* See section 810(e) and § 1.810–4 for special rules for determining the net increase or decrease in the sum of the items described in section 810(c) and paragraph (b) of this section in the case of certain voluntary employees' beneficiary associations. For similar special rules in the case of life insurance companies issuing variable annuity contracts, see section 801(g)(4) and the regulations thereunder.

(d) *Illustration of principles.* The provisions of section 810 (a) and (b) and this section may be illustrated by the following examples:

Example (1). Assume the following facts with respect to R, a life insurance company:

Sum of items described in sec. 810(c) (1) through (5) at beginning of taxable year	$940
Sum of items described in sec. 810(c) (1) through (5) at end of taxable year	1,060
Required interest (as defined in sec. 809(a)(2))	70
Investment yield (as defined in sec. 804(c))	100
Amount of investment yield not included in gain or loss from operations for the taxable year by reason of sec. 809(a)(1)	70

In order to determine the adjustment for decrease or increase in the sum of the items described in section 810(c) for the taxable year, R must first reduce the sum of such items at the end of the taxable year ($1,060) by the amount of investment yield ($70) not

included in gain or loss from operations for the taxable year by reason of section 809(a)(1). Since the adjusted sum of such items at the end of the taxable year, $990 ($1,060 minus $70), exceeds the sum of such items at the beginning of the taxable year, $940, the excess of $50 ($990 minus $940) shall be taken into account as a net increase under section 809(d)(2) and paragraph (a)(2) of § 1.809–5 in determining gain or loss from operations.

Example (2). Assume the facts are the same as in example (1), except that the sum of the items described in section 810(c) at the beginning of the taxable year is $1000. Since the sum of the items described in section 810(c) at the beginning of taxable year, $1000, exceeds the sum of such items at the end of the taxable year after adjustment for the amount of investment yield not included in gain or loss from operations for the taxable year by reason of section 809(a)(1), $990 ($1060 minus $70), the excess of $10 ($1000 minus $990) shall be taken into account as a net decrease under section 809(c)(2) and paragraph (a)(2) of § 1.809–4 in determining gain or loss from operations.

Example (3). Assume the following facts with respect to S, a life insurance company:

Sum of items described in sec. 810(c)(1) through (5) at beginning of taxable year	$1,970
Sum of items described in sec. 810(c)(1) through (5) at end of taxable year	2,040
Required interest (as defined in sec. 809(a)(2))	60
Investment yield (as defined in sec. 804(c))	40
Amount of investment yield not included in gain or loss from operations by reason of sec. 809(a)(1)	40

Under the provisions of section 809(a)(1), since the required interest ($60) exceeds the investment yield ($40), the share of each and every item of investment yield set aside for policyholders and not included in gain or loss from operations for the taxable year shall be 100 percent. Thus, applying the provisions of section 810 (a) and (b), the sum of the items described in section 810(c) at the end of the taxable year ($2,040) must first be reduced by the entire amount of the investment yield ($40) in order to determine the net increase or decrease in the sum of such items for the taxable year. Since the adjusted sum of such items at the end of the taxable year, $2,000 ($2,040 minus $40), is greater than the sum of such items at the beginning of the taxable year, $1,970, the excess of $30 ($2,000 minus $1,970) shall be taken into account as a net increase under section 809(d)(2) and paragraph (a)(2) of § 1.809–5 in determining gain or loss from operations. No additional deduction is allowed under section 809(d) for the amount ($20) by which the required interest exceeds the investment yield for the taxable year.

Example (4). Assume the facts are the same as in example (1), except that as a result of a change in the basis used in computing an item described in section 810(c) during the taxable year, the sum of such items at the end of the taxable year is $1,200. Under the provisions of paragraph (c)(2) of this section, any increase or decrease in the sum of the section 810(c) items for the taxable year which is attributable to a change in the basis used in computing such items during the taxable year shall not be taken into account under section 810 (a) and (b). Thus, for purposes of section 810 (a) and (b), the sum of the items described in section 810(c) at the end of the taxable year shall be $1,060 (the amount computed without regard to the change in basis) and S shall treat the $50 computed in the manner described in example (1) as a net increase under section 809(d)(2) and paragraph (a)(2) of § 1.809–5 in determining its gain or loss from operations for the taxable year. The amount of the increase in the section 810(c) items which is attributable to the change in basis during the taxable year, $140 ($1,200 minus $1,060), shall be taken into account in the manner prescribed in section 810(d) and paragraph (a) of § 1.810–3.

Example (5). The life insurance reserves of M, a life insurance company, computed with respect to contracts for which such reserves are determined on a recognized preliminary term basis amount to $100 on January 1, 1960, and $110 on December 31, 1960. For the taxable year 1960, M elects to revalue such reserves on a net level premium basis under section 818(c). Such reserves computed under section 818(c) amount to $115 on January 1, 1960, and $127 on December 31, 1960. Under the provisions of paragraph (c)(3) of this section, a company which makes the section 818(c) election must use the net level premium basis in computing the sum of its life insurance reserves at the beginning and end of all taxable years for which the election applies. Thus, for purposes of section 810 (a) and (b), in determining whether there is a net increase or decrease in the sum of the section 810(c) items for the taxable year 1960, M shall include $115 as its reserves with respect to such contracts under section 810(c)(1) at the beginning of the taxable year and $127 as its reserves with respect to such contracts under section 810(c)(1) at the end of the taxable year.

§ 1.810–3 Adjustment for change in computing reserves.

(a) *Reserve strengthening or weakening.* Section 810(d)(1) provides that if the basis for determining any item referred to in section 810(c) and paragraph (b) of § 1.810–2 at the end of any taxable year differs from the basis for such determination at the end of the preceding taxable year, then so much of the difference between—

(1) The amount of the item at the end of the taxable year, computed on the new basis, and

(2) The amount of the item at the end of the taxable year, computed on the old basis,

as is attributable to contracts issued before the taxable year shall be taken into account as follows:

(i) If the amount of the item at the end of the taxable year computed on the new basis exceeds the amount of the item at the end of the taxable year computed on the old basis, 1/10 of such excess shall be taken into account, for each of the succeeding 10 taxable years, as a net increase to which section 809(d)(2) and paragraph (a)(2) of § 1.809–5 applies; or

(ii) If the amount of the item at the end of the taxable year computed on the old basis exceeds the amount of the item at the end of the taxable year computed on the new basis, 1/10 of such excess shall be taken into account, for each of the 10 succeeding taxable years, as a net decrease to which section 809(c)(2) and paragraph (a)(2) of § 1.809–4 applies.

(b) *Illustration of principles.* The provisions of section 810(d)(1) and paragraph (a) of this section may be illustrated by the following examples:

Example (1). Assume that the amount of an item described in section 810(c) of L, a life insurance company, at the beginning of the taxable year 1959 is $100. Assume that at the end of the taxable year 1959, as a result of a change in the basis used in computing such item during the taxable year, the amount of the item (computed on the new basis) is $200 but computed on the old basis would have been $150. Since the amount of the item at the end of the taxable year computed on the new basis, $200, exceeds the amount of the item at the end of the taxable year computed on the old basis, $150, by $50, 1/10 of the amount of such excess, or $5, shall be taken into account as a net increase referred to in section 809(d)(2) and paragraph (a)(2) of § 1.809–5 in determining gain or loss from operations for each of the 10 taxable years immediately following the taxable year 1959. Any increase (or decrease) in the sum of the section 810(c) items computed on the old basis at the end of the taxable year 1959 ($150) after adjustment for investment yield not included in gain or loss from operations for the taxable year by reason of section 809(a)(1), over the sum of such items computed on the old basis at the beginning of the taxable year 1959 ($100), shall be taken into account in the manner prescribed in section 810 (a) or (b) and § 1.810–2 for purposes of determining L's gain or loss from operations for 1959.

Example (2). Assume the facts are the same as in example (1), and that the sum of the items described in section 810(c) (computed on the new basis) is $200 on January 1, 1960, and $260 on December 31, 1960. Under the provisions of section 810(d)(1), as a result of the reserve strengthening attributable to the change in basis which occurred in 1959, L would include $5 (computed in the manner described in example (1)) as a net increase under section 809(d)(2) and paragraph (a)(2) of § 1.809–5 in determining its gain or loss from operations for 1960. In addition to this amount, any increase (or decrease) in the sum of the items described in section 810(c) at the end of the taxable year 1960 ($260) after adjustment for investment yield not included in gain or loss from operations for the taxable year by reason of section 809(a)(1), over the sum of such items at the beginning of the taxable year 1960 ($200), shall be taken into account in the manner prescribed in section 810 (a) or (b) and § 1.810–2 for purposes of determining L's gain or loss from operations for 1960.

(c) *Termination as life insurance company.* Section 810(d)(2) provides, subject to the provisions of section 381(c)(22) and the regulations thereunder (relating to carryovers in certain corporate readjustments), that if for any taxable year a company which previously was a life insurance company no longer meets the requirements of section 801(a) and paragraph (b) of § 1.801–3 (relating to the definition of a life insurance company), the balance of any adjustments remaining to be made under section 810(d)(1) and paragraph (a) of this section shall be taken into account for the preceding taxable year.

(d) *Illustration of principles.* The provisions of section 810(d)(2) and paragraph (c) of this section may be illustrated by the following example:

Example. Assume the facts are the same as in example (1) of paragraph (b) of this section, except that for the taxable year 1962, L no longer meets the requirements of section 801(a) (relating to the definition of a life insurance company) and that the provisions of section 381(c)(22) are not applicable. Under the provisions of section 810(d)(2), the entire balance of the adjustment remaining to be made with respect to the change in basis which occurred in 1959, 9/10 of $50, or $40, shall be taken into account for the taxable year 1961, the last year L was a life insurance company. Thus, for the taxable year 1961, the total amount to be taken

into account by L as a net increase referred to in section 809(d)(2) and paragraph (a)(2) of § 1.809–5 in determining its gain or loss from operations shall be $45. Of this amount, $5 (1/10 of $50) represents the amount determined under the provisions of section 810(d)(1), and $40 represents the amount determined under the provisions of section 810(d)(2).

(e) *Effect of preliminary term election.* (1) Section 810(d)(3) provides that if a company which computes its life insurance reserves on a preliminary term basis elects to revalue such reserves on a net level premium basis under section 818(c), such election shall not be treated as a change in basis within the meaning of section 810(d)(1) and paragraph (a) of this section. Thus, any increase or decrease in reserves attributable to such election shall not be taken into account under section 810(d)(1) and paragraph (a) of this section but shall be taken into account in the manner prescribed in section 810 (a) and (b) and paragraph (a) of § 1.810–2. See paragraph (c)(3) of § 1.810–2.

(2) Section 810(d)(3) further provides that where an election under section 818(c) would apply to an item referred to in section 810(c) but for the fact that the basis used in computing such item has actually been changed, any increase or decrease in such item attributable to such actual change in basis shall be subject to the adjustment required under section 810(d)(1) and paragraph (a) of this section. In such a case, however, for purposes of section 810(d)(1)(B) and paragraph (a)(2) of this section, the amount of such item at the end of the taxable year computed on the old basis shall be the amount of such item at the end of the taxable year computed as if the election under section 818(c) applied in respect of such item for the taxable year.

(f) *Illustration of principles.* The provisions of section 810(d)(3) and paragraph (e) of this section may be illustrated by the following examples:

Example (1). Assume that S, a life insurance company which computes its life insurance reserves on a 3-percent assumed rate and the Commissioner's reserve valuation method (one of the recognized preliminary term reserve methods), elects to revalue such reserves on a net level premium method under section 818(c) and that the significant facts are as follows:

	Jan. 1, 1958	Dec. 31, 1958
Book reserves at 3-percent assumed rate, Commissioner's reserve valuation method	100	118
Reserves at 3-percent assumed rate, after restatement under section 818(c)	110	131

Under the provisions of section 810(d)(3), an election under section 818(c) is not treated as a change in basis for purposes of section 810(d)(1). Accordingly, the increase of $21 ($131 minus $110) attributable to such election shall not be subject to the adjustment provided by section 810(d)(1) but shall be taken into account in the manner prescribed in section 810(b). For purposes of determining the amount to be taken into account under section 810(b), the reserves with respect to the contracts subject to the section 818(c) election shall be $110 at the beginning of the taxable year 1958 and $131 at the end of the taxable year 1958. However, as a result of making the election under section 818(c), the difference ($10) between the reserves computed on the preliminary term basis on January 1, 1958 ($100) and the reserves restated on the net level premium basis on January 1, 1958 ($110) shall not be taken into account under section 809(d) for the year 1958, or for any subsequent taxable year.

Example (2). Assume the facts are the same as in example (1), except that during the taxable year 1959, S actually changed from the preliminary term basis to a net level premium basis which was identical with the net level premium basis used under the section 818(c) election and that the significant facts are as follows:

	Jan. 1, 1959	Dec. 31, 1959
Book reserves at 3-percent assumed rate, Commissioner's reserve valuation method	118	127
Reserves at 3-percent assumed rate, after restatement under section 818(c)	131	142
Strengthened reserves at 3-percent assumed rate and net level premium method		142

Under the provisions of section 810(d)(3), if a company which has made an election under section 818(c) which has not been revoked actually changes the basis used by it in computing the reserves subject to such election, any increase or decrease in reserves attributable to such change in basis shall be taken into account in the manner prescribed in section 810(d)(1). Since S actually changed to the same basis which it used in computing its reserves under section 818(c), the reserves at the end of the taxable year computed on the new basis ($142) are the same as the reserves at the end of the taxable year computed on the old basis ($142), i.e., the basis which would have applied under section 818(c) if the election applied for 1959. Accordingly, no adjustment under section 810(d)(1) is required.

Example (3). Assume the facts are the same as in example (1), except that during the taxable year 1960, S actually changed the basis used by it in computing its reserves on a certain block of contracts subject to the election under section 818(c) and that the significant facts with respect to this block of contracts are as follows:

	Jan. 1, 1960	Dec. 31, 1960
Book reserves at 3-percent assumed rate, Commissioner's reserve valuation method	50	63
Reserves at 3-percent assumed rate, after restatement under section 818(c)	60	75
Strengthened reserves at 2-percent assumed rate and net level premium method		95

Under the provisions of section 810(d)(3), the amount of the reserves subject to the section 818(c) election at the end of the taxable year computed on the old basis shall be the amount of such reserves at the end of the taxable year determined under section 818(c) ($75). Since the reserves at the end of the taxable year computed on the new basis, $95, exceed the reserves at the end of the taxable year computed on the old basis, $75, by $20, 1/10 of the excess of $20, or $2, shall be taken into account as a net increase referred to in section 809(d)(2) and paragraph (a)(2) of § 1.809–5 in determining gain or loss from operations for each of the 10 taxable years immediately following the taxable year 1960. For purposes of determining whether there is a net increase or decrease in the sum of the items described in section 810(c) for the taxable year 1960 under section 810 (a) or (b), the sum of the reserves with respect to such block of contracts shall be $60 at the beginning of the taxable year and $75 at the end of the taxable year (the amount of such reserves computed under section 818(c) at the beginning and end of the taxable year). The difference ($10) between the reserves computed on the preliminary term basis on January 1, 1960 ($50) and the reserves restated on the net level premium basis on January 1, 1960 ($60) shall not be taken into account under section 809(d) for the year 1960, or for any subsequent taxable year.

§ 1.810–4 Certain decreases in reserves of voluntary employees' beneficiary associations.

(a) *Decreases due to voluntary lapses of policies issued before January 1, 1958.* (1) Section 810(e) provides that if for any taxable year a life insurance company which meets the requirements of section 501(c)(9), other than the requirement of subparagraph (B) thereof, makes an election in the manner provided in section 810(e)(3) and paragraph (b) of this section, only 11½ percent of any decrease in life insurance reserves (as defined in section 801(b) and § 1.801–4) attributable to the voluntary lapse on or after January 1, 1958, of any policy issued prior to that date shall be taken into account under section 810 (a) or (b) and paragraph (a) of § 1.810–2 in determining the net increase or decrease in the sum of the items described in section 810(c) during the taxable year. In applying the preceding sentence, the decrease in the reserve for any policy shall be determined by reference to the amount of such reserve at the beginning of the taxable year, reduced by any amount allowable as a deduction under section 809(d)(1) and paragraph (a)(1) of § 1.809–5 in respect of such policy by reason of such lapse. The election under section 810(e) shall be adhered to in computing the company's gain or loss from operation for the taxable year for which the election is made and for all subsequent taxable years, unless consent to revoke such election is obtained from the Commissioner.

(2) The application of the election provided under section 810(e) and subparagraph (1) of this paragraph may be illustrated by the following example:

Example. For the taxable year 1960, M, a life insurance company which meets the requirements of section 501(c)(9), other than the requirement of subparagraph (B) thereof, makes the election under section 810(e). Assume the following facts with respect to a policy issued in 1955 which voluntarily lapsed during the taxable year:

(1) Life insurance reserve on January 1, 1960	$600
(2) Amount allowable as a deduction under sec. 809(d)(1)	200
(3) Decrease in life insurance reserves for sec. 810(e) purposes (item (1) minus item (2))	400
(4) Amount taken into account under sec. 810 (a) and (b) by reason of sec. 810(e) election (11½% × $400)	46

Under the provisions of section 810(e) and subparagraph (1) of this paragraph, M would include $46 as its life insurance reserve with respect to such policy under section 810(c)(1) at the beginning of the taxable year 1960 for purposes of determining

the net increase or decrease in the sum of the items described in section 810(c) for the taxable year under section 810 (a) or (b).

(b) *Time and manner of making election.* The election provided by section 810(e)(3) shall be made in a statement attached to the life insurance company's income tax return for the first taxable year for which the company desires the election to apply. The return and statement must be filed not later than the date prescribed by law (including extensions thereof) for filing the return for such taxable year. However, if the last day prescribed by law (including extensions thereof) for filing a return for the first taxable year for which the company desires the election to apply falls before January 20, 1961, the election provided by section 810(e)(3) may be made for such year by filing the statement and an amended return for such taxable year (and all subsequent taxable years for which returns have been filed) before April 21, 1961. The statement shall indicate that the company meets the requirements of section 501(c)(9), other than the requirement of subparagraph (B) thereof, and has made the election provided under section 810(e) and paragraph (a) of this section. The statement shall set forth the following information with respect to each policy described in paragraph (a) of this section which has voluntarily lapsed during such year:

(1) Type of policy.
(2) Date issued.
(3) Date lapsed.
(4) Reason for lapse.
(5) Policy reserve as of beginning of taxable year.
(6) Deduction allowable under section 809(d)(1) and paragraph (a)(1) of § 1.809–5 during taxable year by reason of lapse.
(7) Decrease in policy reserve for section 810(e) purposes (excess of (5) over (6)).

In addition, the statement shall set forth the total of the amounts referred to in subparagraph (7) of this paragraph with respect to all policies described in paragraph (a) of this section which have voluntarily lapsed during the taxable year.

(c) *Scope of election.* An election made under section 810(e)(3) and paragraph (a) of this section shall be effective for the taxable year for which made and for all succeeding taxable years, unless consent to revoke the election is obtained from the Commissioner. However, for taxable years beginning prior to January 20, 1961, a company may revoke the election provided by section 810(e)(3) without obtaining consent from the Commissioner by filing, before April 21, 1961, a statement that the company desires to revoke such election. An amended return reflecting such revocation must accompany the statement for all taxable years for which returns have been filed with respect to such election.

(d) *Disallowance of carryovers from pre-1958 losses from operations.* For any taxable year for which the election provided under section 810(e)(3) and paragraph (b) of this section is effective, the provisions of section 812(b)(1) and § 1.812–4 shall not apply with respect to any loss from operations for any taxable year beginning before January 1, 1958.

§ 1.811 Statutory provisions; life insurance companies; dividends to policyholders.

SEC. 811. *Dividends to policyholders*—(a) *Dividends to policyholders defined.* For purposes of this part, the term "dividends to policyholders" means dividends and similar distributions to policyholders in their capacity as such. Such term does not include interest paid (as defined in section 805(e)).

(b) *Amount of deduction*—(1) *In general.* Except as limited by section 809(f), the deduction for dividends to policyholders for any taxable year shall be an amount equal to the dividends to policyholders paid during the taxable year—

(A) Increased by the excess of (i) the amounts held at the end of the taxable year as reserves for dividends to policyholders (as defined in subsection (a)) payable during the year following the taxable year, over (ii) such amounts held at the end of the preceding taxable year, or

(B) Decreased by the excess of (i) such amounts held at the end of the preceding taxable year, over (ii) such amounts held at the end of the taxable year.

For purposes of subparagraphs (A) and (B), there shall be included as amounts held at the end of any taxable year amounts set aside, before the 16th day of the third month of the year following such taxable year (or, in the case of a mutual savings bank subject to the tax imposed by section 594, before the 16th day of the fourth month of the year following such taxable year), for payment during the year following such taxable year.

(2) *Certain amounts to be treated as net decreases.* If the amount determined under paragraph (1)(B) exceeds the dividends to policyholders paid during the taxable year, the amount of such excess shall be a net decrease referred to in section 809(c)(2).

[Sec. 811 as added by sec. 2, Life Insurance Company Tax Act 1955 (70 Stat. 44); amended by sec. 2, Life Insurance Company Income Tax Act 1959 (73 Stat. 126)]

§ 1.811–1 Taxable years affected.

Section 1.811–2, except as otherwise provided therein, is applicable only to taxable years beginning after December 31, 1957, and all references to sections of part I, subchapter L, chapter 1 of the Code are to the Internal Revenue Code of 1954, as amended by the Life Insurance Company Income Tax Act of 1959 (73 Stat. 112).

§ 1.811–2 Dividends to policyholders.

(a) *Dividends to policyholders defined.* Section 811(a) defines the term "dividends to policyholders", for purposes of part I, subchapter L, chapter 1 of the Code, to mean dividends and similar distributions to policyholders in their capacity as such. The term includes amounts returned to policyholders where the amount is not fixed in the contract but depends on the experience of the company or the discretion of the management. In general, any payment not fixed in the contract which is made with respect to a participating contract (that is, a contract which during the taxable year contains a right to participate in the divisible surplus of the company) shall be treated as a dividend to policyholders. Similarly, any amount refunded or allowed as a rate credit with respect to either a participating or a nonparticipating contract shall be treated as a dividend to policyholders if such amount depends on the experience of the company. However, the term does not include interest paid (as defined in section 805(e) and paragraph (b) of § 1.805–8) or return premiums (as defined in section 809(c) and paragraph (a)(1)(ii) of § 1.809–4). Thus, so-called excess-interest dividends and amounts returned by one life insurance company to another in respect of reinsurance ceded shall not be treated as dividends to policyholders even though such amounts are not fixed in the contract but depend upon the experience of the company or the discretion of the management.

(b) *Amount of deduction*—(1) *In general.* Section 811(b)(1) provides, subject to the limitation of section 809(f), that the deduction for dividends to policyholders for any taxable year shall be an amount equal to the dividends to policyholders paid during the taxable year—

(i) Increased by the excess of the amounts held as reserves for dividends to policyholders at the end of the taxable year for payment during the year following the taxable year, over the amounts held as reserves for dividends to policyholders at the end of the preceding taxable year for payment during the taxable year, or

(ii) Decreased by the excess of the amounts held as reserves for dividends to policyholders at the end of the preceding taxable year for payment during the taxable year, over the amounts held as reserves for dividends to policyholders at the end of the taxable year for payment during the year following the taxable year.

For the rule as to when dividends are considered paid, see section 561 and the regulations thereunder. For the determination of the amounts held as reserves for dividends to policyholders, see paragraph (c) of this section. For special provisions relating to the treatment of dividends to policyholders paid with respect to policies reinsured under modified coinsurance contracts, see section 820(c)(5) and the regulations thereunder.

(2) *Certain amounts to be treated as net decreases.* Section 811(b)(2) provides that if the amount determined under subparagraph (1)(ii) of this paragraph exceeds the dividends to policyholders paid during the taxable year, the amount of such excess shall be a net decrease referred to in section 809(c)(2).

(c) *Reserves for dividends to policyholders defined*—(1) *In general.* The term "reserves for dividends to policyholders", as used in section 811(b)(1)(A) and (B) and paragraph (b)(1) of this section, means only those amounts—

(i) Actually held, or set aside as provided in subparagraph (2) of this paragraph and thus treated as actually held, by the company at the end of the taxable year, and

(ii) With respect to which, at the end of the taxable year or, if set aside, within the period prescribed in subparagraph (2) of this paragraph, the company is under an obligation, which is either fixed

or determined according to a formula which is fixed and not subject to change by the company, to pay such amounts as dividends to policyholders (as defined in section 811(a) and paragraph (a) of this section) during the year following the taxable year.

(2) *Amounts set aside.* (i) In the case of a life insurance company (as defined in section 801(a) and paragraph (b) of § 1.801–3), all amounts set aside before the 16th day of the 3d month of the year following the taxable year for payment as dividends to policyholders (as defined in section 811(a) and paragraph (a) of this section) during the year following such taxable year shall be treated as amounts actually held at the end of the taxable year.

(ii) In the case of a mutual savings bank subject to the tax imposed by section 594, all amounts set aside before the 16th day of the 4th month of the year following the taxable year for payment as dividends to policyholders (as defined in section 811(a) and paragraph (a) of this section) during the year following such taxable year shall be treated as amounts actually held at the end of the taxable year.

(3) *1958 reserve for dividends to policyholders.* For purposes of section 811 (b) and paragraph (b) of this section, the amounts held at the end of 1957 as reserves for dividends to policyholders payable during 1958 shall be determined as if part I, subchapter L, chapter 1 of the Code (as in effect for 1958) applied for 1957. Any adjustment in the reserves for dividends to policyholders at the beginning of 1957 required as a result of an understatement or overstatement of such reserves by the company shall be made to the balance of such reserves as of the beginning of 1957. For example, if at the beginning of 1957 the reserves for dividends to policyholders are stated to be $100 and it is subsequently determined that such reserves should have been $90, the reserves at the beginning of 1957 shall be reduced by $10. Under no circumstances shall an adjustment required with regard to the beginning 1957 reserves be made to the reserves at the end of 1957.

(4) *Information to be filed.* Every company claiming a deduction for dividends to policyholders shall keep such permanent records as are necessary to establish the amount of dividends actually paid during the taxable year. Such company shall also keep a copy of the dividend resolution and any necessary supporting data relating to the amounts of dividends declared and to the amounts held or set aside as reserves for dividends to policyholders during the taxable year. The company shall file with its return a concise statement of the pertinent facts relating to its dividend policy for the year, the amount of dividends actually paid during the taxable year, and the amounts held or set aside as reserves for dividends to policyholders during the taxable year.

(d) *Illustration of principles.* The provisions of section 811(b) and this section may be illustrated by the following examples:

Example (1). On December 31, 1959, M, a life insurance company, held $200 as reserves for dividends to policyholders due and payable in 1960. On March 10, 1960, M set aside an additional $50 as reserves for dividends to policyholders due and payable in 1960. During the taxable year 1960, M paid $240 as dividends to its policyholders and at the end of the taxable year 1960, held $175 as reserves for dividends to policyholders due and payable in 1961. No additional amount was set aside before March 16, 1961, as reserves for dividends to policyholders due and payable in 1961. For the taxable year 1960, subject to the limitation of section 809(f), M's deduction for dividends to policyholders is $165, computed as follows:

(1) Dividends paid to policyholders during the taxable year 1960		$240
(2) Decreased by the excess of item (a) over item (b):		
(a) Reserves for dividends to policyholders as of 12–31–59 (including amounts set aside as provided in paragraph (c)(2) of this section)	$250	
(b) Reserves for dividends to policyholders as of 12–31–60	175	
		75
(3) Deduction for dividends to policyholders under sec. 811(b) (computed without regard to the limitation of sec. 809(f))		165

Example (2). On December 31, 1960, S, a life insurance company, held $100 as reserves for dividends to policyholders due and payable in 1961. During the taxable year 1961, S paid $125 as dividends to its policyholders and at the end of the taxable year 1961, held $110 as reserves for dividends to policyholders due and payable in 1962. No additional amount was set aside for dividends to policyholders as provided in paragraph (c)(2) of this section before March 16, 1961, or March 16, 1962. For the taxable year 1961, subject to the limitation of section 809(f), S's deduction for dividends to policyholders is $135, computed as follows:

(1) Dividends paid to policyholders during the taxable year 1961		$125
(2) Increased by the excess of item (a) over item (b):		
(a) Reserves for dividends to policyholders as of 12–31–61	$110	
(b) Reserves for dividends to policyholders as of 12–31–60	100	
		10
(3) Deduction for dividends to policyholders under sec. 811(b) (computed without regard to the limitation of sec. 809(f))		135

Example (3). Assume the facts are the same as in example (2), except that on December 31, 1960, the amount held as reserves for dividends to policyholders due and payable in 1961 is $250. For the taxable year 1961, S's deduction for dividends to policyholders is zero, computed as follows:

(1) Dividends paid to policyholders during the taxable year 1961		$125
(2) Decreased by the excess of item (a) over item (b):		
(a) Reserves for dividends to policyholders as of 12–31–60	$250	
(b) Reserves for dividends to policyholders as of 12–31–61	110	
		140
(3) Deduction for dividends to policyholders under sec. 811(b) (computed without regard to the limitation of sec. 809(f))		0

Under the provisions of section 811(b)(2) and paragraph (b)(2) of this section, since the decrease in the reserves for dividends to policyholders during the taxable year, $140 ($250 minus $110), exceeds the dividends to policyholders paid during the taxable year 1961, $125, S shall include $15 (the amount of such excess) as a net decrease under section 809(c)(2) and paragraph (a)(2) of § 1.809–4 in determining its gain or loss from operations for 1961.

§ 1.812 Statutory provisions; life insurance companies; operations loss deduction.

SEC. 812. *Operations loss deduction*—(a) *Deduction allowed.* There shall be allowed as a deduction for the taxable year an amount equal to the aggregate of—

(1) The operations loss carryovers to such year, plus

(2) The operations loss carrybacks to such year.

For purposes of this part, the term "operations loss deduction" means the deduction allowed by this subsection.

(b) *Operations loss carrybacks and carryovers*—(1) *Years to which loss may be carried*—(A) *In general.* The loss from operations for any taxable year (hereinafter in this section referred to as the "loss year") beginning after December 31, 1954, shall be—

(i) An operations loss carryback to each of the 3 taxable years preceding the loss year,

(ii) An operations loss carryover to each of the 5 taxable years following the loss year, and

(iii) Subject to subsection (e), if the life insurance company is a new company for the loss year, an operations loss carryover to each of the 3 taxable years following the 5 taxable years described in clause (ii).

(B) *Special transitional rules for carrybacks.* A loss from operations for any taxable year beginning before January 1, 1958, shall not be an operations loss carryback to any taxable year beginning before January 1, 1955. A loss from operations for any taxable year beginning after December 31, 1957, shall not be an operations loss carryback to any taxable year beginning before January 1, 1958.

(C) *Application for years prior to 1958.* For purposes of this section, this part (as in effect for 1958) and section 381(c)(22) shall be treated as applying to all taxable years beginning after December 31, 1954, and before January 1, 1958.

(2) *Amount of carrybacks and carryovers.* The entire amount of the loss from operations for any loss year shall be carried to the earliest of the taxable years to which (by reason of paragraph (1)) such loss may be carried. The portion of such loss which shall be carried to each of the other taxable years shall be the excess (if any) of the amount of such loss over the sum of the offsets (as defined in subsection (d)) for each of the prior taxable years to which such loss may be carried.

(c) *Computation of loss from operations.* In computing the loss from operations for purposes of this section—

(1) The operations loss deduction shall not be allowed.

(2) The deductions allowed by sections 243 (relating to dividends received by corporations), 244 (relating to dividends received on certain preferred stock of public utilities), and 245 (relating to dividends received from certain foreign corporations) shall be computed without regard to section 246(b) as modified by section 809(d)(8)(B).

(d) *Offset defined*—(1) *In general.* For purposes of subsection (b)(2), the term "offset" means, with respect to any taxable year, an amount equal to that increase in the operations loss deduction for the taxable year which reduces the life insurance company taxable income (computed without regard to section 802(b)(3)) for such year to zero.

(2) *Operations loss deduction.* For purposes of paragraph (1), the operations loss

deduction for any taxable year shall be computed without regard to the loss from operations for the loss year or for any taxable year thereafter.

(e) *Rules relating to new companies*—(1) *New company defined.* For purposes of this part, a life insurance company is a new company for any taxable year only if such taxable year begins not more than 5 years after the first day on which it (or any predecessor, if section 381(c)(22) applies or would have applied if in effect) was authorized to do business as an insurance company.

(2) *Limitations on 8-year carryover*—(A) *In general.* For purposes of subsection (b)(1)(A)(iii), a life insurance company shall not be treated as a new company for any loss year if at any time during such year it was a nonqualified corporation. If, at any time during any taxable year after the loss year, the life insurance company is a nonqualified corporation, subsection (b)(1)(A)(iii) shall cease to apply with respect to such loss for such taxable year and all subsequent taxable years.

(B) *Nonqualified corporation defined.* For purposes of subparagraph (A), the term "nonqualified corporation" means any corporation connected through stock ownership with any other corporation, if either of such corporations possesses at least 50 percent of the voting power of all classes of stock of the other such corporation. For purposes of subparagraph (A), a corporation shall be treated as becoming a nonqualified corporation at any time at which it becomes a party to a reorganization (other than a reorganization which is not described in any subparagraph of section 368(a)(1) other than subparagraphs (E) and (F) thereof.

(f) *Application of subtitle A and subtitle F.* Except as provided in section 809(e), subtitle A and subtitle F shall apply in respect of operations loss carrybacks, operations loss carryovers, and the operations loss deduction under this part in the same manner and to the same extent as such subtitles apply in respect of net operating loss carrybacks, net operating loss carryovers, and the net operating loss deduction.

[Sec. 812 as added by sec. 2, Life Insurance Company Tax Act 1955 (70 Stat. 45); amended by sec. 2, Life Insurance Company Income Tax Act 1959 (73 Stat. 127)]

§ 1.812–1 Taxable years affected.

Sections 1.812–2 through 1.812–8, except as otherwise provided therein, are applicable only to taxable years beginning after December 31, 1957, and all references to sections of part I, subchapter L, chapter 1 of the Code are to the Internal Revenue Code of 1954, as amended by the Life Insurance Company Income Tax Act of 1959 (73 Stat. 112).

§ 1.812–2 Operations loss deduction.

(a) *Allowance of deduction.* Section 812 provides that a life insurance company shall be allowed a deduction in computing gain or loss from operations for any taxable year beginning after December 31, 1957, in an amount equal to the aggregate of the operations loss carryovers and operations loss carrybacks to such taxable year. This deduction is referred to as the operations loss deduction. The loss from operations (computed under section 809), is the basis for the computation of the operations loss carryovers and operations loss carrybacks and ultimately for the operations loss deduction itself. Section 809(e)(5) provides that the net operating loss deduction provided in section 172 shall not be allowed a life insurance company since the operations loss deduction provided in section 812 and this paragraph shall be allowed in lieu thereof.

(b) *Steps in computation of operations loss deduction.* The three steps to be taken in the ascertainment of the operations loss deduction for any taxable year beginning after December 31, 1957, are as follows:

(1) Compute the loss from operations for any preceding or succeeding taxable year from which a loss from operations may be carried over or carried back to such taxable year.

(2) Compute the operations loss carryovers to such taxable year from such preceding taxable years and the operations loss carrybacks to such taxable year from such succeeding taxable years.

(3) Add such operations loss carryovers and carrybacks in order to determine the operations loss deduction for such taxable year.

(c) *Statement with tax return.* Every life insurance company claiming an operations loss deduction for any taxable year shall file with its return for such year a concise statement setting forth the amount of the operations loss deduction claimed and all material and pertinent facts relative thereto, including a detailed schedule showing the computation of the operations loss deduction.

(d) *Ascertainment of deduction dependent upon operations loss carryback.* If a life insurance company is entitled in computing its operations loss deduction to a carryback which it is not able to ascertain at the time its return is due, it shall compute the operations loss deduction on its return without regard to such operations loss carryback. When the life insurance company ascertains the operations loss carryback, it may within the applicable period of limitations file a claim for credit or refund of the overpayment, if any, resulting from the failure to compute the operations loss deduction for the taxable year with the inclusion of such carryback; or it may file an application under the provisions of section 6411 for a tentative carryback adjustment.

(e) *Law applicable to computations.* The following rules shall apply to all taxable years beginning after December 31, 1957—

(1) In determining the amount of any operations loss carryback or carryover to any taxable year, the necessary computations involving any other taxable year shall be made under the law applicable to such other taxable year.

(2) The loss from operations for any taxable year shall be determined under the law applicable to that year without regard to the year to which it is to be carried and in which, in effect, it is to be deducted as part of the operations loss deduction.

(3) The amount of the operations loss deduction which shall be allowed for any taxable year shall be determined under the law applicable for that year.

(f) *Special rules.* For purposes of taxable years beginning after December 31, 1954, and before January 1, 1958—

(1) The amount of any:

(i) Loss from operations;

(ii) Operations loss carryback; and

(iii) Operations loss carryover

shall be computed as if part I, subchapter L, chapter 1 of the Code (as in effect for 1958) and section 381(c)(22) applied to such taxable years.

(2) A loss from operations (determined in accordance with the provisions of section 812(b)(1)(C) and this paragraph) for such taxable years shall in no way affect the tax liability of any life insurance company for such taxable years. However, such loss may, to the extent allowed as an operations loss carryover under section 812, affect the tax liability of a life insurance company for a taxable year beginning after December 31, 1957. For example, for the taxable year 1956, X, a life insurance company, has a loss from operations (determined in accordance with the provisions of section 812(b)(1)(C) and this paragraph). Such loss shall in no way affect X's tax liability for the taxable years 1956 (the year of the loss), 1955 (a year to which such loss shall be carried back), or 1957 (a year to which such loss shall be carried forward). However, to the extent allowed under section 812, any amount of the loss for 1956 remaining after such carryback and carryforward shall be taken into account in determining X's tax liability for taxable years beginning after December 31, 1957.

§ 1.812–3 Computation of loss from operations.

(a) *Modification of deductions.* A loss from operations is sustained by a life insurance company in any taxable year, if and to the extent that, for such year, there is an excess of the sum of the deductions provided by section 809(d) over the sum of (1) the life insurance company's share of each and every item of investment yield (including tax-exempt interest, partially tax-exempt interest, and dividends received) as determined under section 809(b)(3), and (2) the sum of the items of gross amount taken into account under section 809(c). In determining the loss from operations for purposes of section 812—

(i) No deduction shall be allowed under section 812 for the operations loss deduction.

(ii) The 85 percent limitation on dividends received provided by section 246(b) as modified by section 809(d)(8)(B) shall not apply to the deductions otherwise allowed under—

(*a*) Section 243(a) in respect to dividends received by corporations,

(*b*) Section 244 in respect of dividends received on certain preferred stock of public utilities, and

(*c*) Section 245 in respect of dividends received from certain foreign corporations.

(b) *Illustration of principles.* The application of paragraph (a) of this section may be illustrated by the following example:

Example. For the taxable year 1960, X, a life insurance company, has items taken into account under section 809(c) amounting to $150,000, its share of the investment yield amounts to $250,000, and total deductions allowed by section 809(d) of $375,000, ex-

clusive of any operations loss deduction and exclusive of any deduction for dividends received. In 1960, X received as its share of dividends entitled to the benefits of section 243(a) the amount of $100,000. These dividends are included in X's share of the investment yield. X has no other deductions to which section 812(c) applies. On the basis of these facts, X has a loss from operations for the taxable year 1960 of $60,000, computed as follows:

Deductions for 1960	$375,000
Plus: Deduction for dividends received computed without regard to the limitation provided by sec. 246(b), as modified by sec. 809(d)(8)(B) (85% of $100,000)	85,000
Total deductions as modified by sec. 812(c)	460,000
Less: Sum of sec. 809(c) items and X's share of investment yield (including $100,000 of dividends)	400,000
Loss from operations for 1960	(60,000)

§ 1.812–4 Operations loss carrybacks and operations loss carryovers.

(a) *In general*—(1) *Years to which loss may be carried.* In order to compute the operations loss deduction of a life insurance company the company must first determine the part of any losses from operations for any preceding or succeeding taxable years which are carryovers or carrybacks to the taxable year in issue. Except as otherwise provided by this paragraph, a loss from operations for taxable years beginning after December 31, 1954, shall be carried back to each of the 3 taxable years preceding the loss year and shall be carried forward to each of the 5 taxable years succeeding the loss year. Except as limited by section 812(e)(2) and paragraph (b) of § 1.812–6, if the life insurance company is a new company (as defined in section 812(e)(1)) for the loss year, the loss from operations shall be carried back to each of the 3 taxable years preceding the loss year and shall be carried forward to each of the 8 taxable years succeeding the loss year. In determining the span of years for which a loss from operations may be carried, taxable years in which a company does not qualify as a life insurance company (as defined in section 801(a)), or is not treated as a new company, shall be taken into account.

(2) *Special transitional rules.* (i) A loss from operations for any taxable year beginning before January 1, 1958, shall not be carried back to any taxable year beginning before January 1, 1955. Furthermore, a loss from operations for any taxable year beginning after December 31, 1957, shall not be carried back to any taxable year beginning before January 1, 1958.

(ii) If for any taxable year a life insurance company has made an election under section 810(e) (relating to certain decreases in reserves for voluntary employees' beneficiary associations) which is effective for such taxable year, the provisions of section 812(b)(1) and subparagraph (1) of this paragraph shall not apply with respect to any loss from operations for any taxable year beginning before January 1, 1958.

(3) *Illustration of principles.* The provisions of section 812(b)(1) and of this paragraph may be illustrated by the following examples:

Example (1). P, a life insurance company, organized in 1940, has a loss from operations of $1,000 in 1958. This loss cannot be carried back, but shall be carried forward to each of the 5 taxable years following 1958.

Example (2). Q, a life insurance company, organized in 1940, has a loss from operations of $1,200 in 1959. This loss shall be carried back to the taxable year 1958 and then shall be carried forward to each of the 5 taxable years following 1959.

Example (3). R, a life insurance company, organized in 1940, has a loss from operations of $1,300 for the taxable year 1956. This loss shall first be carried back to the taxable year 1955 and then shall be carried forward to each of the 5 taxable years following 1956. The loss for 1956, carryback to 1955, and carryover to 1957 shall each be computed as if part I, subchapter L, chapter 1 of the Code (as in effect for 1958) applied to such taxable years.

Example (4). S, a life insurance company, organized in 1958 and meeting the provisions of section 812(e) (rules relating to new companies), has a loss from operations of $1,400 for the taxable year 1958. This loss cannot be carried back, but shall be carried forward to each of the 8 taxable years following 1958, provided, however, S is not a nonqualified corporation at any time during the loss year (1958) or any taxable year thereafter.

Example (5). T, a life insurance company, organized in 1954 and meeting the provisions of section 812(e) (rules relating to new companies), has a loss from operations of $1,500 for the taxable year 1956. This loss shall first be carried back to the taxable year 1955 and then carried forward to each of the 8 taxable years following 1956, provided, however, T is not a nonqualified corporation at any time during the loss year (1956) or any taxable year thereafter. The loss for 1956, carryback to 1955, and carryover to 1957 shall each be computed as if part I of subchapter L (as in effect for 1958) applied to such taxable years.

(4) *Periods of less than 12 months.* A fractional part of a year which is a taxable year under sections 441(b) and 7701(a)(23) is a preceding or a succeeding taxable year for the purpose of determining under section 812 the first, second, etc., preceding or succeeding taxable year. For the determination of the loss from operations for periods of less than 12 months, see section 818(d) and the regulations thereunder.

(5) *Amount of loss to be carried.* The amount which is carried back or carried over to any taxable year is the loss from operations to the extent it was not absorbed in the computation of gain from operations for other taxable years, preceding such taxable year, to which it may be carried back or carried over. For the purpose of determining the gain from operations for any such preceding taxable year, the various operations loss carryovers and carrybacks to such taxable year are considered to be applied in reduction of the gain from operations in the order of the taxable years from which such losses are carried over or carried back, beginning with the loss for the earliest taxable year.

(6) *Corporate acquisitions.* For the computation of the operations loss carryovers in the case of certain acquisitions of the assets of a life insurance company by another life insurance company, see section 381(c)(22) and the regulations thereunder.

(b) *Portion of loss from operations which is a carryback or a carryover to the taxable year in issue*—(1) *Manner of computation.* (i) A loss from operations shall first be carried back to the earliest taxable year permissible under section 812(b) and paragraph (a) of this section for which such loss is allowable as a carryback or a carryover. The entire amount of the loss from operations shall be carried back to such earliest year.

(ii) Section 812(b)(2) provides that the portion of the loss from operations which shall be carried to each of the taxable years subsequent to the earliest taxable year shall be the excess (if any) of the amount of the loss from operations over the sum of the offsets (as defined in section 812(d) and paragraph (a) of § 1.812–5) for all prior taxable years to which the loss from operations may be carried.

(2) *Illustration of principles.* The application of this paragraph may be illustrated by the following example:

Example. T, a life insurance company (which is not a new company as defined in section 812(e)(1)), has a loss from operations for 1960. The entire amount of the loss from operations for 1960 shall first be carried back to 1958. The amount of the carryback to 1959 is the excess (if any) of the 1960 loss over the offset for 1958. The amount of the carryover to 1961 is the excess (if any) of the 1960 loss over the sum of the offsets for 1958 and 1959. The amount of the 1960 loss remaining (if any) to be carried over to 1962, 1963, or 1964 shall be computed in a like manner.

§ 1.812–5 Offset.

(a) *Offset defined.* Section 812(d) defines the term "offset" for purposes of section 812(b)(2) and paragraph (b)(1)(ii) of § 1.812–4. For any taxable year the offset is only that portion of the increase in the operations loss deduction for the taxable year which is necessary to reduce the life insurance company taxable income (computed without regard to section 802(b)(3)) for such year to zero. For purposes of the preceding sentence, the offset shall be determined with the modifications prescribed in paragraph (b) of this section. Such modifications shall be made independently of, and without reference to, the modifications required by paragraph (a) of § 1.812–3 for purposes of computing the loss from operations itself.

(b) *Modifications*—(1) *Operations loss deduction*—(i) *In general.* Section 812(d)(2) provides that for purposes of section 812(d)(1) (relating to the definition of offset), the operations loss deduction for any taxable year shall be computed by taking into account only such losses from operations otherwise allowable as carryovers or as carrybacks to such taxable year as were sustained in taxable years preceding the taxable year in which the life insurance company sustained the loss from operations from which the offset is to be deducted. Thus, for such purposes the loss from operations for the loss year or for any taxable year thereafter shall not be taken into account.

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

Example. In computing the operations loss deduction for 1960, Y, a life insurance company, has a carryover from 1958 of $9,000, a carryover from 1959 of $6,000, a carryback from 1961 of $18,000, and a carryback from 1962 of $10,000, or an aggregate of $43,000 in carryovers and carrybacks. Thus, the operations loss deduction for 1960, for purposes of determining the tax liability for 1960, is $43,000. However, in computing the offset for 1960 which is subtracted from the loss from operations for 1961 for the purpose of determining the portion of such loss which may be carried over to subsequent taxable years, the operations loss deduction for 1960 is $15,000, that is, the aggregate of the $9,000 carryover from 1958 and the $6,000 carryover from 1959. In computing the operations loss deduction for such purpose, the $18,000 carryback from 1961 and the $10,000 carryback from 1962 are disregarded. In computing the offset for 1960, however, which is subtracted from the loss from operations for 1962 for the purpose of determining the portion of such 1962 loss which may be carried over for subsequent taxable years, the operations loss deduction for 1960 is $33,000, that is, the aggregate of the $9,000 carryover from 1958, the $6,000 carryover from 1959, and the $18,000 carryback from 1961. In computing the operations loss deduction for such purpose, the $10,000 carryback from 1962 is disregarded.

(2) *Recomputation of deductions limited by section 809(f)*—(i) *In general.* If in any taxable year a life insurance company has deductions under section 809(d) (3), (5), and (6), as limited by section 809(f), and sustains a loss from operations in a succeeding taxable year which may be carried back as an operations loss deduction, such limitation and deductions shall be recomputed. This recomputation is required since the carryback must be taken into account for purposes of determining such limitation and deductions.

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

(*a*) *Facts.* The books of P, a life insurance company, reveal the following facts:

Taxable year	Taxable investment income	Gain from operations	Loss from operations
1959	$9,000,000	$10,000,000	
1960			($9,800,000)

The gain from operations thus shown is computed without regard to any operations loss deduction or deductions under section 809(d) (3), (5), and (6), as limited by section 809(f). Assume that for the taxable year 1959, P has (without regard to the limitation of section 809(f) or the operations loss deduction for 1959) a deduction under section 809(d)(3) of $2,500,000 for dividends to policyholders and no deductions under section 809(d) (5) or (6).

(*b*) *Determination of section 809(f) limitation and deduction for dividends to policyholders without regard to the operations loss deduction for 1959.* In order to determine gain or loss from operations for 1959, P must determine the deduction for dividends to policyholders for such year. Under the provisions of section 809(f), the amount of such deduction shall not exceed the sum of (*1*) the amount (if any) by which the gain from operations for such year (determined without regard to such deduction) exceeds P's taxable investment income for such year, plus (2) $250,000. Since the gain from operations as thus determined ($10,000,000) exceeds the taxable investment income ($9,000,000) by $1,000,000, the limitation on such deduction is $1,250,000 ($1,000,000 plus $250,000). Accordingly, only $1,250,000 of the $2,500,000 deduction for dividends to policyholders shall be allowed. The gain from operations for such year is $8,750,000 ($10,000,000 minus $1,250,000).

(*c*) *Recomputation of section 809(f) limitation and deduction for dividends to policyholders after application of the operations loss deduction for 1959.* Since P has sustained a loss from operations for 1960 which shall be carried back to 1959 as an operations loss deduction, it must recompute the section 809(f) limitation and deduction for dividends to policyholders. Taking into account the $9,800,000 operations loss deduction for 1959 reduces gain from operations for such year to $200,000 ($10,000,000 minus $9,800,000). Since the gain from operations as thus determined ($200,000) is less than the taxable investment income ($9,000,000), the limitation on the deduction for dividends to policyholders is $250,000. Thus, only $250,000 of the $2,500,000 deduction for dividends to policyholders shall be allowed. The gain from operations for such year as thus determined is $9,750,000 ($10,000,000 minus $250,000) since for purposes of this determination the operations loss deduction for 1959 is not taken into account (see section 812(c)(1)). Accordingly, the offset for 1959 is $9,750,000 (the increase in the operations loss deduction for 1959, computed without regard to the carryback for 1960, which reduces life insurance company taxable income for 1959 to zero); thus, the portion of the 1960 loss from operations which shall be carried forward to 1961 is $50,000 (the excess of the 1960 loss ($9,800,000) over the offset for 1959 ($9,750,000)).

(3) *Minimum limitation.* The life insurance company taxable income, as modified under this paragraph, shall in no case be considered less than zero.

§ 1.812–6 Rules relating to new companies.

(a) *New company defined.* Section 812(e)(1) provides that for purposes of part I, subchapter L, chapter 1 of the Code, a life insurance company is a "new company" for any taxable year only if such taxable year begins not more than 5 years after the first day on which it (or any predecessor, if section 381(c)(22) applies or would have applied if in effect) was authorized to do business as an insurance company.

(b) *Limitations on 8-year carryover.* (1) Section 812(e)(2)(A) provides that for purposes of section 812(b)(1)(A)(iii) (relating to an 8-year carryover of losses for new companies), a life insurance company shall not be treated as a new company for any loss year if at any time during such loss year it was a nonqualified corporation (as defined in subparagraph (2) of this paragraph). Furthermore, if at any time during any taxable year after the loss year the life insurance company is a nonqualified corporation, section 812(b)(1)(A)(iii) shall cease to apply to (i) such loss for the taxable year of the nonqualification, and (ii) all subsequent taxable years.

(2) Section 812(e)(2)(B) defines the term "nonqualified corporation" for purposes of section 812(e)(2)(A) as any corporation connected through stock ownership with any other corporation where either of such corporations possesses at least 50 percent of the total combined voting power of all classes of stock entitled to vote of the other corporation. For such purpose, a corporation shall be treated as becoming a nonqualified corporation at any time it becomes a party to a reorganization other than a reorganization described in section 368(a)(1) (E) or (F).

(c) *Illustration of principles.* The provisions of section 812(e) and this section may be illustrated by the following examples:

Example (1). R, a life insurance company, organized on January 1, 1958, and qualifying as a new company, had a loss from operations for the taxable year 1958. Regardless of what events take place in future taxable years, R is a new company for any taxable year beginning not more than 5 years after January 1, 1958. The loss for 1958 may be carried forward to each of the 8 taxable years following 1958, provided, however, R is not a nonqualified corporation at any time during the loss year (1958) or any taxable year thereafter.

Example (2). The facts are the same as in example (1), except that from March 10, 1958 through August 1, 1958, R was a nonqualified corporation. R is still a new company for the taxable year 1958 but shall not be treated as such since it was a nonqualified corporation at some time during such taxable year. Accordingly, the loss for 1958 shall be carried forward to each of the 5 taxable years following 1958, but shall not be carried forward to any of the 3 taxable years following such 5 taxable years.

Example (3). S, a life insurance company organized in 1958, and qualifying as a new company, had a loss from operations for the taxable year 1958. In 1960, S was a nonqualified corporation. Since S was a nonqualified corporation during a taxable year (1960) after the loss year (1958), the loss for 1958 shall be carried forward to each of the 5 taxable years following 1958, but shall not be carried forward to any of the 3 taxable years following such 5 taxable years. In determining the 5 taxable years to which the loss for 1958 may be carried, the taxable year during which S was a nonqualified corporation (1960) shall be taken into account.

Example (4). The facts are the same as in example (3), except that in 1961 S was no longer a nonqualified corporation. With respect to the loss for 1958, the results are the same as in example (3).

Example (5). The facts are the same as in example (4), except that in 1962 S had a loss from operations. With respect to the loss for 1958, the results are the same as in example (4). With respect to the loss for 1962, such loss may be carried forward to each of the 8 taxable years following 1962, provided, however, S is not a nonqualified corporation at any time during the loss year (1962) or any taxable year thereafter.

Example (6). T, a life insurance company, organized on January 1, 1958, and qualifying as a new company, had a loss from operations for the taxable years 1959 and 1964. With respect to the loss for 1959, such loss may be carried forward to each of the 8 taxable years following 1959, provided, however, T is not a nonqualified corporation at any time during the loss year (1959) or any tax-

able year thereafter. With respect to the loss for 1964, such loss may be carried forward to each of the 5 taxable years following 1964, but not to any of the 3 taxable years following such 5 taxable years since the loss for 1964 was sustained in a taxable year beginning more than 5 taxable years after the first day (January 1, 1958) on which T was authorized to do business as an insurnace company.

Example (7). U, a life insurance company, organized in 1958, and qualifying as a new company, had a loss from operations for the taxable year 1958. In 1965, U was a nonqualified corporation. The loss for 1958 shall be carried forward to each of the 6 taxable years following 1958 (1959, 1960, 1961, 1962, 1963, and 1964), but shall not be carried forward to any of the 2 taxable years following such 6 taxable years (1965 and 1966).

§ 1.812–7 Application of subtitle A and subtitle F.

Section 812(f) provides that except as modified by section 809(e) (relating to modifications of deduction items otherwise allowable under subtitle A of the Code) subtitles A and F of the Code shall apply to operations loss carrybacks and carryovers, and to the operations loss deduction, in the same manner and to the same extent that such subtitles apply in respect of net operation loss carrybacks, net operating loss carryovers, and the net operating loss deduction of corporations generally. For the computation of the operations loss carrybacks and carryovers, and of the operations loss deduction in the case of certain acquisitions of the assets of a life insurance company by another life insurance company, see section 381(c)(22) and the regulations thereunder.

§ 1.812–8 Illustration of operations loss carrybacks and carryovers.

The application of § 1.812-4 may be illustrated by the following example:

(a) *Facts.* The books of M, a life insurance company, organized in 1940, reveal the following facts:

Taxable year	Taxable investment income	Gain from operations	Loss from operations
1958	$11,000	$15,000	
1959	23,000	30,000	
1960			($75,000)
1961	25,000	20,000	
1962			(150,000)
1963	22,000	30,000	
1964	40,000	35,000	
1965	62,000	75,000	
1966	25,000	17,000	
1967	39,000	53,000	

The gain from operations thus shown is computed without regard to any operations loss deduction. The assumption is also made that none of the other modifications prescribed in paragraph (b) of § 1.812-5 apply. There are no losses from operations for 1955, 1956, 1957, 1968, 1969, 1970.

(b) *Loss sustained in 1960.* The portions of the $75,000 loss from operations for 1960 which shall be used as carrybacks to 1958 and 1959 and as carryovers to 1961, 1962, 1963, 1964, and 1965 are computed as follows:

(1) *Carryback to 1958.* The carryback to this year is $75,000, that is, the amount of the loss from operations.

(2) *Carryback to 1959.* The carryback to this year is $60,000 (the excess of the loss for 1960 over the offset for 1958), computed as follows:

Loss from operations		$75,000
Less:		
Offset for 1958 (the $15,000 gain from operations for such year computed without the deduction of the carryback from 1960)		15,000
Carryback		60,000

(3) *Carryover to 1961.* The carryover to this year is $30,000 (the excess, if any, of the loss for 1960 over the sum of the offsets for 1958 and 1959), computed as follows:

Loss from operations		$75,000
Less:		
Offset for 1958 (the $15,000 gain from operations for such year computed without the deduction of the carryback from 1960)	$15,000	
Offset for 1959 (the $30,000 gain from operations for such year computed without the deduction of the carryback from 1960 or the carryback from 1962)	30,000	
Sum of offsets		45,000
Carryover		30,000

(4) *Carryover to 1962.* The carryover to this year is $10,000 (the excess, if any, of the loss for 1960 over the sum of the offsets for 1958, 1959, and 1961), computed as follows:

Loss from operations		$75,000
Less:		
Offset for 1958 (the $15,000 gain from operations for such year computed without the deduction of the carryback from 1960)	$15,000	
Offset for 1959 (the $30,000 gain from operations for such year computed without the deduction of the carryback from 1960 or the carryback from 1962)	30,000	
Offset for 1961 (the $20,000 gain from operations for such year computed without the deduction of the carryover from 1960 or the carryback from 1962)	20,000	
Sum of offsets		65,000
Carryover		10,000

(5) *Carryover to 1963.* The carryover to this year is $10,000 (the excess, if any, of the loss for 1960 over the sum of the offsets for 1958, 1959, 1961, and 1962), computed as follows:

Loss from operations		$75,000
Less:		
Offset for 1958 (the $15,000 gain from operations for such year computed without the deduction of the carryback from 1960)	$15,000	
Offset for 1959 (the $30,000 gain from operations for such year computed without the deduction of the carryback from 1960 or the carryback from 1962)	30,000	
Less—Continued		
Offset for 1961 (the $20,000 gain from operations for such year computed without the deduction of the carryover from 1960 or the carryback from 1962)	$20,000	
Offset for 1962 (a year in which a loss from operations was sustained)	0	
Sum of offsets		$65,000
Carryover		10,000

(6) *Carryover to 1964.* The carryover to this year is $0 (the excess, if any, of the loss from 1960 over the sum of the offsets for 1958, 1959, 1961, 1962, and 1963), computed as follows:

Loss from operations		$75,000
Less:		
Offset for 1958 (the $15,000 gain from operations for such year computed without the deduction of the carryback from 1960)	$15,000	
Offset for 1959 (the $30,000 gain from operations for such year computed without the deduction of the carryback from 1960 or the carryback from 1962)	30,000	
Offset for 1961 (the $20,000 gain from operations for such year computed without the deduction of the carryover from 1960 or the carryback from 1962)	20,000	
Offset for 1962 (a year in which a loss from operations was sustained)	0	
Offset for 1963 (the $30,000 gain from operations for such year computed without the deduction of the carryover from 1960 or the carryover from 1962)	30,000	
Sum of offsets		95,000
Carryover		0

(7) *Carryover to 1965.* The carryover to this year is $0 (the excess, if any, of the loss from 1960 over the sum of the offsets for 1958, 1959, 1961, 1962, 1963, and 1964), computed as follows:

Loss from operations		$75,000
Less:		
Offset for 1958 (the $15,000 gain from operations for such year computed without the deduction of the carryback from 1960)	$15,000	
Offset for 1959 (the $30,000 gain from operations for such year computed without the deduction for the carryback from 1960 or the carryback from 1962)	30,000	
Offset for 1961 (the $20,000 gain from operations for such year computed without the deduction for the caryover from 1960 or the carryback from 1962)	20,000	
Offset for 1962 (a year in which a loss from operations was sustained)	0	

Less—Continued	
Offset for 1963 (the $30,000 gain from operations for such year computed without the deduction for the carryover from 1960 or the carryover from 1962)	$30,000
Offset for 1964 (the $35,000 gain from operations for such year computed without the deduction of the carryover from 1960 or the carryover from 1962)	35,000
Sum of offsets	$130,000
Carryover	0

(c) *Loss sustained in 1962.* The portions of the $150,000 loss from operations for 1962 which shall be used as carrybacks to 1959, 1960, and 1961 and as carryovers to 1963, 1964, 1965, 1966, and 1967 are computed as follows:

(1) *Carryback to 1959.* The carryback to this year is $150,000, that is, the amount of the loss from operations.

(2) *Carryback to 1960.* The carryback to this year is $150,000 (the excess, if any, of the loss from 1962 over the offset for 1959), computed as follows:

Loss from operations	$150,000
Less:	
Offset for 1959 (the $30,000 gain from operations for such year reduced by the carryback to such year of $60,000 from 1960, the carryback from 1962 to 1959 not being taken into account)	0
Carryback	150,000

(3) *Carryback to 1961.* The carryback to this year is $150,000 (the excess, if any, of the loss from 1962 over the sum of the offsets for 1959 and 1960), computed as follows:

Loss from operations	$150,000
Less:	
Offset for 1959 (the $30,000 gain from operations for such year reduced by the carryback to such year of $60,000 from 1960, the carryback from 1962 to 1959 not being taken into account)	$0
Offset for 1960 (a year in which a loss from operations was sustained)	0
Sum of offsets	0
Carryback	150,000

(4) *Carryover to 1963.* The carryover to this year is $150,000 (the excess, if any, of the loss from 1962 over the sum of the offsets for 1959, 1960, and 1961), computed as follows:

Loss from operations	$150,000
Less:	
Offset for 1959 (the $30,000 gain from operations for such year reduced by the carryback to such year of $60,000 from 1960, the carryback from 1962 to 1959 not being taken into account)	$0
Offset for 1960 (a year in which a loss from operations was sustained)	0
Offset for 1961 (the $20,000 gain from operations for such year reduced by the carryover to such year of $30,000 from 1960, the carryback from 1962 to 1961 not being taken into account)	0
Sum of offsets	$0
Carryover	150,000

(5) *Carryover to 1964.* The carryover to this year is $130,000 (the excess, if any, of the loss from 1962 over the sum of the offsets for 1959, 1960, 1961, and 1963), computed as follows:

Loss from operations	$150,000
Less:	
Offset for 1959 (the $30,000 gain from operations for such year reduced by the carryback to such year of $60,000 from 1960, the carryback from 1962 to 1959 not being taken into account)	$0
Offset for 1960 (a year in which a loss from operations was sustained)	0
Offset for 1961 (the $20,000 gain from operations for such year reduced by the carryover to such year of $30,000 from 1960, the carryback from 1962 to 1961 not being taken into account)	0
Offset for 1963 (the $30,000 gain from operations for such year reduced by the carryover to such year of $10,000 from 1960, the carryover from 1962 to 1963 not being taken into account)	20,000
Sum of offsets	20,000
Carryover	130,000

(6) *Carryover to 1965.* The carryover to this year is $95,000 (the excess, if any, of the loss from 1962 over the sum of the offsets for 1959, 1960, 1961, 1963, and 1964), computed as follows:

Loss from operations	$150,000
Less:	
Offset for 1959 (the $30,000 gain from operations for such year reduced by the carryback to such year of $60,000 from 1960, the carryback from 1962 to 1959 not being taken into account)	$0
Offset for 1960 (a year in which a loss from operations was sustained)	0
Offset for 1961 (the $20,000 gain from operations for such year reduced by the carryover to such year of $30,000 from 1960, the carryback from 1962 to 1961 not being taken into account)	0
Offset for 1963 (the $30,000 gain from operations for such year reduced by the carryover to such year of $10,000 from 1960, the carryover from 1962 to 1963 not being taken into account)	20,000
Offset for 1964 (the $35,000 gain from operations for such year reduced by the carryover to such year of $0 from 1960, the carryover from 1962 to 1964 not being taken into account)	$35,000
Sum of offsets	$55,000
Carryover	95,000

(7) *Carryover to 1966.* The carryover to this year is $20,000 (the excess, if any, of the loss from 1962 over the sum of the offsets for 1959, 1960, 1961, 1963, 1964, and 1965), computed as follows:

Loss from operations	$150,000
Less:	
Offset for 1959 (the $30,000 gain from operations for such year reduced by the carryback to such year of $60,000 from 1960, the carryback from 1962 to 1959 not being taken into account)	$0
Offset for 1960 (a year in which a loss from operations was sustained)	0
Offset for 1961 (the $20,000 gain from operations for such year reduced by the carryover to such year of $30,000 from 1960, the carryback from 1962 to 1961 not being taken into account)	0
Offset for 1963 (the $30,000 gain from operations for such year reduced by the carryover for such year of $10,000 from 1960, the carryover from 1962 to 1963 not being taken into account)	20,000
Offset for 1964 (the $35,000 gain from operations for such year reduced by the carryover to such year of $0 from 1960, the carryover from 1962 to 1964 not being taken into account)	35,000
Offset for 1965 (the $75,000 gain from operations for such year reduced by the carryover to such year of $0 from 1960, the carryover from 1962 to 1965 not being taken into account)	75,000
Sum of offsets	130,000
Carryover	20,000

(8) *Carryover to 1967.* The carryover to this year is $3,000 (the excess, if any, of the loss from 1962 over the sum of the offsets for 1959, 1960, 1961, 1963, 1964, 1965, and 1966), computed as follows:

Loss from operations	$150,000
Less:	
Offset for 1959 (the $30,000 gain from operations for such year reduced by the carryback to such year of $60,000 from 1960, the carryback from 1962 to 1959 not being taken into account)	$0

Less—Continued		
Offset for 1960 (a year in which a loss from operations was sustained)	$0	
Offset for 1961 (the $20,000 gain from operations for such year reduced by the carryover to such year of $30,000 from 1960, the carryback from 1962 to 1961 not being taken into account)	0	
Offset for 1963 (the $30,000 gain from operations for such year reduced by the carryover to such year of $10,000 from 1960, the carryover from 1962 to 1963 not being taken into account)	20,000	
Offset for 1964 (the $35,000 gain from operations for such year reduced by the carryover to such year of $0 from 1960, the carryover from 1962 to 1964 not being taken into account)	35,000	
Offset for 1965 (the $75,000 gain from operations for such year reduced by the carryover to such year of $0 from 1960, the carryover from 1962 to 1965 not being taken into account)	75,000	
Offset for 1966 (the $17,000 gain from operations for such year computed without the deduction of the carryover from 1962)	17,000	
Sum of offsets		$147,000
Carryover		3,000

(d) *Determination of operations loss deduction for each year.* The carryovers and carrybacks computed under paragraphs (b) and (c) of this section are used as a basis for the computation of the operations loss deduction in the following manner:

Taxable year	Carryover		Carryback		Operations loss deductions
	From 1960	From 1962	From 1960	From 1962	
1958			$75,000		$75,000
1959			60,000	$150,000	210,000
1961	$30,000			150,000	180,000
1963	10,000	$150,000			160,000
1964		130,000			130,000
1965		95,000			95,000
1966		20,000			20,000
1967		3,000			3,000

§ 1.813 Statutory provisions; life insurance companies; adjustment for certain reserves.

SEC. 813. *Adjustment for certain reserves.* In the case of a life insurance company writing contracts other than life insurance, annuity, and noncancellable health and accident insurance contracts (including life insurance or annuity contracts combined with noncancellable health and accident insurance), the term "adjustment for certain reserves" means, for purposes of this subpart, an amount equal to 3½ percent of the unearned premiums and unpaid losses on such other contracts which are not included in life insurance reserves (as defined in section 801(b)). For purposes of this section, such unearned premiums shall not be considered to be less than 25 percent of the net premiums written during the taxable year on such other contracts.

[Sec. 813 as added by sec. 2, Life Insurance Company Tax Act 1955 (70 Stat. 46)]

DISTRIBUTIONS TO SHAREHOLDERS

§ 1.815 Statutory provisions; life insurance companies; distributions to shareholders.

SEC. 815. *Distributions to shareholders*—(a) *General rule.* For purposes of this section and section 802(b)(3), any distribution to shareholders after December 31, 1958, shall be treated as made—

(1) First out of the shareholders surplus account, to the extent thereof,

(2) Then out of the policyholders surplus account, to the extent thereof, and

(3) Finally out of other accounts.

For purposes of this section, the term "distribution" includes any distribution in redemption of stock or in partial or complete liquidation of the corporation, but does not include any distribution made by the corporation in its stock or in rights to acquire its stock, and does not (except for purposes of paragraph (3) and subsection (e)(2)(B)) include any distribution in redemption of stock issued before 1958 which at all times on and after the date of issuance and on and before the date of redemption is limited as to dividends and is callable, at the option of the issuer, at a price not in excess of 105 percent of the sum of the issue price and the amount of any contribution to surplus made by the original purchaser at the time of his purchase.

(b) *Shareholders surplus account*—(1) *In general.* Each stock life insurance company shall, for purposes of this part, establish and maintain a shareholders surplus account. The amount in such account on January 1, 1958, shall be zero.

(2) *Additions to account.* The amount added to the shareholders surplus account for any taxable year beginning after December 31, 1957, shall be the amount by which—

(A) The sum of—

(i) The life insurance company taxable income (computed without regard to section 802(b)(3)),

(ii) In the case of a taxable year beginning after December 31, 1958, the amount (if any) by which the net long-term capital gain exceeds the net short-term capital loss,

(iii) The deduction for partially tax-exempt interest provided by section 242 (as modified by section 804(a)(3)), the deductions for dividends received provided by sections 243, 244, and 245 (as modified by section 809(d)(8)(B)), and the amount of interest excluded from gross income under section 103, and

(iv) The small business deduction provided by section 809(d)(10), exceeds

(B) The taxes imposed for the taxable year by section 802(a), determined without regard to section 802(b)(3).

(3) *Subtractions from account*—(A) *In general.* There shall be subtracted from the shareholders surplus account for any taxable year the amount which is treated under this section as distributed out of such account.

(B) *Distributions in 1958.* There shall be subtracted from the shareholders surplus account (to the extent thereof) for any taxable year beginning in 1958 the amount of distributions to shareholders made during 1958.

(c) *Policyholders surplus account*—(1) *In general.* Each stock life insurance company shall, for purposes of this part, establish and maintain a policyholders surplus account. The amount in such account on January 1, 1959, shall be zero.

(2) *Additions to account.* The amount added to the policyholders surplus account for any taxable year beginning after December 31, 1958, shall be the sum of—

(A) An amount equal to 50 percent of the amount by which the gain from operations exceeds the taxable investment income,

(B) The deduction for certain nonparticipating contracts provided by section 809(d)(5) (as limited by section 809(f)), and

(C) The deduction for group life and group accident and health insurance contracts provided by section 809(d)(6) (as limited by section 809(f)).

(3) *Subtractions from account.* There shall be subtracted from the policyholders surplus account for any taxable year an amount equal to the sum of—

(A) The amount which (without regard to subparagraph (B)) is treated under this section as distributed out of the policyholders surplus account, and

(B) The amount (determined without regard to section 802(a)(3)) by which the tax imposed for the taxable year by section 802(a)(1) is increased by reason of section 802(b)(3).

(d) *Special rules*—(1) *Election to transfer amounts from policyholders surplus account to shareholders surplus account*—(A) *In general.* A taxpayer may elect for any taxable year for which it is a life insurance company to subtract from its policyholders surplus account any amount in such account as of the close of such taxable year. The amount so subtracted, less the amount of the tax imposed with respect to such amount by reason of section 802(b)(3), shall be added to the shareholders surplus account as of the beginning of the succeeding taxable year.

(B) *Manner and effect of election.* The election provided by subparagraph (A) shall be made (in such manner and in such form as the Secretary or his delegate may by regulations prescribe) after the close of the taxable year and not later than the time prescribed by law for filing the return (including extensions thereof) for the taxable year. Such an election, once made, may not be revoked.

(2) *Termination as life insurance company*—(A) *Effect of termination.* Except as provided in section 381(c)(22) (relating to carryovers in certain corporate readjustments), if—

(i) For any taxable year the taxpayer is not an insurance company, or

(ii) For any two successive taxable years the taxpayer is not a life insurance company,

then the amount taken into account under section 802(b)(3) for the last preceding taxable year for which it was a life insurance company shall be increased (after the application of subparagraph (B)) by the amount remaining in its policyholders surplus account at the close of such last preceding taxable year.

(B) *Effect of certain distributions.* If for any taxable year the taxpayer is an insurance company but not a life insurance company, then any distribution to shareholders during such taxable year shall be treated as made on the last day of the last preceding taxable year for which the taxpayer was a life insurance company.

(3) *Treatment of certain indebtedness.* If—

(A) The taxpayer makes any payment in discharge of its indebtedness, and

(B) Such indebtedness is attributable to a distribution by the taxpayer to its shareholders after February 9, 1959,

then the amount of such payment shall, for purposes of this section and section 802(b)(3), be treated as a distribution in cash to shareholders, but only to the extent that the distribution referred to in subparagraph (B) was treated as made out of accounts other than the shareholders and policyholders surplus accounts.

(4) *Limitation on amount in policyholders surplus account.* There shall be treated as a subtraction from the policyholders surplus account for a taxable year for which the taxpayer is a life insurance company the

amount by which the policyholders surplus account (computed at the end of the taxable year without regard to this paragraph) exceeds whichever of the following is the greatest—

(A) 15 percent of life insurance reserves at the end of the taxable year,

(B) 25 percent of the amount by which the life insurance reserves at the end of the taxable year exceed the life insurance reserves at the end of 1958, or

(C) 50 percent of the net amount of the premiums and other consideration taken into account for the taxable year under section 809(c)(1).

The amount so treated as subtracted, less the amount of the tax imposed with respect to such amount by reason of section 802(b)(3), shall be added to the shareholders surplus account as of the beginning of the succeeding taxable year.

(e) *Special rule for certain mutualizations*—(1) *In general.* For purposes of this section and section 802(b)(3), any distribution to shareholders after December 31, 1958, in acquisition of stock pursuant to a plan of mutualization shall be treated—

(A) First, as made out of paid-in capital and paid-in surplus, to the extent thereof,

(B) Thereafter, as made in two allocable parts—

(i) One part of which is made out of the other accounts referred to in subsection (a)(3), and

(ii) The remainder of which is a distribution to which subsection (a) applies.

(2) *Special rules*—(A) *Allocation ratio.* The part referred to in paragraph (1)(B)(i) is the amount which bears the same ratio to the amount to which paragraph (1)(B) applies as—

(i) The excess (determined as of December 31, 1958, and adjusted to the beginning of the year of the distribution as provided in subparagraph (B)) of the assets over the total liabilities, bears to

(ii) The sum (determined as of the beginning of the year of the distribution) of the excess described in clause (i), the amount in the shareholders surplus account, plus the amount in the policyholders surplus account.

(B) *Adjustment for certain distributions.* The excess described in subparagraph (A)(i) shall be reduced by the aggregate of the prior distributions which have been treated under subsection (a)(3) as made out of accounts other than the shareholders surplus account and the policyholders surplus account.

[Sec. 815 as added by sec. 2, Life Insurance Company Income Tax Act 1959 (73 Stat. 129)]

§ 1.815–1 Taxable years affected.

Sections 1.815–2 through 1.815–6 are applicable only to taxable years beginning after December 31, 1957, and all references to sections of part I, subchapter L, chapter 1 of the Code are to the Internal Revenue Code of 1954, as amended by the Life Insurance Company Income Tax Act of 1959 (73 Stat. 112).

§ 1.815–2 Distributions to shareholders.

(a) *In general.* Section 815 provides that every stock life insurance company subject to the tax imposed by section 802 shall establish and maintain two special surplus accounts for Federal income tax purposes. These special accounts are the shareholders surplus account (as defined in section 815(b) and § 1.815–3) and the policyholders surplus account (as defined in section 815(c) and § 1.815–4). To the extent that a distribution to shareholders (as defined in paragraph (c) of this section) is treated as being made out of the shareholders surplus account, no tax is imposed on the company with respect to such distribution. However, to the extent that a distribution to shareholders is treated as being made out of the policyholders surplus account, the amount subtracted from the policyholders surplus account by reason of such distribution shall be taken into account in determining life insurance company taxable income under section 802(b).

(b) *Priority system for distributions to shareholders.* (1) For purposes of section 815 (other than subsection (e) thereof relating to certain mutualizations) and section 802(b)(3) (relating to the determination of life insurance company taxable income), any distribution made to shareholders after December 31, 1958, shall be treated in the following manner:

(i) Distributions shall be treated as first being made out of the shareholders surplus account (as defined in section 815(b) and § 1.815–3);

(ii) Once the shareholders surplus account has been reduced to zero, distributions shall then be treated as being made out of the policyholders surplus account (as defined in section 815(c) and § 1.815–4) until that account has been reduced to zero; and

(iii) Finally, any distributions in excess of the amounts in the shareholders surplus account and the policyholders surplus account shall be treated as being made out of other accounts (as defined in § 1.815–5).

(2) For purposes of subparagraph (1) of this paragraph, in order to determine whether a distribution (or any portion thereof) shall be treated as being made out of the shareholders surplus account, policyholders surplus account, or other accounts, the amount in such accounts at the end of any taxable year shall be the cumulative balance in such accounts at the end of the taxable year, computed without diminution by reason of a distribution (or any portion thereof) during the taxable year which is treated as being made out of such accounts. For example, on January 1, 1960, S, a stock life insurance company, had $1,000 in its shareholders surplus account and $3,000 in its policyholders surplus account. On November 1, 1960, S distributed $4,000 to its shareholders. Under the provisions of section 815(b)(2) and paragraph (b) of § 1.815–3, S added $5,000 to its shareholders surplus account for the taxable year 1960. Since the distributions to shareholders during the taxable year 1960, $4,000, does not exceed the cumulative balance in the shareholders surplus account at the end of the taxable year, computed without diminution by reason of distributions treated as made out of such account during the taxable year, $6,000 ($1,000 plus $5,000), the entire distribution is treated as being made out of the shareholders surplus account.

(3) Except in the case of a distribution in cash and as otherwise provided herein, the amount to be charged to the special surplus accounts referred to in subparagraph (1) of this paragraph with respect to any distributions to shareholders (as defined in section 815(a) and paragraph (c) of this section) shall be the fair market value of the property distributed, determined as of the date of distribution. However, for the amount of the adjustment to earnings and profits reflecting such distributions, see section 312 and the regulations thereunder. For a special rule relating to the determination of the amount to be charged to such special surplus accounts in the case of a distribution by a foreign life insurance company carrying on a life insurance business within the United States, see section 819(c)(1) and the regulations thereunder.

(c) *Distributions to shareholders defined.* (1) Except as provided in subparagraph (2) of this paragraph, the term "distribution", as used in section 815(a) and paragraph (b) of this section, means any distribution of property made by a life insurance company to its shareholders. For purposes of the preceding sentence, the term "property" means any property (including money, securities, and indebtedness to the company) other than stock, or rights to acquire stock, in the company making the distribution. Thus, for example, the term includes a distribution which is considered a dividend under section 316, but is not limited to the extent that such distribution must be made out of the accumulated or current earnings and profits of the company making the distribution. Similarly, there is a distribution within the meaning of this paragraph in any case in which a corporation acquires the stock of a shareholder in exchange for property in a redemption treated as a distribution in exchange for stock under section 302(a) or treated as a distribution of property under section 302(d). For special rules relating to distributions to shareholders in acquisition of stock pursuant to a plan of mutualization, see section 815(e) and paragraph (e) of § 1.815–6.

(2) The term "distribution", as used in section 815(a) and paragraph (b) of this section, does not (except for purposes of section 815(a)(3) and (e)(2)(B)) include any distribution in redemption of stock issued prior to January 1, 1958, where such stock was at all times on and after the date of its issuance and on and before the date of its redemption limited as to the amount of dividends payable and was callable, at the option of the issuer, at a price not in excess of 105 percent of the sum of its issue price plus the amount of contribution to surplus (if any) made by the original purchaser at the time of his purchase.

§ 1.815–3 Shareholders surplus account.

(a) *In general.* Every stock life insurance company subject to the tax imposed by section 802 shall establish and maintain a shareholders surplus account. This account shall be established as of January 1, 1958, and the beginning or opening balance of the shareholders surplus account on that date shall be zero.

(b) *Additions to shareholders surplus account.* (1) The amount added to the shareholders surplus account for any taxable year beginning after December

31, 1957, shall be the amount by which the sum of—

(i) The life insurance company taxable income (computed without regard to section 802(b)(3)),

(ii) In the case of a taxable year beginning after December 31, 1958, the amount (if any) by which the net long-term capital gain exceeds the net short-term capital loss,

(iii) The deduction for partially tax-exempt interest provided by section 242 (as modified by section 804(a)(3)), the deductions for dividends received provided by sections 243, 244, and 245 (as modified by section 809(d)(8)(B)), and the amount of interest excluded from gross income under section 103, and

(iv) The small business deduction provided by section 809(d)(10),

exceeds the taxes imposed for the taxable year by section 802(a), computed without regard to section 802(b)(3).

(2) For amounts which are to be added to the shareholders surplus account at the beginning of the succeeding taxable year, see section 815(d) (1) and (4) and paragraphs (a) and (d) of § 1.815–6.

(c) *Subtractions from shareholders surplus account*—(1) *In general.* There shall be subtracted from the cumulative balance in the shareholders surplus account at the end of any taxable year, computed without diminution by reason of distributions made during the taxable year, the amount which is treated as being distributed out of such account under section 815(a) and paragraph (b) of § 1.815–2.

(2) *Special rule; distributions in 1958.* There shall be subtracted from the shareholders surplus account (to the extent thereof) for any taxable year beginning in 1958 the amount of the distributions to shareholders made by the company during 1958. For example, assume S, a stock life insurance company, had additions to its shareholders surplus account (as determined under section 815(b)(2) and paragraph (b) of this section) for the taxable year 1958 of $10,000, and actually distributed as dividends to its shareholders $8,000 during the year 1958. The balance in S's shareholders surplus account as of January 1, 1959, shall be $2,000. If S had distributed $12,000 as dividends in 1958, the balance in its shareholders surplus account as of January 1, 1959, would be zero and the other accounts referred to in section 815(a)(3) and paragraph (b)(1)(iii) of § 1.815–2 would be reduced by $2,000.

(d) *Illustration of principles.* The application of section 815(b) and this section may be illustrated by the following example:

Example. The books of S, a stock life insurance company, reflect the following items for the taxable year 1960:

Balance in shareholders surplus account as of 1–1–60	$5,000
Life insurance company taxable income computed without regard to sec. 802(b)(3)	4,000
Excess of net long-term capital gain over net short-term capital loss	1,700
Tax-exempt interest included in gross investment income under sec. 804(b)	100
Small business deduction (determined under sec. 809(d)(10))	200
Tax liability under sec. 802(a) (1) and (2) computed without regard to sec. 802(b)(3)	$1,625
Amount distributed to shareholders	9,000

For purposes of determining the amount to be subtracted from its shareholders surplus account for the taxable year, S would first make up the following schedule in order to determine the cumulative balance in the shareholders surplus account at the end of the taxable year, computed without diminution by reason of distributions made during the taxable year:

(1) Balance in shareholders surplus account as of 1–1–60		$5,000
(2) Additions to account:		
(a) Life insurance company taxable income computed without regard to sec. 802(b)(3)	$4,000	
(b) Excess of net long-term capital gain over net short-term capital loss	1,700	
(c) Tax-exempt interest included in gross investment income under sec. 804(b)	100	
(d) Small business deduction (determined under sec. 809(d)(10))	200	
Total	6,000	
Less: Tax liability under sec. 802(a) (1) and (2) computed without regard to sec. 802(b)(3)	1,625	
		4,375
(3) Cumulative balance in shareholders surplus account as of 12–31–60 (item (1) plus item (2))		9,375

Since the amount distributed to shareholders during the taxable year, $9,000, does not exceed the cumulative balance in the shareholders surplus account at the end of the taxable year, computed without diminution by reason of distributions made during the taxable year, $9,375, under the provisions of section 815(a), the entire distribution shall be treated as being made out of the shareholders surplus account. Thus, $9,000 shall be subtracted from the shareholders surplus account (leaving a balance of $375 in such account at the end of the taxable year) and S shall incur no additional tax liability by reason of the distribution to its shareholders during the taxable year 1960.

§ 1.815–4 Policyholders surplus account.

(a) *In general.* Every stock life insurance company subject to the tax imposed by section 802 shall establish and maintain a policyholders surplus account. This account shall be established as of January 1, 1959, and the beginning or opening balance of the policyholders surplus account on that date shall be zero.

(b) *Additions to policyholders surplus account.* The amount added to the policyholders surplus account for any taxable year beginning after December 31, 1958, shall be the sum of—

(1) An amount equal to 50 percent of the amount by which the gain from operations for the taxable year exceeds the taxable investment income,

(2) The deduction allowed or allowable under section 809(d)(5) (as limited by section 809(f)) for certain nonparticipating contracts, and

(3) The deduction allowed or allowable under section 809(d)(6) (as limited by section 809(f)) for group life and group accident and health insurance contracts.

(c) *Subtractions from policyholders surplus account*—(1) *In general.* There shall be subtracted from the cumulative balance in the policyholders surplus account at the end of any taxable year, computed without diminution by reason of distributions made during the taxable year, an amount equal to the sum of—

(i) The amount which (without regard to subdivision (ii) of this subparagraph) is treated under section 815(a) as distributed out of the policyholders surplus account for the taxable year, plus

(ii) The amount (determined without regard to section 802(a)(3)) by which the tax imposed for the taxable year by section 802(a)(1) is increased by reason of section 802(b)(3).

In addition, there shall be subtracted from the policyholders surplus account for the taxable year those amounts which, at the close of the taxable year, are subtracted or treated as subtracted from the policyholders surplus account under section 815(d) (1) and (4) and paragraphs (a) and (d) of § 1.815–6. For purposes of this paragraph, the subtractions from the policyholders surplus account shall be treated as made in the following order:

(*a*) First the amount determined under section 815(c)(3) by reason of distributions to shareholders during the taxable year which are treated as being made out of the policyholders surplus account;

(*b*) Next the amount elected to be subtracted from the policyholders surplus account for the taxable year under section 815(d)(1);

(*c*) Then the amount which is treated as a subtraction from the policyholders surplus account for the taxable year by reason of the limitation provided in section 815(d)(4); and

(*d*) Finally the amount taken into account upon termination as a life insurance company as provided in section 815(d)(2).

(2) *Method of computing amount subtracted from policyholders surplus account*—(i) *Where life insurance company taxable income, computed without regard to section 802(b)(3), exceeds $25,000.* If the life insurance company taxable income for any taxable year computed under section 802(b), computed without regard to section 802(b)(3), exceeds $25,000, the amount subtracted from the policyholders surplus account shall be determined by multiplying the amount treated as distributed out of such account by a ratio, the numerator of which is 100 percent and the denominator of which is 100 percent minus the sum of the normal tax rate and the surtax rate for the taxable year.

(ii) *Where life insurance company taxable income does not exceed $25,000.* If the life insurance company taxable income for any taxable year, computed under section 802(b), does not exceed $25,000, the amount subtracted from the policyholders surplus account shall be determined by multiplying the amount

treated as distributed out of such account by a ratio, the numerator of which is 100 percent and the denominator of which is 100 percent minus the normal tax rate for the taxable year.

(iii) *Where life insurance company taxable income, computed without regard to section 802(b)(3) does not exceed $25,000, but computed with regard to section 802(b)(3) does exceed $25,000.* If the life insurance company taxable income for any taxable year, computed without regard to section 802(b)(3) does not exceed $25,000, but computed with regard to section 802(b)(3) does exceed $25,000, the amount subtracted from the policyholders surplus account shall be determined in the following manner:

(*a*) First, determine the amount by which $25,000 exceeds the amount determined under section 802(b) (1) and (2);

(*b*) Then, multiply the amount determined under (*a*) by a ratio, the numerator of which is 100 percent minus the normal tax rate and the denominator of which is 100 percent;

(*c*) Next, determine the amount by which the amount treated as distributed out of the policyholders surplus account exceeds the amount determined under (*b*) and multiply such excess by a ratio, the numerator of which is 100 percent and the denominator of which is 100 percent minus the sum of the normal tax rate and the surtax rate; and

(*d*) Finally, add the amounts determined under (*a*) and (*c*).

(3) *Illustration of principles.* The application of section 815(c)(3) and subparagraph (2) of this paragraph may be illustrated by the following examples:

Example (1). The life insurance company taxable income of S, a stock life insurance company, computed without regard to section 802(b)(3), exceeds $25,000 for the taxable year 1959. Assume that of the amount distributed by S to its shareholders during the taxable year, $9,600 (as determined under section 815(a) and without regard to section 815(c)(3)(B)) is treated as distributed out of the policyholders surplus account. Since the sum of the normal tax rate (30%) and the surtax rate (22%) in effect for 1959 is 52 percent, S shall subtract $20,000 from its policyholders surplus account for the taxable year 1959, computed as follows:

$$\$9{,}600\times\frac{100}{(100-52)}=\$9{,}600\times\frac{100}{48}=\$20{,}000$$

Of this amount, $9,600 is due to the application of section 815(c)(3)(A) and $10,400 to the application of section 815(c)(3)(B).

Example (2). Assume that for the taxable year 1960, S, a stock life insurance company, has taxable investment income of $1,000 and a gain from operations of $2,000. Assume further that of the amount distributed by S to its shareholders during the taxable year, $3,500 (as determined under section 815(a) and without regard to section 815(c)(3)(B)) is treated as distributed out of the policyholders surplus account. Since S's life insurance company taxable income does not exceed $25,000 for the taxable year and the normal tax rate in effect for 1960 is 30 percent, S shall subtract $5,000 from its policyholders surplus account for the taxable year 1960, computed as follows:

$$\$3{,}500\times\frac{100}{(100-30)}=\$3{,}500\times\frac{100}{70}=\$5{,}000$$

Of this amount, $3,500 is due to the application of section 815(c)(3)(A), and $1,500 to the application of section 815(c)(3)(B).

Example (3). For the taxable year 1960, the life insurance company taxable income of S, a stock life insurance company, computed without regard to section 802(b)(3), is $10,000. Assume that of the amount distributed by S to its shareholders during the taxable year, $12,000 (as determined under section 815(a) and without regard to section 815(c)(3)(B)) is treated as distributed out of the policyholders surplus account. Since the life insurance company taxable income of S, computed with regard to section 802(b)(3), exceeds $25,000, in order to determine the amount to be subtracted from its policyholders surplus account, S would make up the following schedule:

(1) $25,000 minus life insurance company taxable income, computed without regard to sec. 802(b)(3) ($25,000 minus $10,000)	$15,000
(2) Item (1) multiplied by 100 percent minus the normal tax rate as in effect for 1960, over 100 percent $\left(\$15{,}000\times\frac{(100-30)}{100}\right)$	10,500
(3) Amount by which the amount treated as distributed out of policyholders surplus account ($12,000) exceeds item (2) ($10,500), multiplied by 100 percent over 100 percent minus the sum of the normal tax rate and the surtax rate as in effect for 1960 $\left(\$1{,}500\times\frac{100}{(100-52)}\right)$	3,125
(4) Item (1) plus item (3) ($15,000 plus $3,125)	18,125

For the taxable year 1960, S shall subtract $18,125 from its policyholders surplus account. Of this amount, $10,500 represents the distribution from the policyholders surplus account which is taxed at a 30 percent tax rate and $1,500 the distribution from the policyholders surplus account which is taxed at a 52 percent tax rate. Thus, of the amount subtracted from the policyholders surplus account for the taxable year 1960, $12,000 is due to the application of section 815(c)(3)(A), and $6,125 to the application of section 815(c)(3)(B).

(d) *Illustration of principles.* The application of section 815(c) and this section may be illustrated by the following example:

Example. The books of S, a stock life insurance company, reflect the following items for the taxable year 1960:

Taxable investment income	$25,000
Gain from operations	30,000
Tax base (sec. 802(b) (1) and (2))	27,500
Deduction for certain nonparticipating policies provided by sec. 809(d)(5) (as limited by sec. 809(f))	600
Deduction for group policies provided by sec. 809(d)(6) (as limited by sec. 809(f))	400
Amount distributed to shareholders	60,000
Cumulative balance in shareholders surplus account as of 12-31-60	36,000
Balance in policyholders surplus account as of 1-1-60	48,000

For purposes of determining the amount to be subtracted from its policyholders surplus account for the taxable year, S would first make up the following schedule in order to determine the cumulative balance in the policyholders surplus account at the end of the taxable year, computed without diminution by reason of distributions made during the taxable year:

(1) Balance in policyholders surplus account as of 1-1-60		$48,000
(2) Additions to account:		
(a) 50 percent of the amount by which the gain from operations ($30,000) exceeds the taxable investment income ($25,000) (½×$5,000)	$2,500	
(b) The deduction for certain nonparticipating contracts provided by sec. 809(d)(5) (as limited by sec. 809(f))	600	
(c) The deduction for group contracts provided by sec. 809(d)(6) (as limited by sec. 809(f))	400	
		3,500
(3) Cumulative balance in policyholders account as of 12-31-60 (item (1) plus item (2))		51,500

Under the provisions of section 815(a), since the amount distributed to shareholders during the taxable year, $60,000, exceeds the cumulative balance in the shareholders surplus at the end of the taxable year, computed without diminution by reason of distributions during the taxable year, $36,000, the shareholders surplus account shall first be reduced to zero. The remaining $24,000 ($60,000 minus $36,000) of the distribution shall then be treated as made out of the policyholders surplus account. Thus, since the tax base under section 802(b) (1) and (2) is in excess of $25,000, the total amount to be subtracted from the policyholders surplus account at the end of the taxable year would be $50,000 $\left(\$24{,}000\times\frac{100}{(100-52)}\right)$. Of this amount $26,000 ($50,000 minus $24,000) represents the tax on the portion of the distribution to shareholders which is treated as being out of the policyholders surplus account.

(e) *Special rule for 1959 and 1960.* For a special transitional rule applicable to any increase in tax liability under section 802(b)(3) for the taxable years 1959 and 1960 which is due solely to the operation of section 815(c)(3) and this section, see section 802(a)(3) and § 1.802–5.

§ 1.815–5 Other accounts defined.

The term "other accounts", as used in section 815(a)(3) and paragraph (b) of § 1.815–2, means all amounts which are not specifically included in the shareholders surplus account under section 815(b) and paragraph (b) of § 1.815–3, or in the policyholders surplus account under section 815(c) and paragraph (b) of § 1.815–4. Thus, for example, other accounts includes amounts representing the increase in tax due to the operation of section 802(b)(3) which is not taken into account for the taxable years 1959 and 1960 because of the special transitional rule provided in section 802(a)(3) and § 1.802–5, earnings and profits accumulated prior to January 1, 1958, paid-in surplus, capital, etc. To the extent that a distribution (or any portion thereof) is treated as being made out of other accounts, no tax is imposed on the company with respect to such distribution.

§ 1.815–6 Special rules.

(a) *Election to transfer amounts from policyholders surplus account to shareholders surplus account*—(1) *In general.* Section 815(d)(1) permits a life insurance company to elect, after the close of any taxable year for which it is a life insurance company, to subtract any amount (or any portion thereof) in its policyholders surplus account as of the close of the taxable year. The effect of such election is to subject the company to tax on the amounts elected to be subtracted for the taxable year for which the election applies. The amount so subtracted, less the amount of tax imposed with respect to such amount by reason of section 802(b)(3), shall be added to the shareholders surplus account as of the beginning of the taxable year following the taxable year for which the election applies and no further tax shall be imposed upon the company if the amount elected to be transferred to the shareholders surplus account is subsequently distributed to shareholders.

(2) *Manner and effect of election.* (i) The election provided by section 815(d)(1) and this section shall be made in a statement attached to the life insurance company's income tax return for any taxable year for which the company desires the election to apply. The statement shall include the name and address of the taxpayer, shall be signed by the taxpayer (or his duly authorized representative), and shall be filed not later than the date prescribed by law (including extensions thereof) for filing the return for such taxable year. In addition, the statement shall indicate that the company has made the election provided under section 815(d)(1) for the taxable year and the amount elected to be subtracted from the policyholders surplus account.

(ii) An election made under section 815(d)(1)(B) and subdivision (i) of this subparagraph shall be effective only with respect to the taxable year for which the election is made. Thus, the company must make a new election for each taxable year for which it desires the election to apply. Once such an election has been made for any taxable year it may not be revoked.

(3) The application of subparagraph (1) of this paragraph may be illustrated by the following example:

Example. For the taxable year 1960, the life insurance company taxable income of S, a stock life insurance company, computed without regard to section 802(b)(3), exceeds $25,000. Assume that S elects to subtract $20,000 from its policyholders surplus account under section 815(d)(1) for the taxable year. Since S is subject to a 52 percent tax rate, the tax on the amount elected to be subtracted from the policyholders surplus account (as of the close of the taxable year 1960) is $10,400 ($20,000 × 52 percent). Thus, the amount to be added to the shareholders surplus account as of January 1, 1961, is $9,600 (the amount subtracted from the policyholders surplus account by virtue of the section 815(d)(1) election, less the tax imposed upon such amount by reason of section 802(b)(3), or $20,000 minus $10,400).

(b) *Termination as life insurance company*—(1) *Effect of termination.* Except as provided in section 381(c)(22) (relating to carryovers in certain corporate readjustments), section 815(d)(2)(A) provides that if for any taxable year the taxpayer is not an insurance company (as defined in paragraph (a) of § 1.801–3), or if for any two successive taxable years the taxpayer is not a life insurance company (as defined in section 801(a) and paragraph (b) of § 1.801–3), the amount taken into account under section 802(b)(3) for the last preceding year for which the company was a life insurance company shall be increased (after the application of section 815(d)(2)(B)) by the entire balance in the policyholders surplus account at the close of such last preceding taxable year.

(2) *Effect of certain distributions.* If for any taxable year the taxpayer is an insurance company (as defined in paragraph (a) of § 1.801–3) but is not a life insurance company (as defined in section 801(a) and paragraph (b) of § 1.801–3), section 815(d)(2)(B) provides that any distribution to shareholders during such taxable year shall be treated as having been made on the last day of the last preceding taxable year for which the company was a life insurance company.

(3) *Examples.* The application of section 815(d)(2) and this paragraph may be illustrated by the following examples:

Example (1). At the end of the taxable year 1959, the balance in the policyholders surplus account of S, a life insurance company within the meaning of section 801(a) and paragraph (b) of § 1.801–3, is $12,000. If S fails to qualify as an insurance company (as defined in paragraph (a) of § 1.801–3) for the taxable year 1960, and section 381(c)(22) does not apply, under the provisions of section 815(d)(2)(A), the entire balance of $12,000 in the policyholders surplus account at the end of 1959, the last year S was a life insurance company, shall be taken into account under section 802(b)(3) for purposes of determining S's tax liability for the taxable year 1959.

Example (2). Assume the facts are the same as in example (1), except that for the taxable years 1960 and 1961, S qualifies as an insurance company (as defined in paragraph (a) of § 1.801–3) but does not qualify as a life insurance company within the meaning of section 801(a) and paragraph (b) of § 1.801–3. Assume further that as a result of a distribution by S to its shareholders in 1960, $4,800 (as determined under section 815(a) and without regard to section 815(c)(3)(B)) is treated as distributed out of the policyholders surplus account. Under the provisions of section 815(d)(2)(B), if section 381(c)(22) does not apply, any distribution to shareholders during the taxable years 1960 and 1961 shall be treated as having been made on December 31, 1959 (the last day of the last preceding taxable year for which S was a life insurance company). Thus, assuming S is subject to a 52 percent tax rate on additions to life insurance company taxable income, $10,000 ($4,800 plus $5,200, the tax on the portion of the distribution treated as made out of the policyholders surplus account) shall be treated as being subtracted from the policyholders surplus account at the end of 1959 and shall be taken into account under section 802(b)(3) for purposes of determining S's tax liability for the taxable year 1959. Under the provisions of section 815(d)(2)(A), the entire balance of $2,000 ($12,000 minus $10,000) in the policyholders surplus account at the end of 1959 (after the application of section 815(d)(2)(B)), shall also be taken into account under section 802(b)(3) for purposes of determining S's tax liability for the taxable year 1959.

(c) *Treatment of certain indebtedness.* Section 815(d)(3) provides that if a taxpayer makes any payment in discharge of its indebtedness and such indebtedness is attributable to a distribution by the taxpayer to its shareholders after February 9, 1959, the amount of such payment shall be treated as a distribution in cash to shareholders both for purposes of section 802(b)(3) and section 815. However, this paragraph shall only apply to the extent that the distribution of such indebtedness to shareholders was treated as being out of accounts other than the shareholders and policyholders surplus accounts at the time of distribution.

(d) *Limitation on amount in policyholders surplus account*—(1) *In general.* Section 815(d)(4) provides a limitation on the amount that any life insurance company may accumulate in its policyholders surplus account. If the policyholders surplus account at the end of any taxable year (computed without regard to this paragraph) exceeds whichever of the following is the greatest—

(i) 15 percent of life insurance reserves (as defined in section 801(b) and paragraph (a) of § 1.801–4) at the end of the taxable year,

(ii) 25 percent of the amount by which the life insurance reserves at the end of the taxable year exceed the life insurance reserves at the end of 1958, or

(iii) 50 percent of the net amount of the premiums and other consideration taken into account for the taxable year under section 809(c)(1),

then such excess shall be treated as a subtraction from the policyholders surplus account as of the end of such taxable year. The amount so treated as subtracted, less the amount of tax imposed with respect to such amount by reason of section 802(b)(3), shall be added to the shareholders surplus account at the beginning of the succeeding taxable year.

(2) *Example.* The application of the limitation contained in subparagraph (1) of this paragraph may be illustrated by the following example:

Example. The books of S, a stock life insurance company, reflect the following items for the taxable year 1960:

Balance in policyholders surplus account, computed without regard to sec. 815(d)(4), as of 12–31–60	$175
Life insurance reserves (as defined in sec. 801(b)) as of 12–31–60	4,500
Life insurance reserves (as defined in sec. 801(b)) as of 12–31–58	3,900
Premiums and other consideration taken into account for the taxable year under sec. 809(c)(1)	310

In order to determine the limitations on the amount that it may accumulate in its policyholders surplus account at the end of the taxable year under section 815(d)(4), S would make up the following schedule:

(1) 15 percent of life insurance reserves at the end of the taxable year (15% × $4,500)	$675

(2) 25 percent of amount by which life insurance reserves at the end of the taxable year ($4,500) exceed life insurance reserves as of 12-31-58 ($3,900) (25% × $600)	$150
(3) 50 percent of premiums and other consideration taken into account under sec. 809(c)(1) for the taxable year (50% × $310)	155
(4) Limitation on policyholders surplus account (the greatest of items (1), (2), or (3))	675

Since the balance in the policyholders surplus account at the end of the taxable year 1960, $175, does not exceed the limitation provided by section 815(d)(4), $675, S is not required to make any further adjustment to its policyholders surplus account at the end of the taxable year.

(e) *Special rule for certain mutualizations*—(1) *In general.* Section 815(e) provides a rule for determining priorities which shall operate in place of section 815(a) and paragraph (b) of § 1.815–2 where a life insurance company makes any distribution to its shareholders after December 31, 1958, in acquisition of stock pursuant to a plan of mutualization. Section 815(e)(1) provides that such a distribution shall first be treated as being made out of paid-in capital and paid-in surplus, and, to the extent thereof, no tax shall be imposed on the company with respect to such distribution. Thereafter, distributions made pursuant to such plan of mutualization shall be treated as made in two allocable parts. One part shall be treated as being made out of other accounts (as defined in § 1.815–5) and the company shall incur no tax with respect to such portion of the distribution. The other part shall be treated as a distribution to which section 815(a) and paragraph (b) of § 1.815–2 applies. Thus, such portion of the distribution shall be treated as first being made out of the shareholders surplus account (as defined in section 815(b) and § 1.815–3), to the extent thereof, and then out of the policyholders surplus account (as defined in section 815(c) and § 1.815–4), to the extent thereof. See paragraph (a) of § 1.815–2. For purposes of this paragraph, a distribution shall be considered as being made pursuant to a plan of mutualization only if the requirements of applicable State law for the adoption of such plan (as, for example, approval by the requisite majority of the board of directors, shareholders, and policyholders) have been fulfilled.

(2) *Allocation ratio.* Section 815(e)(2)(A) provides an allocation ratio which when applied to the amount distributed under a plan of mutualization in excess of the balance in the paid-in capital and paid-in surplus accounts determines the portion of such excess to be treated as distributed out of the shareholders surplus account, policyholders surplus account, or other accounts. The numerator of this ratio is the excess of the assets of the company (as defined in section 805(b)(4) and paragraph (a)(4) of § 1.805–5) over the total liabilities (including reserves), both determined as of December 31, 1958, and adjusted in the manner provided in subparagraph (3) of this paragraph. The denominator of this ratio is the amount included in the numerator plus the amounts in the shareholders surplus account and policyholders surplus account, all determined as of the beginning of the year of the distribution.

(3) *Adjustment for certain distributions.* Section 815(e)(2)(B) provides that if between 1958 and the year of distribution the taxpayer has been treated as having made a distribution (under a plan of mutualization or otherwise) which is treated as a return of paid-in capital and paid-in surplus or as out of other accounts (as defined in § 1.815–5), the aggregate amount of any such prior distributions must be subtracted from the numerator and denominator in all cases where the allocation ratio provided by subparagraph (2) of this paragraph applies.

(f) *Recomputation required as a result of a subsequent loss from operations under section 812*—(1) *In general.* Any amounts added to or subtracted from the special surplus accounts referred to in section 815(a) and paragraph (b) of § 1.815–2 for any taxable year shall be adjusted to the extent necessary to properly reflect a subsequent loss from operations which under section 812 is carried back to the taxable year for which such additions or subtractions were made.

(2) *Example.* The application of subparagraph (1) of this paragraph may be illustrated by the following example:

Example. Assume that for the taxable years 1959 through 1961, the books of S, a stock life insurance company subject to a 30 percent tax rate for all taxable years involved, reflect the following items:

	1959	1960	1961
Taxable investment income	$40.00	$40.00	$40.00
Gain from operations	60.00	60.00	60.00
Tax base (sec. 802(b) (1) and (2))	50.00	50.00	50.00
Tax (sec. 802(b) (1) and (2) base)	15.00	15.00	15.00
Shareholders surplus account—			
At beginning of year	0	35.00	37.00
Added at beginning of year by reason of election under sec. 815(d)(1)	0	7.00	0
Added for year (without regard to election under sec. 815(d)(1))	35.00	35.00	35.00
Subtracted (distributions)	0	40.00	40.00
Policyholders surplus account—			
At beginning of year	0	0	10.00
Added for year	10.00	10.00	10.00
Subtracted (distributions)	0	0	0
Subtracted (by reason of election under sec. 815(d)(1))	10.00	0	0
Tax base (sec. 802(b)(3))	10.00	0	0
Tax (sec. 802(b)(3) base)	3.00	0	0

Assume further that S has a loss from operations for the taxable year 1962 of $25. Under the provisions of section 812, the $25 loss from operations would be carried back to the taxable year 1959 and would reduce the 1959 tax base under section 802(b) (1) and (2) to $35 ($60 minus $25). After adjustments reflecting the 1962 loss from operations, the results for the taxable years 1959 through the beginning of 1962 would be as follows:

	1959	1960	1961	1962
Taxable investment income	$40.00	$40.00	$40.00	
Gain from operations	35.00	60.00	60.00	
Tax base (sec. 802 (b) (1) and (2))	35.00	50.00	50.00	
Tax (sec. 802 (b) (1) and (2) base)	10.50	15.00	15.00	
Shareholders surplus account—				
At beginning of year	0	24.50	19.50	$14.50
Added for year (without regard to election under sec. 815(d)(1))	24.50	35.00	35.00	
Added by reason of elec tic... under sec. 815 (d)(1)	0	0	0	
Subtracted (distributions)	0	40.00	40.00	
Policyholders surplus account—				
At beginning of year	0	0	10.00	20.00
Added for year	0	10.00	10.00	
Subtracted (distributions)	0	0	0	
Subtracted (by reason of election under sec. 815(d)(1))	0	0	0	
Tax base (sec. 802(b)(3))	0	0	0	
Tax (sec. 802(b)(3) base)	0	0	0	

As a result of the loss from operations for 1962, the election under section 815(d)(1) for the taxable year 1959 has become inapplicable in its entirety since the balance in the policyholders surplus account at the end of 1959, as recomputed, is zero. Thus, S would be entitled to a total refund of $7.50 for the taxable year 1959. Of this amount, $4.50 is due to the recomputation of the section 802(b) (1) and (2) tax base and $3 to the amount of tax paid by reason of the election under section 815(d)(1).

§ 1.816 Statutory provisions; life insurance companies; foreign life insurance companies.

SEC. 816. *Foreign life insurance companies*—(a) *Carrying on United States insurance business.* A foreign life insurance company carrying on a life insurance business within the United States, if with respect to its United States business it would qualify as a life insurance company under section 801, shall be taxable in the same manner as a domestic life insurance company; except that the determinations necessary for purposes of this subtitle shall be made on the basis of the income, disbursements, assets, and liabilities reported in the annual statement for the taxable year of the United States business of such company on the form approved for life insurance companies by the National Association of Insurance Commissioners.

(b) *No United States Insurance Business.* Foreign life insurance companies not carrying on an insurance business within the United States shall not be taxable under this part but shall be taxable as other foreign corporations.

[Sec. 816 as added by sec. 2, Life Insurance Company Tax Act 1955 (70 Stat. 46)]

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

[F.R. Doc. 61–512; Filed, Jan. 19, 1961; 8:46 a.m.]

[T.D. 6537]

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

Departing Aliens

In order to liberalize the requirements imposed on departing aliens in the reg-

ulations under section 6851 of the Internal Revenue Code of 1954, § 1.6851–2 of the Income Tax Regulations (26 CFR Part 1) is amended to read as follows:

§ 1.6851–2 Certificates of compliance with income tax laws by departing aliens.

(a) *In general*—(1) *Requirement.* The rules of this section are applicable to any alien who departs from the United States or any of its possessions after January 20, 1961. Except as provided in subparagraph (2) of this paragraph, no such alien, whether resident or nonresident, may depart from the United States unless he first procures a certificate that he has complied with all of the obligations imposed upon him by the income tax laws. In order to procure such a certificate an alien who intends to depart from the United States (i) must file with the district director for the internal revenue district in which he is located the statements or returns required by paragraph (b) of this section to be filed before obtaining such certificate, (ii) must appear before such district director if the district director deems it necessary, and (iii) must pay any taxes required under paragraph (b) of this section to be paid before obtaining the certificate. Either such certificate of compliance, properly executed, or evidence that the alien is excepted under subparagraph (2) of this paragraph from obtaining the certificate must be presented at the point of departure. An alien who presents himself at the point of departure without a certificate of compliance, or evidence establishing that such a certificate is not required, will be subject at such departure point to examination by an internal revenue officer or employee and to the completion of returns and statements and payment of taxes as required by paragraph (b) of this section.

(2) *Exceptions*—(i) *Diplomatic representatives.* (*a*) Representatives of foreign governments bearing diplomatic passports, whether accredited to the United States or other countries, and members of their households shall not, upon departure from the United States or any of its possessions, be examined as to their liability for United States income tax or be required to obtain a certificate of compliance. If a foreign government does not issue diplomatic passports but merely indicates on passports issued to members of its diplomatic service the status of the bearer as a member of such service, such passports are considered as diplomatic passports for income tax purposes.

(*b*) Likewise, the servant of a representative described in (*a*) of this subdivision who accompanies any individual bearing a diplomatic passport upon departure from the United States or any of its possessions shall not be required, upon such departure, to obtain a certificate of compliance or to submit to examination as to his liability for United States income tax. If the departure of such a servant from the United States or any of its possessions is not made in the company of an individual bearing a diplomatic passport, the servant is required to obtain a certificate of compliance. However, such certificate will be issued to him on Form 2063 without examination as to his income tax liability upon presentation to the district director for the internal revenue district in which the servant is located of a letter from the chief of the diplomatic mission to which the servant is attached certifying (*1*) that the name of the servant appears on the "White List", a list of employees of diplomatic missions, and (2) that the servant is not obligated to the United States for any income tax, and will not be so obligated up to and including the intended date of departure.

(*c*) An alien who has filed with the Attorney General the waiver provided for under section 247(b) of the Immigration and Nationality Act (8 U.S.C. 1257(b)) is not entitled to the exception provided by this subdivision.

(ii) *Alien students and industrial trainees.* A certificate of compliance shall not be required, and examination as to United States income tax liability shall not be made, upon the departure from the United States or any of its possessions of—

(*a*) An alien student admitted solely on an F visa who has received no gross income from sources within the United States during the period he is in the United States under such visa, other than allowances to cover the expenses incident to his study in the United States (including expenses for travel, maintenance, tuition) and the value of any services or accommodations furnished to him incident to such study; or

(*b*) An alien industrial trainee admitted solely on an H–3 visa who has received no gross income from sources within the United States during the period he is in the United States under such visa, other than allowances to cover the expenses incident to his training in the United States (including expenses for travel, maintenance) and the value of any services or accommodations furnished to him incident to such training.

(iii) *Other aliens temporarily in the United States.* A certificate of compliance shall not be required, and examination as to United States income tax liability shall not be made, upon the departure from the United States or any of its possessions of an alien hereinafter described in this subdivision, unless the district director has reason to believe that such alien has received taxable income during the taxable year up to and including the date of departure or during the preceding taxable year and that collection of income tax from such alien will be jeopardized by his departure from the United States:

(*a*) An alien visitor for pleasure admitted solely on a B–2 visa;

(*b*) An alien visitor for business admitted on a B–1 visa, or on both a B–1 visa and a B–2 visa, who does not remain in the United States or a possession thereof for a period or periods exceeding a total of 90 days during the taxable year;

(*c*) An alien in transit through the United States or any of its possessions on a C–1 visa or under a contract, including a bond agreement, between a transportation line and the Attorney General pursuant to section 238(d) of the Immigration and Nationality Act (8 U.S.C. 1228(d));

(*d*) An alien who is admitted to the United States on a border-crossing identification card or with respect to whom passports, visas, and border-crossing identification cards are not required, if such alien is a visitor for pleasure, or if such alien is a visitor for business who does not remain in the United States or a possession thereof for a period or periods exceeding a total of 90 days during the taxable year, or if such alien is in transit through the United States or any of its possessions;

(*e*) An alien military trainee admitted to the United States to pursue a course of instruction under the auspices of the Department of Defense who departs from the United States on official military travel orders; or

(*f*) An alien resident of Canada or Mexico who commutes between such country and the United States at frequent intervals for the purpose of employment and whose wages are subject to the withholding of tax.

(b) *Issuance of certificate of compliance*—(1) *In general.* (i) Upon the departure of an alien required to secure a certificate of compliance under paragraph (a) of this section, the district director shall determine whether the departure of such alien jeopardizes the collection of any income tax for the current or the preceding taxable year, but the district director may determine that jeopardy does not exist in some cases. If the district director finds that the departure of such an alien results in jeopardy, the taxable period of the alien will be terminated, and the alien will be required to file returns and make payment of tax in accordance with subparagraph (3)(iii) of this paragraph. On the other hand, if the district director finds that the departure of the alien does not result in jeopardy, the alien will be required to file the statement or returns required by subparagraph (2) or (3)(ii) of this paragraph, but will not be required to pay income tax before the usual time for payment.

(ii) The departure of an alien who is a resident of the United States or a possession thereof and who intends to continue such residence shall be treated as not resulting in jeopardy, and thus not requiring termination of his taxable period, except when the district director has information indicating that the alien intends by such departure to avoid the payment of his income tax. In the case of a nonresident alien (including a resident alien discontinuing residence), the fact that the alien intends to depart from the United States will justify termination of his taxable period unless the alien establishes to the satisfaction of the district director that he intends to return to the United States and that his departure will not jeopardize collection of the tax. The determination of whether the departure of the alien results in jeopardy will be made on examination of all the facts in the case. Evidence tending to establish that jeopardy does not result from the departure of the alien may be provided, for exam-

ple, by information showing that the alien is engaged in trade or business in the United States or that he leaves sufficient property in the United States to secure payment of his income tax for the taxable year and of any income tax for the preceding year which remains unpaid.

(2) *Alien having no taxable income and resident alien whose taxable period is not terminated.* A statement on Form 2063 shall be filed with the district director by every alien required to obtain a certificate of compliance—

(i) Who is a resident of the United States and whose taxable period is not terminated either because he has had no taxable income for the taxable year up to and including the date of his departure (and for the preceding taxable year where the period for making the income tax return for such year has not expired) or because, although he has had taxable income for such period or periods, the district director has not found that his departure jeopardizes collection of the tax on such income; or

(ii) Who is not a resident of the United States and who has had no taxable income for the taxable year up to and including the date of his departure (and for the preceding taxable year where the period for making the income tax return for such year has not expired).

Any alien described in subdivision (i) or (ii) of this subparagraph who is in default in making return of, or paying, income tax for any taxable year shall, in addition, file with the district director any returns which have not been made as required and pay to the district director the amount of any tax for which he is in default. Upon compliance by an alien with the foregoing requirements of this subparagraph, the district director shall execute and issue to the alien the certificate of compliance attached to Form 2063. The certificate of compliance so issued shall be effective for all departures of the alien during his current taxable year, subject to revocation upon any subsequent departure should the district director have reason to believe that such subsequent departure would result in jeopardy. The statement required of a resident alien under this subparagraph, if made before January 21, 1961, with respect to a departure after January 20, 1961, may be made on a Form 1040C in lieu of a Form 2063.

(3) *Nonresident alien having taxable income and resident alien whose taxable period is terminated*—(i) *Nonresident alien having taxable income.* Every nonresident alien required to obtain a certificate of compliance (but not described in subparagraph (2) of this paragraph) who wishes to establish that his departure does not result in jeopardy shall furnish to the district director such information as may be required for the purpose of determining whether the departure of the alien jeopardizes collection of the income tax and thus requires termination of his taxable period.

(ii) *Nonresident alien whose taxable period is not terminated.* Every nonresident alien described in subdivision (i) of this subparagraph whose taxable period is not terminated upon departure shall file with the district director—

(*a*) A return in duplicate on Form 1040C for the taxable year of his intended departure, showing income received, and reasonably expected to be received, during the entire taxable year within which the departure occurs; and

(*b*) Any income tax returns which have not been filed as required.

Upon compliance by the alien with the foregoing requirements of this subdivision, and the payment of any income tax for which he is in default, the district director shall execute and issue to the alien the certificate of compliance on the duplicate copy of Form 1040C. The certificate of compliance so issued shall be effective for all departures of the alien during his current taxable year, subject to revocation by the district director upon any subsequent departure if the taxable period of the alien is terminated on such subsequent departure.

(iii) *Alien (whether resident or nonresident) whose taxable period is terminated.* Every alien required to obtain a certificate of compliance, whether resident or nonresident, whose taxable period is terminated upon departure shall file with the district director—

(*a*) A return in duplicate on Form 1040C for the short taxable period resulting from such termination, showing income received, and reasonably expected to be received, during the taxable year up to and including the date of departure;

(*b*) Where the period for filing has not expired, the return required under section 6012 and § 1.6012–1 for the preceding taxable year; and

(*c*) Any other income tax returns which have not been filed as required.

Upon compliance with the foregoing requirements of this subdivision, and payment of the income tax required to be shown on the returns filed pursuant to (*a*) and (*b*) of this subdivision and of any income tax due and owing for prior years, the departing alien will be issued the certificate of compliance on the duplicate copy of Form 1040C. The certificate of compliance so issued shall be effective only for the specific departure with respect to which it is issued. A departing alien may postpone payment of the tax required to be shown on the returns filed in accordance with (*a*) and (*b*) of this subdivision until the usual time of payment by furnishing a bond as provided in § 1.6851–3.

(4) *Joint return on Form 1040C.* A departing alien may not file a joint return on Form 1040C unless—

(i) Such alien and his spouse may reasonably be expected to be eligible to file a joint return at the normal close of their taxable periods for which the return is made; and

(ii) If the taxable period of such alien is terminated, the taxable periods of both spouses are so terminated as to end at the same time.

(5) *Annual return.* Notwithstanding that form 1040C has been filed for either the entire taxable year of departure or for a terminated period, the return required under section 6012 and § 1.6012–1 for such taxable year shall be filed. Any income tax paid on income shown on the return on Form 1040C shall be applied against the tax determined to be due on the income required to be shown on the subsequent return under section 6012 and § 1.6012–1.

Because the rules prescribed in this Treasury decision are of a liberalizing character, it is hereby found that it is unnecessary to issue this Treasury decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitations of section 4(c) of that Act.

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

[SEAL] DANA LATHAM,
Commissioner of Internal Revenue.

Approved: January 16, 1961.

FRED C. SCRIBNER, Jr.,
Acting Secretary of the Treasury.

[F.R. Doc. 61–514; Filed, Jan. 19, 1961; 8:47 a.m.]

SUBCHAPTER B—ESTATE AND GIFT TAXES

[T.D. 6542]

PART 25—GIFT TAX UNDER CHAPTER 12 OF THE INTERNAL REVENUE CODE OF 1954, AS AMENDED

Miscellaneous Amendments

On December 10, 1960, a notice of proposed rule making was published in the FEDERAL REGISTER (25 F.R. 12707) to conform the Gift Tax Regulations (26 CFR Part 25) to sections 23(f), 30(d), 43(b), 68, and 102(b) of the Technical Amendments Act of 1958 (72 Stat. 1623, 1631, 1641, 1659, 1674) and to section 4(d) of Public Law 86–779 (74 Stat. 1000), and to make a correction of a typographical error in paragraph (f)(4) of § 25.2523(e)–1 of such regulations. After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the regulations as so proposed are hereby adopted.

[SEAL] DANA LATHAM,
Commissioner of Internal Revenue.

Approved: January 17, 1961.

FRED C. SCRIBNER, Jr.,
Acting Secretary of the Treasury.

In order to conform the Gift Tax Regulations (26 CFR Part 25) to sections 23(f), 30(d), 43(b), 68, and 102(b) of the Technical Amendments Act of 1958 (72 Stat. 1623, 1631, 1641, 1659, 1674) and to section 4(d) of Public Law 86–779 (74 Stat. 1000), and in order to make a correction of a typographical error in paragraph (f)(4) of § 25.2523(e)–1 such regulations are amended as follows:

PARAGRAPH 1. Paragraph (a) of § 25.01 is amended to read as follows:

§ 25.01 Introduction.

(a) *In general.* (1) The regulations in this part are designated "Gift Tax Regulations." These regulations pertain

to (i) the gift tax imposed by chapter 12 of subtitle B of the Internal Revenue Code on the transfer of property by gift by individuals in the calendar year 1955 and subsequent calendar years, and (ii) certain related administrative provisions of subtitle F of the Code. It should be noted that the application of some of the provisions of these regulations may be affected by the provisions of an applicable gift tax convention with a foreign country. Unless otherwise indicated, references in these regulations to the "Internal Revenue Code" or the "Code" are references to the Internal Revenue Code of 1954, as amended, and references to a section or other provision of law are references to a section or other provision of the Internal Revenue Code of 1954, as amended. The Gift Tax Regulations are applicable to the transfer of property by gift by individuals in the calendar year 1955 and subsequent calendar years, and supersede the regulations contained in Part 86, Subchapter B, Chapter I, Title 26, Code of Federal Regulations (1939) (Regulations 108, Gift Tax), as prescribed and made applicable to the Internal Revenue Code of 1954 by Treasury Decision 6091, signed August 16, 1954 (19 F.R. 5167, Aug. 17, 1954).

(2) Section 2501(b) makes the provisions of chapter 12 of the Code apply in the case of gifts made after September 2, 1958, by certain citizens of the United States who were residents of a possession thereof at the time the gifts were made. Section 2501(c) makes the provisions of chapter 12 apply in the case of gifts made after September 14, 1960, by certain other citizens of the United States who were residents of a possession thereof at the time the gifts were made. See paragraphs (c) and (d) of § 25.2501–1. Except as otherwise provided in paragraphs (c) and (d) of § 25.2501–1, the provisions of these regulations do not apply to the making of gifts by such citizens.

PAR. 2. Section 25.2501 is amended to read as follows:

§ 25.2501 Statutory provisions; imposition of tax.

SEC. 2501. *Imposition of tax*—(a) *General rule.* For the calendar year 1955 and each calendar year thereafter a tax, computed as provided in section 2502, is hereby imposed on the transfer of property by gift during such calendar year by any individual, resident or nonresident, except transfers of intangible property by a nonresident not a citizen of the United States and who was not engaged in business in the United States during such calendar year.

(b) *Certain residents of possessions considered citizens of the United States.* A donor who is a citizen of the United States and a resident of a possession thereof shall, for purposes of the tax imposed by this chapter, be considered a "citizen" of the United States within the meaning of that term wherever used in this title unless he acquired his United States citizenship solely by reason of (1) his being a citizen of such possession of the United States, or (2) his birth or residence within such possession of the United States.

(c) *Certain residents of possessions considered nonresidents not citizens of the United States.* A donor who is a citizen of the United States and a resident of a possession thereof shall, for purposes of the tax imposed by this chapter, be considered a "nonresident not a citizen of the United States" within the meaning of that term wherever used in this title, but only if such donor acquired his United States citizenship solely by reason of (1) his being a citizen of such possession of the United States, or (2) his birth or residence within such possession of the United States.

(d) *Cross references.* (1) For increase in basis of property acquired by gift for gift tax paid, see section 1015(d).

(2) For exclusion of transfers of property outside the United States by a nonresident who is not a citizen of the United States, see section 2511(a).

[Sec. 2501 as amended by secs. 43(b) and 102(b), Technical Amendments Act 1958 (72 Stat. 1641, 1674) and as amended by sec. 4 (d), Act of Sept. 14, 1960, Pub. Law 86–779 (74 Stat. 1000)]

PAR. 3. Section 25.2501–1 is amended by striking paragraph (b) and inserting in lieu thereof the following paragraphs:

§ 25.2501–1 Imposition of tax.

* * * * *

(b) *Resident.* A resident is an individual who has his domicile in the United States at the time of the gift. For this purpose the United States includes the States and the District of Columbia. The term also includes the Territories of Alaska and Hawaii prior to admission as a State. See section 7701(a)(9). All other individuals are nonresidents. A person acquires a domicile in a place by living there, for even a brief period of time, with no definite present intention of moving therefrom. Residence without the requisite intention to remain indefinitely will not constitute domicile, nor will intention to change domicile effect such a change unless accompanied by actual removal.

(c) *Certain residents of possessions considered citizens of the United States.* As used in this part, the term "citizen of the United States" includes a person who makes a gift after September 2, 1958 and who, at the time of making the gift, was domiciled in a possession of the United States and was a United States citizen, and who did not acquire his United States citizenship solely by reason of his being a citizen of such possession or by reason of his birth or residence within such possession. The gift of such a person is, therefore, subject to the tax imposed by section 2501 in the same manner in which a gift made by a resident of the United States is subject to the tax. See paragraph (a) of § 25.01 and paragraph (d) of this section for further information relating to the application of the Federal gift tax to gifts made by persons who were residents of possessions of the United States. The application of this paragraph may be illustrated by the following example and the examples set forth in paragraph (d) of this section:

Example. A, a citizen of the United States by reason of his birth in the United States at San Francisco, established residence in Puerto Rico and acquired Puerto Rican citizenship. A makes a gift of stock of a Spanish corporation on September 4, 1958, while a citizen and domiciliary of Puerto Rico. A's gift is, by reason of the provisions of section 2501(b) subject to the tax imposed by section 2501 inasmuch as his United States citizenship is based on birth in the United States and is not based solely on being a citizen of a possession or solely on birth or residence in a possession.

(d) *Certain residents of possessions considered nonresidents not citizens of the United States.* As used in this part, the term "nonresident not a citizen of the United States" includes a person who makes a gift after September 14, 1960, and who at the time of making the gift, was domiciled in a possession of the United States and was a United States citizen, and who acquired his United States citizenship solely by reason of his being a citizen of such possession or by reason of his birth or residence within such possession. The gift of such a person is, therefore, subject to the tax imposed by section 2501 in the same manner in which a gift is subject to the tax when made by a donor who is a "nonresident not a citizen of the United States." See paragraph (a) of § 25.01 and paragraph (c) of this section for further information relating to the application of the Federal gift tax to gifts made by persons who were residents of possessions of the United States. The application of this paragraph may be illustrated by the following examples and the example set forth in paragraph (c) of this section. In each of the following examples the person who makes the gift is deemed a "nonresident not a citizen of the United States" and his gift is subject to the tax imposed by section 2501 in the same manner in which a gift is subject to the tax when made by a donor who is a nonresident not a citizen of the United States, since he made the gift after September 14, 1960, but would not have been so deemed and subject to such tax if the person who made the gift had made it on or before September 14, 1960.

Example (1). C, who acquired his United States citizenship under section 5 of the Act of March 2, 1917 (39 Stat. 953), by reason of being a citizen of Puerto Rico, while domiciled in Puerto Rico makes a gift on October 1, 1960, of real estate located in New York. C is considered to have acquired his United States citizenship solely by reason of his being a citizen of Puerto Rico.

Example (2). E, whose parents were United States citizens by reason of their birth in Boston, was born in the Virgin Islands on March 1, 1927. On September 30, 1960, while domiciled in the Virgin Islands, he made a gift of tangible personal property situated in Kansas. E is considered to have acquired his United States citizenship solely by reason of his birth in the Virgin Islands (section 306 of the Immigration and Nationality Act (66 Stat. 237, 8 U.S.C. 1406)).

Example (3). N, who acquired United States citizenship by reason of being a native of the Virgin Islands and a resident thereof on June 28, 1932 (section 306 of the Immigration and Nationality Act (66 Stat. 237, 8 U.S.C. 1406)), made a gift on October 1, 1960, at which time he was domiciled in the Virgin Islands, of tangible personal property situated in Wisconsin. N is considered to have acquired his United States citizenship solely by reason of his birth or residence in the Virgin Islands.

Example (4). P, a former Danish citizen, who on January 17, 1917, resided in the Virgin Islands, made the declaration to preserve his Danish citizenship required by Article 6 of the treaty entered into on August 4, 1916, between the United States and Denmark. Subsequently P acquired United States citizenship when he renounced

such declaration before a court of record (section 306 of the Immigration and Nationality Act (66 Stat. 237, 8 U.S.C. 1406)). P, while domiciled in the Virgin Islands, made a gift on October 1, 1960, of tangible personal property situated in California. P is considered to have acquired his United States citizenship solely by reason of his birth or residence in the Virgin Islands.

Example (5). R, a former French citizen, acquired his United States citizenship through naturalization proceedings in a court located in the Virgin Islands after having qualified for citizenship by residing in the Virgin Islands for 5 years. R, while domiciled in the Virgin Islands, made a gift of tangible personal property situated in Hawaii on October 1, 1960. R is considered to have acquired his United States citizenship solely by reason of his birth or residence within the Virgin Islands.

PAR. 4. Paragraph (b) of § 25.2511–1 is amended to read as follows:

§ 25.2511–1 Transfers in general.

* * * * *

(b) In the case of a nonresident not a citizen who was not engaged in business in the United States (see § 25.2501–1) during the calendar year, the tax is imposed only if the gift consisted of real estate or tangible personal property situated within the United States at the time of transfer. See §§ 25.2501–1 and 25.2511–3.

PAR. 5. Section 25.2511–3 is amended to read as follows:

§ 25.2511–3 Transfers by nonresidents not citizens.

(a) *In general.* Sections 2511 and 2501 contain provisions relating to the taxation of transfers by a donor who is a nonresident not a citizen of the United States. (See paragraph (b) of § 25.2501–1 for definition of the term "resident".) As combined these rules are—

(1) If the nonresident not a citizen of the United States was not engaged in business in the United States during the calendar year in which the gift was made, the tax applies only to the transfer of real property and tangible personal property situated in the United States.

(2) If the nonresident not a citizen of the United States was engaged in business in the United States during the calendar year in which the gift was made, the tax applies to the transfer of all property (whether real or personal, tangible or intangible) situated in the United States.

(b) *Situs of property.* (1) Real property, tangible personal property, and, except as otherwise provided in subparagraph (2) of this paragraph (relating to shares of stock), the written evidence of intangible personal property which is treated as being the property itself are within the United States if physically situated therein. For example, a bond for the payment of money is not within the United States unless physically situated therein. Intangible personal property the written evidence of which is not treated as being the property itself constitutes property within the United States if consisting of a property right issuing from or enforceable against a resident of the United States or a domestic corporation (public or private) irrespective of where such written evidence is physically located.

(2) Shares of stock owned and held by a nonresident not a citizen of the United States constitute property within the United States if issued by a domestic corporation, irrespective of where the certificates are physically located. However, since a share of stock is intangible property, the transfer by gift by a nonresident not a citizen of the United States of a share of stock issued by a domestic corporation would, under the provisions of paragraph (a) of this section, be subject to the tax only if the donor was engaged in business in the United States during the calendar year in which the gift was made.

(3) Shares of stock owned and held by a nonresident not a citizen of the United States do not constitute property within the United States if issued by a corporation which is not a domestic corporation, irrespective of where the certificates are physically located. Therefore, the tax will not under any circumstances apply to the transfer of a share of such stock by a nonresident not a citizen of the United States.

PAR. 6. Section 25.2512–6 is amended by adding at the end thereof the following additional example:

§ 25.2512–6 Valuation of certain life insurance and annuity contracts.

* * * * *

Example (5). A donor purchases from a life insurance company for $15,198 a joint and survivor annuity contract which provides for the payment of $60 a month to the donor during his lifetime, and then to his sister for such time as she may survive him. The premium which would have been charged by the company for an annuity of $60 monthly payable during the life of the donor alone is $10,690. The value of the gift is $4,508 ($15,198 less $10,690).

PAR. 7. There is inserted immediately after § 25.2516–2 the following new sections:

§ 25.2517 Statutory provisions; certain annuities under qualified plans.

SEC. 2517. *Certain annuities under qualified plans*—(a) *General rule.* The exercise or nonexercise by an employee of an election or option whereby an annuity or other payment will become payable to any beneficiary at or after the employee's death shall not be considered a transfer for purposes of this chapter if the option or election and annuity or other payment is provided for under—

(1) An employees' trust (or under a contract purchased by an employees' trust) forming part of a pension, stock bonus, or profit-sharing plan which, at the time of such exercise or nonexercise, or at the time of termination of the plan if earlier, met the requirements of section 401(a);

(2) A retirement annuity contract purchased by an employer (and not by an employees' trust) pursuant to a plan which, at the time of such exercise or nonexercise, or at the time of termination of the plan if earlier, met the requirements of section 401(a) (3), (4), (5), and (6); or

(3) A retirement annuity contract purchased for an employee by an employer which is an organization referred to in section 503(b) (1), (2), or (3), and which is exempt from tax under section 501(a).

(b) *Transfers attributable to employee contributions.* If the annuity or other payment referred to in subsection (a) is attributable to any extent to payments or contributions made by the employee, then subsection (a) shall not apply to that part of the value of such annuity or other payment which bears the same proportion to the total value of the annuity or other payment as the total payments or contributions made by the employee bear to the total payments or contributions made. For purposes of the preceding sentence, payments or contributions made by the employee's employer or former employer toward the purchase of an annuity contract described in subsection (a)(3) shall, to the extent not excludable from gross income under section 403(b), be considered to have been made by the employee.

(c) *Employee defined.* For purposes of this section, the term "employee" includes a former employee.

[Sec. 2517 as added by sec. 68 and as amended by sec. 23(f), Technical Amendments Act 1958 (72 Stat. 1659)]

§ 25.2517–1 Employees' annuities.

(a) *In general.* (1) Section 2517 provides an exception to the general rule of section 2511 by exempting from gift tax all or part of the value of certain annuities or other payments for the benefit of employees' surviving beneficiaries. Under the general rule in section 2511, where an employee has an unqualified right to an annuity but takes a lesser annuity with the provision that upon his death a survivor annuity or other payment will be paid to his designated beneficiary, the employee has made a gift to the beneficiary at the time he gives up his power to deprive the beneficiary of the survivor annuity or other payment. See especially § 25.2511–1(h)(10). The making of such a gift by the employee may be accomplished in three principal ways:

(i) By irrevocably electing to take the reduced annuity and designating the individual who is to receive the survivor annuity or other payment. In this case the gift is made at the time the election and designation are irrevocably made.

(ii) By permitting a prior revocable election of a reduced annuity and designation of beneficiary to become irrevocable through failure to revoke during the period during which revocation could be made. In this case the gift is made at the time the prior election and designation become irrevocable.

(iii) By permitting an option to expire under which the employee could, by exercising the option, have defeated the beneficiary's interest in the survivor annuity or other payment, and thereby regain for himself the right to a full annuity. In this case the gift is made at the time the employee permits the option to expire.

The value of the gift is the value, on the date of the gift, of the survivor annuity or other payment, computed in accordance with the principles set forth in §§ 25.2512–1, 25.2512–5, and 25.2512–6. It should be noted that such a gift is a gift of a future interest within the contemplation of § 25.2503–3 and no part thereof may be excluded in determining the total amount of gifts made during the calendar year.

(2) Section 2517 exempts from gift tax all or a portion of the value of the annuities or other payments described in subparagraph (1) of this paragraph which otherwise would be considered as

gifts by employees to their beneficiaries. See paragraph (b) of this section for a complete description of the annuities and other payments to which the exemption applies. Also see paragraph (c) of this section for the portion of the annuity or other payment which is to be excluded in those cases where the annuity or other payment is attributable to payments or contributions made by both the employee and the employer. In the case of an annuity or other payment payable under an employees' trust or under a retirement annuity contract described in paragraph (b)(1) (i) or (ii) of this section, the exemption applies if the gift would otherwise be considered as having been made on or after January 1, 1955. In the case of an annuity or other payment payable under a retirement annuity contract described in paragraph (b)(1)(iii) of this section, the exclusion applies if the gift would otherwise be considered as having been made on or after January 1, 1958.

(b) *Annuities or other payments to which section 2517 applies.* (1) Except to the extent provided otherwise in paragraph (c) of this section, section 2517 exempts from transfers subject to the gift tax the value of an annuity or other payment which, upon the death of an employee, will become payable to the employee's beneficiary under:

(i) An employees' trust (or under a contract purchased by an employees' trust) forming part of a pension, stock bonus or profit-sharing plan which, at the time of such exercise or nonexercise, or at the time of termination of the plan if earlier, met the requirements of section 401(a);

(ii) A retirement annuity contract purchased by an employer (and not by an employees' trust) pursuant to a plan which, at the time of such exercise or non-exercise, or at the time of termination of the plan if earlier, met the requirements of section 401(a) (3), (4), (5), and (6); or

(iii) A retirement annuity contract purchased for an employee by an employer which is an organization referred to in section 503(b) (1), (2), or (3), and which is exempt from tax under section 501(a).

(2) The term "annuity or other payment" as used in this section, has reference to one or more payments extending over any period of time. The payments may be equal or unequal, conditional or unconditional, periodic or sporadic. For purposes of this section, the term "employee" includes a former employee. The application of this paragraph may be illustrated by the following example:

Example. Pursuant to a pension plan, the employer made contributions to a trust which was to provide each employee, upon his retirement at age 60, with an annuity for life, and which contained a provision for designating either before or after retirement, a surviving beneficiary. No contributions under the plan were made by the employee. At the time of designating the surviving beneficiary (January 20, 1955), the pension trust formed part of a plan meeting the requirements of section 401(a). Assume that an employee made an irrevocable election whereby he would receive a lesser annuity, and after his death, annuity payments would be continued to his wife. Since the wife was designated annuitant under a qualified pension plan, no part of the value of such annuity is includible in the total amount of gifts for the calendar year by reason of the provisions of section 2517.

(c) *Amount excludable from gift.* (1) If an annuity or other payment described in paragraph (a)(1) of this section is attributable to payments or contributions made by both the employee and the employer, the exclusion is limited to that proportion of the value on the date of the gift (see paragraph (a)(1) of this section) of the annuity or other payment which the employer's contribution (or a contribution made on the employer's behalf) to the plan on the employee's account bears to the total contributions to the plan on the employee's account. In applying the ratio set forth in the preceding sentence, payments or contributions made by the employer toward the purchase of an annuity contract described in paragraph (b)(1)(iii) of this section are considered to be contributions made by the employee (and not by the employer) to the extent that such contributions are, or were, not excludable from the employee's gross income under section 403(b). The application of this subparagraph may be illustrated by the following examples:

Example (1). Pursuant to a pension plan, contributions were made by employer and employee to a trust which was to provide the employee, upon his retirement at age 60, with an annuity for life, and which contained a provision for designating either before or after retirement, a surviving beneficiary upon the employee's death. Assume that the employee made an irrevocable election on January 20, 1955, whereby he would receive a lesser annuity and that after his death annuity payments would be continued to his wife. At the time of making the election, the pension trust formed part of a plan meeting the requirements of section 401(a); contributions to the plan on the employee's account amounted to $20,000 of which $15,000 was contributed by the employer and $5,000 was contributed by the employee; and the value of the survivor annuity was $8,000. Since the wife's annuity was receivable under a qualified pension plan, that part of the value of such annuity which is attributable to the employer's contributions $\left(\frac{\$15,000}{\$20,000} \times \$8,000 \text{ or } \$6,000\right)$ is excludable from gifts by reason of the provisions of section 2517(b).

Example (2). An employer purchased a retirement annuity contract for an employee which was to provide the employee, upon his retirement at age 60, with an annuity for life and which in accordance with the employee's irrevocable election, under which he agreed to accept reduced annuity payments, provided that annuity payments would be continued to his wife after his death. At the time of making the election (January 20, 1955), the plan under which the retirement annuity contract was purchased met the requirements of section 401(a) (3), (4), (5), and (6). The retirement annuity contract was purchased from a life insurance company at a cost of $15,198 of which $3,039.60 was contributed by the employee. The premium which would have been charged by the life insurance company for the reduced retirement annuity payments for the life of the employee alone is $10,690. The value, at the time of the election, of the survivor annuity which will become payable to the wife if she survives the employee is $4,508 ($15,198—$10,690). Of such amount, only $901.60 is includible in the employee's gifts, computed as follows:

$$\frac{\$3,039.60 \text{ (employee's contribution)}}{\$15,198.00 \text{ (total contribution)}} \times \$4,508 = \$901.60.$$

Example (3). An employer purchased a retirement annuity contract for an employee which was to provide the employee, upon his retirement at age 60, with an annuity for life and which contained a provision for designating a surviving beneficiary. Assume that the employee made an irrevocable election whereby he would receive a lesser annuity, and after his death, annuity payments would be continued to his wife. At the time of making the election (January 20, 1959), the employer was an organization referred to in section 503(b) (1), (2), or (3) and exempt from tax under section 501(a). As of the date of the election the total contributions toward the cost of the annuity, all by the employer, amounted to $25,000. Of this amount $5,000 was includible in the employee's income under the requirements of section 403(b) and is, therefore, considered as the employee's contributions for the purpose of applying section 2517(b).

(2) In certain cases, the employer's contribution (or a contribution made on his behalf) to a plan on the employee's account and thus the total contributions to the plan on the employee's account cannot be readily ascertained. In order to apply the ratio stated in subparagraph (1) of this paragraph in such a case, the method outlined in the following two sentences must be used unless a more precise method is presented. In such a case, the total contributions to the plan on the employee's account is the value of the annuities or other payments payable to the employee and his beneficiary computed in accordance with the rules set forth in § 25.2512-5. By subtracting from such value the amount of the employee's contribution to the plan, the amount of the employer's contribution to the plan on the employee's account may be obtained. The application of this subparagraph may be illustrated by the following example:

Example. Pursuant to a pension plan, the employer and the employee contributed to a trust which was to provide the employee, upon his retirement at age 60, with an annuity for life, and which contained a provision for designating either before or after retirement, a surviving beneficiary to receive an annuity upon the employee's death. At the time of the employee's retirement on January 20, 1955, he made an irrevocable election designating his wife as beneficiary. Also, at that time, the pension trust formed part of a plan meeting the requirements of section 401(a). Assume the following: (i) That the employer's contributions to the fund were not credited to the accounts of individual employees; (ii) that the value of the employee's annuity and his wife's annuity, computed as of the time of the employee's retirement, was $40,000; (iii) that the employee contributed $10,000 to the plan; and (iv) that the value at the time of the employee's retirement of the wife's annuity was $16,000. On the basis of these facts, the total contributions to the fund on the employee's account are presumed to be $40,000 and the employer's contribution to the plan on the employee's account is presumed to be $30,000 ($40,000 less $10,000). Since the election and the wife's annuity were provided for under a qualified pension

plan, that part of the value of such annuity which is attributable to the employer's contributions $\left(\frac{\$30,000}{\$40,000} \times \$16,000, \text{ or } \$12,000\right)$ is excludable in determining the total amount of gifts for the calendar year by reason of the provisions of section 2517. Since the wife's right to a deferred annuity is a gift of a future interest the $3,000 exclusion provided in section 2503 is not allowable.

PAR. 8. Section 25.2522(c) is amended to read as follows:

§ 25.2522(c) Statutory provisions; charitable and similar gifts; disallowance of deductions in certain cases.

SEC. 2522. *Charitable and similar gifts.* * * *

(c) *Disallowance of deductions in certain cases.* For disallowance of certain charitable, etc., deductions otherwise allowable under this section, see sections 503 and 681. [Sec. 2522(c) as amended by sec. 30(d), Technical Amendments Act 1958 (72 Stat. 1631)]

PAR. 9. Subparagraph (4) of § 25.2523(e)-1(f) is revised to read as follows:

§ 25.2523(e)-1 Marital deduction; life estate with power of appointment in donee spouse.

* * * * *

(f) *Right to income.* * * *

(4) Provisions granting administrative powers to the trustees will not have the effect of disqualifying an interest transferred in trust unless the grant of powers evidences the intention to deprive the donee spouse of the beneficial enjoyment required by the statute. Such an intention will not be considered to exist if the entire terms of the instrument are such that the local courts will impose reasonable limitations upon the exercise of the powers. Among the powers which if subject to reasonable limitations will not disqualify the interest transferred in trust are the power to determine the allocation or apportionment of receipts and disbursements between income and corpus, the power to apply the income or corpus for the benefit of the spouse, and the power to retain the assets transferred to the trust. For example, a power to retain trust assets which consist substantially of unproductive property will not disqualify the interest if the applicable rules for the administration of the trust require, or permit the spouse to require, that the trustee either make the property productive or convert it within a reasonable time. Nor will such a power disqualify the interest if the applicable rules for administration of the trust require the trustee to use the degree of judgment and care in the exercise of the power which a prudent man would use if he were owner of the trust assets. Further, a power to retain a residence for the spouse or other property for the personal use of the spouse will not disqualify the interest transferred in trust.

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

[F.R. Doc. 61-563; Filed, Jan. 19, 1961; 8:52 a.m.]

SUBCHAPTER C—EMPLOYMENT TAXES

[T.D. 6541]

PART 31—EMPLOYMENT TAXES; APPLICABLE ON AND AFTER JANUARY 1, 1955

Miscellaneous Amendments

On December 14, 1960, notice of proposed rule making with respect to regulations under sections 3201, 3202(a), 3211, and 3221 of the Internal Revenue Code of 1954, as amended, relating to taxes imposed by the Railroad Retirement Tax Act (chapter 22 of the Code) was published in the FEDERAL REGISTER (25 F.R. 12835). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the regulations as so proposed are hereby adopted.

[SEAL] DANA LATHAM,
Commissioner of Internal Revenue.

Approved: January 17, 1961.

FRED C. SCRIBNER, JR.,
Acting Secretary of the Treasury.

In order to conform the Employment Tax Regulations (26 CFR Part 31) to sections 201 and 202 of the Act of May 19, 1959 (Public Law 86-28, 73 Stat. 28, 30), such regulations are amended as follows:

PARAGRAPH 1. Section 31.3201 is amended to read as follows:

§ 31.3201 Statutory provisions; rate of tax.

SEC. 3201. *Rate of tax.* In addition to other taxes, there is hereby imposed on the income of every employee a tax equal to—

(1) 6¾ percent of so much of the compensation paid to such employee for services rendered by him after the month in which this provision was amended in 1959, and before January 1, 1962, and

(2) 7¼ percent of so much of the compensation paid to such employee for services rendered by him after December 31, 1961,

as is not in excess of $400 for any calendar month: *Provided*, That the rate of tax imposed by this section shall be increased, with respect to compensation paid for services after December 31, 1964, by a number of percentage points (including fractional points) equal at any given time to the number of percentage points (including fractional points) by which the rate of the tax imposed with respect to wages by section 3101 at such time exceeds the rate provided by paragraph (2) of such section 3101 as amended by the Social Security Amendments of 1956.

[Sec. 3201 as amended by sec. 206(a), Act of Aug. 31, 1954 (Pub. Law 746, 83d Cong., 68 Stat. 1040); sec 201(a), Act of May 19, 1959 (Pub. Law 86-28, 73 Stat. 28)]

PAR. 2. Section 31.3201-1 is amended to read as follows:

§ 31.3201-1 Measure of employee tax.

The employee tax with respect to compensation paid after 1954 for services rendered after 1954 is measured by the amount of such compensation paid to an individual for services rendered as an employee to one or more employers, excluding, however, the amount of—

(a) Compensation in excess of $400 which is paid to the employee after May 31, 1959, for services rendered during any one calendar month after May 31, 1959;

(b) Compensation in excess of $350 which is paid to the employee after 1954 and before June 1, 1959, for services rendered during any one calendar month after May 31, 1959; and

(c) Compensation in excess of $350 which is paid to the employee after 1954 for services rendered during any one calendar month after 1954 and before June 1, 1959.

The employee tax with respect to compensation paid after May 31, 1959, for services rendered after such date, is measured without regard to any amount of compensation paid before June 1, 1959, for such services. The employee tax with respect to compensation paid before June 1, 1959, for services rendered after May 31, 1959, is measured without regard to any amount of compensation paid after May 31, 1959, for such services. For provisions relating to compensation, see § 31.3231(e)-1. For provisions relating to the circumstances under which certain compensation is to be disregarded for the purpose of determining the employee tax, see paragraph (a) (4) and (5) of § 31.3231(e)-1.

PAR. 3. Section 31.3201-2 is amended to read as follows:

§ 31.3201-2 Rates and computation of employee tax.

(a) *Rates.* The rates of employee tax applicable with respect to compensation are as follows:

	Percent
Compensation paid at any time after 1954 for services rendered after 1954 and before June 1, 1959; and compensation paid after 1954 and before June 1, 1959, for services rendered after May 31, 1959	6¼
Compensation paid after May 31, 1959, for services rendered after May 31, 1959, and before 1962	6¾
Compensation paid after May 31, 1959, for services rendered during the calendar years 1962, 1963, and 1964	7¼

The rate of employee tax with respect to compensation paid after May 31, 1959, for services rendered after 1964 is the sum of 7¼ percent and an additional percentage. Such additional percentage is determined by subtracting 2¾ percent from the rate of tax imposed by section 3101 with respect to wages received at the time such services are rendered.

Example. If the rate of tax imposed by section 3101 with respect to wages received in 1965 is 3½ percent, then the rate of tax imposed by section 3201 with respect to compensation paid after May 31, 1959, for services rendered in 1965 is 8 percent. (That is, 2¾ percent subtracted from 3½ percent leaves a remainder of ¾ percent. Such remainder of ¾ percent added to 7¼ percent equals 8 percent.)

(b) *Computation.* The employee tax is computed by multiplying the amount of the employee's compensation with respect to which the employee tax is imposed by the rate applicable to such

compensation, as determined under paragraph (a) of this section.

PAR. 4. Section 31.3202 is amended by revising section 3202(a) and the historical note to read as follows:

§ 31.3202 Statutory provisions; deduction of tax from compensation.

Sec. 3202. *Deduction of tax from compensation*—(a) *Requirement.* The tax imposed by section 3201 shall be collected by the employer of the taxpayer by deducting the amount of the tax from the compensation of the employee as and when paid. If an employee is paid compensation after the month in which this provision was amended in 1959, by more than one employer for services rendered during any calendar month after the month in which this provision was amended in 1959 and the aggregate of such compensation is in excess of $400, the tax to be deducted by each employer other than a subordinate unit of a national railway-labor-organization employer from the compensation paid by him to the employee with respect to such month shall be that proportion of the tax with respect to such compensation paid by all such employers which the compensation paid by him after the month in which this provision was amended in 1959, to the employee for services rendered during such month bears to the total compensation paid by all such employers after the month in which this provision was amended in 1959, to such employee for services rendered during such month; and in the event that the compensation so paid by such employers to the employee for services rendered during such month is less than $400, each subordinate unit of a national railway-labor-organization employer shall deduct such proportion of any additional tax as the compensation paid by such employer after the month in which this provision was amended in 1959, to such employee for services rendered during such month bears to the total compensation paid by all such employers after the month in which this provision was amended in 1959, to such employee for services rendered during such month.

* * * * *

[Sec. 3202 as amended by sec. 206(a), Act of Aug. 31, 1959 (Pub. Law 746, 83d Cong., 68 Stat. 1040); sec. 201(b), Act of May 19, 1959 (Pub. Law 86-28, 73 Stat. 29)]

PAR. 5. Section 31.3202-1 is amended by revising paragraph (b), and by adding a new paragraph (f), to read as follows:

§ 31.3202-1 Collection of, and liability for, employee tax.

* * * * *

(b) *Collection; payments by two or more employers in excess of monthly compensation limitation*—(1) *Aggregate monthly compensation in excess of $400 paid after May 31, 1959, for services rendered after that date.* If an employee is paid compensation after May 31, 1959, by two or more employers for services rendered during any one calendar month after such date, and if the aggregate compensation paid to such employee after such date by all employers for services rendered during that month is in excess of $400, the employee tax to be deducted by each employer from the compensation as and when paid by him after May 31, 1959, to the employee shall be determined as follows:

(i) If such compensation is paid by two or more employers, none of whom is a subordinate unit of a national railway-labor-organization employer (see paragraph (a)(6) of § 31.3231(a)-1), each employer shall deduct the employee tax with respect to that proportion of $400 of compensation which the compensation paid after May 31, 1959, by such employer to the employee for the month bears to the total compensation paid after such date to such employee by all employers for that month. See example (1) in subdivision (vii) of this subparagraph.

(ii) If such compensation is paid by two or more employers, each of which is a subordinate unit of a national railway-labor-organization employer, each subordinate unit shall deduct the employee tax with respect to that proportion of $400 of compensation which the compensation paid after May 31, 1959, by such subordinate unit to the employee for the month bears to the total compensation paid after such date to such employee by all such subordinate units for that month.

(iii) If such compensation is paid by two or more employers, only one of whom is an employer other than a subordinate unit of a national railway-labor-organization employer, and if the compensation paid after May 31, 1959, to the employee by the employer other than a subordinate unit equals or exceeds $400 for the month, then no employee tax shall be deducted by any such subordinate unit from the compensation paid by it after such date to such employee for that month, and the employer other than a subordinate unit shall deduct the employee tax with respect to $400 of compensation paid by him after such date to such employee for that month. See example (2) in subdivision (vii) of this subparagraph.

(iv) If such compensation is paid by two or more employers other than a subordinate unit of a national railway-labor-organization employer and by one or more subordinate units of a national railway-labor-organization employer, and if the total compensation paid after May 31, 1959, to the employee by the employers other than a subordinate unit equals or exceeds $400 for the month, then no employee tax shall be deducted by any such subordinate unit from the compensation paid by it after such date to such employee for that month, and each employer other than subordinate unit shall deduct the employee tax with respect to that proportion of $400 of compensation which the compensation paid after such date by such employer to the employee for the month bears to the total compensation paid after such date to such employee by all such employers other than a subordinate unit for that month. See example (3) in subdivision (vii) of this subparagraph.

(v) If such compensation is paid by two or more employers, only one of whom is a subordinate unit of a national railway-labor-organization employer, and if the total compensation paid after May 31, 1959, to the employee by all employers other than the subordinate unit is less than $400 for the month, then each employer other than the subordinate unit shall deduct the employee tax with respect to the full amount of compensation paid by him after such date to such employee for that month, and the subordinate unit of a national railway-labor-organization employer shall deduct the employee tax with respect to the remainder of $400 of compensation less the total compensation paid after such date to such employee for that month by all other employers. See example (4) in subdivision (vii) of this subparagraph.

(vi) If such compensation is paid by one or more employers other than a subordinate unit of a national railway-labor-organization employer and by two or more subordinate units of a national railway-labor-organization employer, and if the total compensation paid after May 31, 1959, to the employee by all employers other than the subordinate units is less than $400 for the month, then each employer other than the subordinate units shall deduct the employee tax with respect to the full amount of compensation paid by him after such date to such employee for that month, and each subordinate unit of a national railway-labor-organization employer shall deduct the employee tax with respect to that proportion of the remainder of $400 of compensation less the total compensation paid after such date to such employee for the month by all employers other than the subordinate units which the compensation paid after such date by such subordinate unit to the employee for that month bears to the total compensation paid after such date to such employee by all such subordinate units for that month. See example (5) in subdivision (vii) of this subparagraph.

(vii) The application of certain of the principles stated in this subparagraph may be illustrated by the following examples:

Example (1). A, an employee, renders services during June 1959 for employers X, Y, and Z, none of whom is a subordinate unit of a national railway-labor-organization employer. For such services A is paid in June 1959 or thereafter compensation of $100 by X, $100 by Y, and $300 by Z, or an aggregate of $500 for the month. In such case X pays one-fifth of A's aggregate compensation for the month, Y pays one-fifth, and Z pays three-fifths. X and Y, therefore, are each required to deduct the employee tax with respect to one-fifth of $400, or $80, and Z is required to deduct the employee tax with respect to three-fifths of $400, or $240.

Example (2). A, an employee, renders services during June 1959 for employer X, an employer other than a subordinate unit of a national railway-labor-organization employer, and for employers Y and Z, each of which is a subordinate unit of a national railway-labor-organization employer. For such services A is paid in the month or thereafter compensation of $400 by X, $50 by Y, and $35 by Z. Since the compensation paid A for the month by X equals $400, neither Y nor Z is required to deduct any employee tax from the compensation paid by him to A for the month; and X is required to deduct the employee tax with respect to the full $400 paid by him to A for the month.

Example (3). A, an employee, renders services during June 1959 for employers W and X, each of whom is an employer other than a subordinate unit of a national railway-labor-organization employer, and for employers Y and Z, each of which is a subordinate unit of a national railway-labor-organization employer. For such services A is paid in the month or thereafter compen-

sation of $200 by W and $300 by X, or an aggregate of $500 for the month, and compensation of $50 by Y and $50 by Z. Since the aggregate compensation paid A for the month by W and X is in excess of $400, neither Y nor Z is required to deduct any employee tax from the compensation paid by him to A for the month. Of the aggregate compensation of $500 paid A for the month by W and X, W pays two-fifths and X pays three-fifths. W, therefore, is required to deduct the employee tax with respect to two-fifths of $400, or $160, and X is required to deduct the employee tax with respect to three-fifths of $400, or $240.

Example (4). A, an employee, renders services during June 1959 for employer X, an employer other than a subordinate unit of a national railway-labor-organization employer, and for employer Y, a subordinate unit of a national railway-labor-organization employer. For such services A is paid in the month or thereafter compensation of $250 by X and $200 by Y. In such case X is required to deduct the employee tax with respect to the full $250 paid by him to A for the month; and Y is required to deduct the employee tax only with respect to $150 ($400 minus $250 paid by X).

Example (5). A, an employee, renders services during June 1959 for employers W and X, each of whom is an employer other than a subordinate unit of a national railway-labor-organization employer, and for employers Y and Z, each of which is a subordinate unit of a national railway-labor-organization employer. For such services A is paid in the month or thereafter compensation of $190 by W, $120 by X, $50 by Y, and $100 by Z. In such case W and X are each required to deduct the employee tax with respect to the full amount paid to A for the month, that is, W with respect to $190 and X with respect to $120; and Y and Z are required to deduct the employee tax with respect to their proportionate share of $90 ($400 minus $310 paid by W and X). Of the aggregate compensation of $150 paid by Y and Z, $50, or one-third, was paid by Y, and $100, or two-thirds, was paid by Z. In such case Y is required to deduct the employee tax with respect to one-third of $90, or $30, and Z is required to deduct the employee tax with respect to two-thirds of $90, or $60.

(2) *Aggregate monthly compensation in excess of $350 paid before June 1, 1959, for services rendered after May 31, 1959.* If an employee is paid compensation within the period January 1, 1955, to May 31, 1959, both dates inclusive, by two or more employers for services rendered during any one calendar month after May 31, 1959, and if the aggregate compensation paid within such period to such employee by all employers for services rendered during such month is in excess of $350, the employee tax to be deducted by each employer from the compensation as and when paid by him to the employee within such period shall be determined in accordance with the principles stated in subparagraph (1) of this paragraph. Such principles should be applied, however, with reference to the compensation and services described in this subparagraph.

(3) *Aggregate monthly compensation in excess of $350 paid after 1954 for services rendered before June 1, 1959.* If an employee is paid compensation at any time after 1954 by two or more employers for services rendered during any one calendar month within the period January 1, 1955, to May 31, 1959, both dates inclusive, and if the aggregate compensation paid after 1954 to such employee by all employers for services rendered during such month is in excess of $350, the employee tax to be deducted by each employer from the compensation as and when paid by him after 1954 to the employee shall be determined in accordance with the principles stated in subparagraph (1) of this paragraph. Such principles should be applied, however, with reference to the compensation and services described in this subparagraph.

* * * * *

(f) *Cross reference.* See paragraph (a) (4) and (5) of § 31.3231(e)–1 for provisions relating to the circumstances under which certain compensation is to be disregarded for the purpose of determining the employee tax.

PAR. 6. Section 31.3211 is amended to read as follows:

§ 31.3211 Statutory provisions; rate of tax.

SEC. 3211. *Rate of tax.* In addition to other taxes, there is hereby imposed on the income of each employee representative a tax equal to—

(1) 13½ percent of so much of the compensation paid to such employee representative for services rendered by him after the month in which this provision was amended in 1959, and before January 1, 1962, and

(2) 14½ percent of so much of the compensation paid to such employee representative for services rendered by him after December 31, 1961,

as is not in excess of $400 for any calendar month: *Provided*, That the rate of tax imposed by this section shall be increased, with respect to compensation paid for services rendered after December 31, 1964, by a number of percentage points (including fractional points) equal at any given time to twice the number of percentage points (including fractional points) by which the rate of the tax imposed with respect to wages by section 3101 at such time exceeds the rate provided by paragraph (2) of such section 3101 as amended by the Social Security Amendments of 1956.

[Sec. 3211 as amended by sec. 206(a), Act of Aug. 31, 1954 (Pub. Law 746, 83d Cong., 68 Stat. 1040); sec. 201(c), Act of May 19, 1959 (Pub. Law 86–28, 73 Stat. 29)]

Par. 7. Section 31.3211–1 is amended to read as follows:

§ 31.3211–1 Measure of employee representative tax.

(a) *General rule.* Except as provided in paragraph (b) of this section the employee representative tax with respect to compensation paid after 1954 for services rendered after 1954 is measured by the amount of such compensation paid to an individual for services rendered as an employee representative, excluding however, the amount of—

(1) Compensation in excess of $400 which is paid to the employee representative after May 31, 1959, for services rendered during any one calendar month after May 31, 1959;

(2) Compensation in excess of $350 which is paid to the employee representative after 1954 and before June 1, 1959, for services rendered during any one calendar month after May 31, 1959; and

(3) Compensation in excess of $350 which is paid to the employee representative after 1954 for services rendered during any one calendar month after 1954 and before June 1, 1959.

The employee representative tax with respect to compensation paid after May 31, 1959, for services rendered after such date, is measured without regard to any amount of compensation paid before June 1, 1959, for such services. The employee representative tax with respect to compensation paid before June 1, 1959, for services rendered after May 31, 1959, is measured without regard to any amount of compensation paid after May 31, 1959, for such services. For provisions relating to compensation, see § 31.3231(e)–1.

(b) *Aggregate monthly compensation as employee representative and employee in excess of monthly compensation limitation*—(1) *Compensation in excess of $400 paid after May 31, 1959, for services rendered after that date.* (i) If during any one calendar month after May 31, 1959, an individual renders services both as an employee representative and as an employee and the total compensation paid after such date to the individual for services rendered during such month both as an employee representative and as an employee exceeds $400, the measure of the employee representative tax for such month shall be $400 minus the compensation paid after May 31, 1959, to such individual for services rendered by him during such month as an employee.

(ii) The application of subdivision (i) of this subparagraph may be illustrated by the following example:

Example. A renders services as an employee representative during June 1959 for which he is paid $100 in June 1959 or thereafter. During such month A also renders services as an employee for one or more employers and receives during such month or thereafter compensation of $350. Inasmuch as the total amount of compensation paid after May 31, 1959, to A for services rendered during June 1959 as an employee representative and as an employee exceeds $400 ($100 plus $350, or $450), the measure of the employee representative tax is $400 minus $350 (A's compensation for services rendered as an employee), or $50.

(2) *Compensation in excess of $350 paid before June 1, 1959, for services rendered after May 31, 1959.* If during any one calendar month after May 31, 1959, an individual renders services as an employee representative and as an employee and the total compensation paid after 1954 and before June 1, 1959, to the individual for services rendered during such month as an employee representative and as an employee exceeds $350, the measure of the employee representative tax for such month shall be $350 minus the compensation paid after 1954 and before June 1, 1959, to such individual for services rendered by him during such month as an employee.

(3) *Compensation in excess of $350 paid after 1954 for services rendered after 1954 and before June 1, 1959.* If during any one calendar month after 1954 and before June 1, 1959, an individual renders services as an employee representative and as an employee and the total compensation paid at any time after 1954 to the individual for services rendered during such month as an employee representative and as an employee

exceeds $350, the measure of the employee representative tax for such month shall be $350 minus the compensation paid at any time after 1954 to such individual for services rendered by him during the month as an employee.

PAR. 8. Section 31.3211–2 is amended to read as follows:

§ 31.3211–2 Rates and computation of employee representative tax.

(a) *Rates.* The rates of employee representative tax applicable with respect to compensation are as follows:

	Percent
Compensation paid at any time after 1954 for services rendered after 1954 and before June 1, 1959; and compensation paid after 1954 and before June 1, 1959, for services rendered after May 31, 1959	12½
Compensation paid after May 31, 1959, for services rendered after May 31, 1959, and before 1962	13½
Compensation paid after May 31, 1959, for services rendered during the calendar years 1962, 1963, and 1964	14½

The rate of employee representative tax with respect to compensation paid after May 31, 1959, for services rendered after 1964 is the sum of 14½ percent and an additional percentage. Such additional percentage is determined by subtracting 2¾ percent from the rate of tax imposed by section 3101 with respect to wages received at the time such services are rendered, and by doubling the remainder.

Example. If the rate of tax imposed by section 3101 with respect to wages received in 1965 is 3½ percent, then the rate of tax imposed by section 3211 with respect to compensation paid after May 31, 1959, for services rendered in 1965 is 16 percent. (That is, 2¾ percent subtracted from 3½ percent leaves a remainder of ¾ percent. Such remainder doubled is 1½ percent. The sum of 1½ percent and 14½ percent is 16 percent.)

(b) *Computation.* The employee representative tax is computed by multiplying the amount of the employee representative's compensation with respect to which the employee representative tax is imposed by the rate applicable to such compensation, as determined under paragraph (a) of this section.

PAR. 9. Section 31.3221 is amended to read as follows:

§ 31.3221 Statutory provisions; rate of tax.

Sec. 3221. *Rate of tax.* (a) In addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to—

(1) 6¾ percent of so much of the compensation paid by such employer for services rendered to him after the month in which this provision was amended in 1959, and before January 1, 1962, and

(2) 7¼ percent of so much of the compensation paid by such employer for services rendered to him after December 31, 1961,

as is, with respect to any employee for any calendar month, not in excess of $400; except that if an employee is paid compensation after the month in which this provision was amended in 1959, by more than one employer for services rendered during any calendar month after the month in which this provision was amended in 1959, the tax imposed by this section shall apply to not more than $400 of the aggregate compensation paid to such employee by all such employers after the month in which this provision was amended in 1959, for services rendered during such month, and each employer other than a subordinate unit of a national railway-labor-organization employer shall be liable for that proportion of the tax with respect to such compensation paid by all such employers which the compensation paid by him after the month in which this provision was amended in 1959, to the employee for services rendered during such month bears to the total compensation paid by all such employers after the month in which this provision was amended in 1959, to such employee for services rendered during such month; and in the event that the compensation so paid by such employers to the employee for services rendered during such month is less than $400, each subordinate unit of a national railway-labor-organization employer shall be liable for such proportion of any additional tax as the compensation paid by such employer after the month in which this provision was amended in 1959, to such employee for services rendered during such month bears to the total compensation paid by all such employers after the month in which this provision was amended in 1959, to such employee for services rendered during such month.

(b) The rate of tax imposed by subsection (a) shall be increased, with respect to compensation paid for services rendered after December 31, 1964, by a number of percentage points (including fractional points) equal at any given time to the number of percentage points (including fractional points) by which the rate of the tax imposed with respect to wages by section 3111 at such time exceeds the rate provided by paragraph (2) of such section 3111 as amended by the Social Security Amendments of 1956.

[Sec. 3221 as amended by sec. 206(a), Act of Aug. 31, 1954 (Pub. Law 746, 83d Cong., 68 Stat. 1040); sec. 201(d), Act of May 19, 1959 (Pub. Law 86–28, 73 Stat. 29)]

PAR. 10. Section 31.3221–1 is amended by revising paragraphs (a) and (b), and by adding a new paragraph (d), as follows:

§ 31.3221–1 Measure of employer tax.

(a) *General rule.* Except as provided in paragraph (b) of this section, the employer tax with respect to compensation paid after 1954 for services rendered after 1954 is measured by the amount of such compensation paid by an employer to his employees, excluding, however, the amount of—

(1) Compensation in excess of $400 which is paid to any employee after May 31, 1959, for services rendered during any one calendar month after May 31, 1959;

(2) Compensation in excess of $350 which is paid to any employee after 1954 and before June 1, 1959, for services rendered during any one calendar month after May 31, 1959; and

(3) Compensation in excess of $350 which is paid to any employee after 1954 for services rendered during any one calendar month after 1954 and before June 1, 1959.

The employer tax with respect to compensation paid after May 31, 1959, for services rendered after such date, is measured without regard to any amount of compensation paid before June 1, 1959, for such services. The employer tax with respect to compensation paid before June 1, 1959, for services rendered after May 31, 1959, is measured without regard to any amount of compensation paid after May 31, 1959, for such services. For provisions relating to compensation, see § 31.3231(e)–1. For provisions relating to the circumstances under which certain compensation is to be disregarded for the purpose of determining the employer tax, see paragraph (a) (4) and (5) of § 31.3231(e)–1.

(b) *Payments by two or more employers in excess of monthly compensation limitation*—(1) *Aggregate monthly compensation in excess of $400 paid after May 31, 1959, for services rendered after that date.* If an employee is paid compensation after May 31, 1959, by two or more employers for services rendered during any one calendar month after such date, and if the aggregate compensation paid to such employee after such date by all employers for services rendered during such month is in excess of $400, the measure of the employer tax of each employer with respect to the compensation paid by him after such date to the employee for the month shall be determined as follows:

(i) If such compensation is paid by two or more employers, none of whom is a subordinate unit of a national railway-labor-organization employer (see paragraph (a)(6) of § 31.3231(a)–1), the measure of the employer tax of each employer shall be that proportion of $400 which the compensation paid after May 31, 1959, by such employer to the employee for the month bears to the total compensation paid after such date to such employee by all employers for that month.

(ii) If such compensation is paid by two or more employers, each of which is a subordinate unit of a national railway-labor-organization employer, the measure of the employer tax of each subordinate unit shall be that proportion of $400 which the compensation paid after May 31, 1959, by such subordinate unit to the employee for the month bears to the total compensation paid after such date to such employee by all such subordinate units for that month.

(iii) If such compensation is paid by two or more employers, only one of whom is an employer other than a subordinate unit of a national railway-labor-organization employer, and if the compensation paid after May 31, 1959, to the employee by the employer other than a subordinate unit equals or exceeds $400 for the month, then no subordinate unit shall be liable for any employer tax with respect to the compensation paid by it after such date to such employee for that month, and the measure of the employer tax of the employer other than a subordinate unit with respect to the compensation paid by him after 1954 to such employee for that month shall be $400.

(iv) If such compensation is paid by two or more employers other than a subordinate unit of a national railway-labor-organization employer and by one or more subordinate units of a national railway-labor-organization employer, and if the total compensation paid after May 31, 1959, to the employee by the employers other than a subordinate unit equals or exceeds $400 for the month, then no subordinate unit shall be liable for any employer tax with respect to the compensation paid by it after such

date to such employee for that month, and the measure of the employer tax of each employer other than a subordinate unit shall be that proportion of $400 which the compensation paid after such date by such employer to the employee for the month bears to the total compensation paid after such date to such employee by all such employers other than a subordinate unit for that month.

(v) If such compensation is paid by two or more employers, only one of whom is a subordinate unit of a national railway-labor-organization employer, and if the total compensation paid after May 31, 1959, to the employee by all employers other than the subordinate unit is less than $400 for the month, then the measure of the employer tax of each employer other than the subordinate unit shall be the full amount of compensation paid by him after such date to such employee for that month, and the measure of the employer tax of the subordinate unit of a national railway-labor-organization employer shall be the remainder of $400 less the total compensation paid after such date to such employee for that month by all other employers.

(vi) If such compensation is paid by one or more employers other than a subordinate unit of a national railway-labor-organization employer, and by two or more subordinate units of a national railway-labor-organization employer, and if the total compensation paid after May 31, 1959, to the employee by all employers other than the subordinate units is less than $400 for the month, then the measure of the employer tax of each employer other than the subordinate units shall be the full amount of compensation paid by him after such date to such employee for that month, and the measure of the employer tax of each subordinate unit of a national railway-labor-organization employer shall be that proportion of the remainder of $400 less the total compensation paid after such date to such employee for the month by all employers other than the subordinate units which the compensation paid after such date by such subordinate unit to the employee for that month bears to the total compensation paid after such date to such employee by all such subordinate units for that month.

(vii) For illustrations of the application of certain of the principles in this subparagraph, see the examples, illustrating the analogous principles with respect to the deduction of employee tax, set forth in paragraph (b)(1)(vii) of § 31.3202–1.

(2) *Aggregate monthly compensation in excess of $350 paid before June 1, 1959, for services rendered after May 31, 1959.* If an employee is paid compensation within the period January 1, 1955, to May 31, 1959, both dates inclusive, by two or more employers for services rendered during any one calendar month after May 31, 1959, and if the aggregate compensation paid within such period to such employee by all employers for services rendered during such month is in excess of $350, the measure of the employer tax of each employer with respect to the compensation paid by him to the employee within such period shall be determined in accordance with the principles stated in subparagraph (1) of this paragraph. Such principles should be applied, however, with reference to the compensation and services described in this subparagraph.

(3) *Aggregate monthly compensation in excess of $350 paid after 1954 for services rendered before June 1, 1959.* If an employee is paid compensation at any time after 1954 by two or more employers for services rendered during any one calendar month within the period January 1, 1955, to May 31, 1959, both dates inclusive, and if the aggregate compensation paid after 1954 to such employee by all employers for services rendered during such month is in excess of $350, the measure of the employer tax of each employer with respect to the compensation paid by him to the employee after 1954 shall be determined in accordance with the principles stated in subparagraph (1) of this paragraph. Such principles should be applied, however, with reference to the compensation and services described in this subparagraph.

* * * * *

(d) *Cross reference.* See paragraph (a) (4) and (5) of § 31.3231(e)–1 for provisions relating to the circumstances under which certain compensation is to be disregarded for the purpose of determining the employer tax.

PAR. 11. Section 31.3221–2 is amended to read as follows:

§ 31.3221–2 Rates and computation of employer tax.

(a) *Rates.* The rates of employer tax applicable with respect to compensation are as follows:

	Percent
Compensation paid at any time after 1954 for services rendered after 1954 and before June 1, 1959; and compensation paid after 1954 and before June 1, 1959, for services rendered after May 31, 1959	6¼
Compensation paid after May 31, 1959, for services rendered after May 31, 1959, and before 1962	6¾
Compensation paid after May 31, 1959, for services rendered during the calendar years 1962, 1963, and 1964	7¼

The rate of employer tax with respect to compensation paid after May 31, 1959, for services rendered after 1964 is the sum of 7¼ percent and an additional percentage. Such additional percentage is determined by subtracting 2¾ percent from the rate of tax imposed by section 3111 with respect to wages paid at the time such services are rendered.

Example. If the rate of tax imposed by section 3111 with respect to wages paid in 1965 is 3½ percent, then the rate of tax imposed by section 3221 with respect to compensation paid after May 31, 1959, for services rendered in 1965 is 8 percent. (That is, 2¾ percent subtracted from 3½ percent leaves a remainder of ¾ percent. Such remainder of ¾ percent added to 7¼ percent equals 8 percent.)

(b) *Computation.* The employer tax is computed by multiplying the amount of the compensation with respect to which the employer tax is imposed by the rate applicable to such compensation, as determined under paragraph (a) of this section.

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

[F.R. Doc. 61–562; Filed, Jan. 19, 1961; 8:52 a.m.]

[T.D. 6538]

SUBCHAPTER D—MISCELLANEOUS EXCISE TAXES

PART 48—MANUFACTURERS AND RETAILERS EXCISE TAXES

Laminated Tires

On December 2, 1960, notice of proposed rule making with respect to regulations under section 4071(a)(5) of the Internal Revenue Code of 1954, as amended, relating to the manufacturers excise tax on the sale of laminated tires, was published in the FEDERAL REGISTER (25 F.R. 12362). No objection to the rules proposed having been received during the 30-day period prescribed in the notice, the regulations as so proposed are hereby adopted.

[SEAL] DANA LATHAM,
Commissioner of Internal Revenue.

Approved: January 16, 1961.

FRED C. SCRIBNER, JR.,
Acting Secretary of the Treasury.

In order to conform the Manufacturers and Retailers Excise Tax Regulations (26 CFR Part 48) to the Act of April 22, 1960 (Public Law 86–440, 74 Stat. 80), such regulations are amended as follows:

PARAGRAPH 1. Section 48.4071 is amended to read as follows:

§ 48.4071 Statutory provisions; imposition of tax.

SEC. 4071 *Imposition of tax*—(a) *Imposition and rate of tax.* There is hereby imposed upon the following articles, if wholly or in part of rubber, sold by the manufacturer, producer, or importer, a tax at the following rates:

(1) Tires of the type used on highway vehicles, 8 cents a pound.

(2) Other tires (other than laminated tires to which paragraph (5) applies), 5 cents a pound.

(3) Inner tubes for tires, 9 cents a pound.

(4) Tread rubber, 3 cents a pound.

(5) Laminated tires (not of the type used on highway vehicles) which consist wholly of scrap rubber from used tire casings with an internal metal fastening agent, 1 cent a pound.

(b) *Determination of weight.* For purposes of this section, weight shall be based on total weight, except that in the case of tires such total weight shall be exclusive of metal rims or rim bases. Total weight of the articles shall be determined under regulations prescribed by the Secretary or his delegate.

(c) *Rate reduction.* On and after July 1, 1972—

(1) The tax imposed by paragraph (1) of subsection (a) shall be 5 cents a pound; and

(2) Paragraph (4) of subsection (a) shall not apply.

[Sec. 4071 as amended and in effect Jan. 1, 1959, and as further amended by Act of Apr. 22, 1960 (Pub. Law 86–440, 74 Stat. 80)]

PAR. 2. Paragraph (b)(1) of § 48.4071–1 is amended to read as follows:

§ 48.4071–1 Imposition and rates of tax.

* * * * *

(b) *Rates and computation of tax*—(1) *Rates of tax.* Tax is imposed upon each of the above-mentioned taxable articles at the rate applicable on the date on which the article is sold, as specified below:

	Cents per pound
(i) *Tires:*	
(a) Of the type used on highway vehicles;	
(1) For the period January 1, 1959, to June 30, 1972, inclusive	8
(2) On or after July 1, 1972	5
(b) Of the type used on other than highway vehicles (excluding laminated tires)	5
(c) Laminated tires:	
(1) For the period January 1, 1959, to May 31, 1960, inclusive	5
(2) On or after June 1, 1960	1
(ii) *Inner tubes*	9
(iii) *Tread rubber:*	
For the period January 1, 1959, to June 30, 1972, inclusive	3

For definitions of the terms "tires of the type used on highway vehicles" and "laminated tires", see paragraphs (c) and (f) of § 48.4072–1.

PAR. 3. Section 48.4072–1 is amended by striking paragraph (f) and inserting the following:

§ 48.4072–1 Definitions.

* * * * *

(f) *Laminated tires.* The term "laminated tires", for purposes of the tax imposed by section 4071, means tires (1) which are not "tires of the type used on highway vehicles" within the meaning of paragraph (c) of this section, and (2) which consist wholly of scrap rubber from used tire casings with an internal metal fastening agent.

(g) *Cross references.* For other definitions, see §§ 48.0–2 and 48.7701.

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

[F.R. Doc. 61–515; Filed, Jan. 19, 1961; 8:47 a.m.]

[T.D. 6536]

PART 49—FACILITIES AND SERVICES EXCISE TAXES

Excise Tax on Club Dues

On September 23, 1960, a notice of proposed rule making with respect to the Facilities and Services Excise Tax Regulations (26 CFR Part 49) under sections 4241, 4242, and 4243 of the Internal Revenue Code of 1954, as amended, relating to the excise tax on club dues, was published in the FEDERAL REGISTER (25 F.R. 9143). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the regulations as so published are hereby adopted, subject to the changes set forth below. Such regulations supersede § 148.1–2 of the Regulations on Certain Excise Tax Matters under Excise Tax Technical Changes Act of 1958 (26 CFR 148.1–2).

PARAGRAPH 1. Subparagraphs (1), (2), and (3) of paragraph (c), and paragraph (g)(2) of § 49.4241–1 are revised.

PAR. 2. Section 49.4243–1 is revised.

PAR. 3. Paragraphs (a), (b), and (c), and examples (5) and (6) of paragraph (d), of § 49.4243–2 are revised.

PAR. 4. Section 49.4243–3 is revised by changing paragraph (a) and by adding subparagraph (3) to paragraph (b).

[SEAL] DANA LATHAM,
Commissioner of Internal Revenue.

Approved: January 16, 1961.

FRED C. SCRIBNER, JR.,
Acting Secretary of the Treasury.

The regulations so adopted under sections 4241, 4242, and 4243 of the Internal Revenue Code of 1954, as amended, relating to the excise tax on club dues, read as follows:

Subpart B—Admissions and Dues

CLUB DUES

AUTHORITY: §§ 49.4241 to 49.4243–3 issued under sec. 7805, I.R.C. 1954; 68A Stat. 917; 26 U.S.C. 7805.

§ 49.4241 Statutory provisions; imposition of tax.

SEC. 4241. *Imposition of tax*—(a) *Rate.* There is hereby imposed—

(1) *Dues or membership fees.* A tax equivalent to 20 percent of any amount paid as dues or membership fees to any social, athletic, or sporting club or organization, if the dues or fees of an active resident annual member are in excess of $10 per year.

(2) *Initiation fees.* A tax equivalent to 20 percent of any amount paid as initiation fees to such a club or organization, if such fees amount to more than $10, or if the dues or membership fees, not including initiation fees, of an active resident annual member are in excess of $10 per year.

(3) *Life memberships.* In the case of life memberships—

(A) A tax equivalent to the tax upon the amount paid as dues or membership fees by members (other than life members) having privileges most nearly comparable to those of the person holding the life membership; or

(B) At the election (made at such time not later than the day on which the first amount is paid for life membership, and made in such manner and form, as the Secretary or his delegate shall by regulations prescribe) of the person holding the life membership, a tax equivalent to 20 percent of any amount paid for the life membership. Any election under this subparagraph shall be irrevocable.

If subparagraph (A) applies, no tax shall be paid under this subsection on amounts paid for the life membership, and the tax under subparagraph (A) shall be paid at the time for the payment of dues or membership fees by members (other than life members) having privileges most nearly comparable to those of the person holding the life membership. Any tax payable under this paragraph shall be in addition to any tax payable under paragraph (1) or (2). No tax shall be payable under this paragraph on any life membership for which no charge is made to any person.

(b) *By whom paid.* Except as provided in section 4243(b), the taxes imposed by this section shall be paid by the person paying such dues or fees, or holding such life membership.

[Sec. 4241 as amended and in effect Jan. 1, 1959, and as further amended by sec. 3(b), Act of Sept. 21, 1959 (Pub. Law 86–344, 73 Stat. 618)]

§ 49.4241–1 Tax on club dues, initiation fees, and life memberships.

(a) *Dues or membership fees.* Section 4241(a)(1) imposes a tax at the rate of 20 percent on amounts paid as dues or membership fees to a social, athletic, or sporting club or organization, if the dues and membership fees of an active resident annual member are in excess of $10 per year. If the dues and membership fees of an active resident annual member of such a club or organization are in excess of $10 per year, the tax applies not only to the dues and membership fees of an active resident annual member, but also to the dues and membership fees of all other members of the club or organization, whether or not the dues and membership fees of the other members are in excess of $10 per year. For definition of the term "dues or membership fees", see paragraph (a) of § 49.4242–1.

(b) *Initiation fees.* Section 4241(a)(2) imposes a tax at the rate of 20 percent on amounts paid as initiation fees required as a condition precedent to membership in a social, athletic, or sporting club or organization, if (1) such initiation fees are in excess of $10, or (2) the dues and membership fees of an active resident annual member are in excess of $10 per year. If the initiation fee exceeds $10, it is subject to the tax, regardless of the amount of dues and membership fees paid by an active resident annual member. If the dues and membership fees paid by an active resident annual member are in excess of $10 per year, any initiation fee, regardless of the amount, is subject to the tax. For definition of the term "initiation fees", see § 49.4242–2.

(c) *Life memberships*—(1) *General rule.* Section 4241(a)(3) imposes a tax on life memberships in a social, athletic, or sporting club or organization. In the absence of an election by the life member to have the tax determined in the manner described in subparagraph (2) of this paragraph, the tax in respect of a life membership is, pursuant to section 4241(a)(3)(A), equivalent to the tax imposed by section 4241(a)(1) (after application of any exemption provided in section 4243 (see particularly paragraph (b) of § 49.4243–2)) upon the amount paid to the club or organization as the dues or membership fees of any member (other than a life member) for privileges most nearly comparable to those enjoyed under the life membership. Thus, if the life membership confers limited privileges comparable to the privileges of certain other members who pay dues in a lesser amount than members having full privileges, the tax in respect of the life membership shall be computed on the basis of such lesser amount. The tax on life memberships imposed by section

4241(a)(3) is in addition to any taxes under paragraphs (1) and (2) of section 4241(a) which may be due on amounts paid as dues and membership fees or as initiation fees of the life member. If the tax on a life membership is determined in the manner described in this subparagraph, no tax shall be paid on the amount paid for the life membership. However, in no event is tax on life memberships payable in respect of any life membership for which no charge is made to any person as, for example, an honorary membership. An amount paid for a term membership, such as a membership for 10 years or 20 years, is not an amount paid for a life membership, but is subject to the tax imposed by section 4241(a) (1) or (2) as an amount paid as dues or membership fees or as initiation fees.

(2) *Election to pay tax on amount paid for life membership.* In lieu of paying a tax on a life membership which is determined in the manner described in subparagraph (1) of this paragraph, a life member may elect to pay a tax in the amount of 20 percent of the payment or payments made for his life membership (after application of any exemption provided in section 4243 (see particularly paragraph (b) of § 49.4243–2)), whether the payment for life membership is made by the life member himself or by some other person.

(3) *Conditions for election.* The election provided for in this paragraph may be made only by the individual holding the life membership and, once made, cannot be revoked. The election must be made not later than the day on which the first amount is paid for the life membership, and shall be evidenced by a statement showing—

(i) The name and address of the life member,

(ii) The total amount paid or to be paid for the life membership,

(iii) The date on which the first payment for the life membership was made and the amount of such payment, and

(iv) An assertion by the life member that he elects to pay tax in respect of his life membership computed on the basis of the amount of the payment or payments made or to be made for the life membership.

The amount referred to in subdivision (iv) of this subparagraph is the amount determined after application of any exemption provided in section 4243. The statement shall be signed by the life member and shall be furnished to the club or organization in which he holds the life membership. This statement must be furnished in the case of an election, even though all amounts paid or to be paid for the life membership are exempt from tax under section 4243 (see particularly paragraph (b) of § 49.4243–2). The statement shall be retained by the club or organization as a part of its records and shall be available for inspection by internal revenue officers.

(4) *Special rules for amounts paid before July 1, 1959.* If a payment was made before July 1, 1959, for a life membership and if the life member desires to make the election provided for in subparagraph (2) of this paragraph, he must make the election during the period beginning January 1, 1959, and ending July 1, 1959. In such a case all amounts paid on or before June 30, 1959, for the life membership are treated as having been paid on July 1, 1959. If an election under the provisions of this paragraph is made during the period January 1, 1959, through July 1, 1959, the tax computed pursuant to subparagraph (2) of this paragraph is reduced by the tax imposed and paid on or after January 1, 1959, pursuant to the provisions of section 4241(a)(3)(A) (described in subparagraph (1) of this paragraph). However, the tax computed pursuant to subparagraph (2) of this paragraph shall not be reduced by any tax imposed by section 4241 for any period before January 1, 1959.

(d) *Active resident annual member.* An "active resident annual member" is one who is entitled to the enjoyment, on an annual basis or, if offered for a lesser period during the year, on a seasonal or full-period basis, whichever is appropriate, of all the privileges of the club or organization, as distinguished from the privileges enjoyed by a person holding a nonresident membership, an associate membership, or other partial or restricted membership. It is immaterial whether anyone actually holds a membership which entitles him to enjoyment of all the privileges of the club. For example, if the regular dues or membership fees of a social club are $5 per year for all members, and the club has a golf course and a swimming pool, either of which is available to a member upon payment of an additional $5 per year as dues or membership fees, an active resident annual member of the club is considered to be an individual who enjoys all the privileges of the club, including use of the golf course and the swimming pool, on an annual or seasonal basis, whether or not any member of the club actually enjoys all of these privileges. In this example, the dues and membership fees of an active resident annual member are considered to be $15 per year since a member must pay that amount to enjoy all the privileges of the club. A penalty paid by an active resident annual member for failure to pay his dues promptly is not considered in determining whether dues and membership fees of an active resident annual member are in excess of $10 per year.

(e) *Social, athletic, or sporting club or organization*—(1) *In general.* The purposes and activities of a club or organization, and not its name, determine its character for purposes of the tax. Every club or organization which has a membership of individuals or family units and which has social, athletic, or sporting features is presumed to be a social, athletic, or sporting club or organization, until the club or organization has satisfied the district director that it is not in fact a social, athletic, or sporting club or organization within the meaning of the regulations in this part. (However, see §§ 49.4243–1 and 49.4243–3 for exemptions provided for fraternal organizations and certain swimming or skating clubs.) If any such club or organization claims that it is not in fact a social, athletic, or sporting club or organization, it may submit to the district director a request for a determination, together with a copy of its charter or constitution and bylaws, and a statement showing its actual purposes, activities, practices, facilities, and the character of its expenditures. Any additional evidence required shall be submitted upon the request of the district director. When a club or organization has been held not to be a social, athletic, or sporting club or organization, it need not make any further showing with respect to its status for purposes of the tax, unless it changes the character of its organization or operations or the purposes for which it was originally created. Each district director will keep a list of all clubs and organizations in his district held not to be social, athletic, or sporting clubs or organizations, and may from time to time reinvestigate the status of these clubs and organizations.

(2) *Social clubs or organizations.* Any club or organization which maintains quarters, or arranges periodic dinners or meetings, for the purpose of affording its members an opportunity of congregating for social intercourse is a social club or organization within the meaning of the regulations in this part, unless its social features are not a material purpose of the organization, but are subordinate and merely incidental to the active furtherance of a different and predominant purpose, such as religion, the arts, or business. An organization which has for its exclusive or predominant purpose religion, philanthropic social service, or the advancement of the business or commercial interests of a city or community is not a social club or organization. Thus, a religious organization, chamber of commerce, commercial club, trade organization, or the like, is not considered to be a social club or organization merely because it has incidental social features. However, if the social features are a material purpose of the club or organization, it is a social club or organization within the meaning of the regulations in this part. This subparagraph may be illustrated by the following examples:

Example (1). Neither a Young Men's Christian Association nor a Young Men's Hebrew Association is a social club within the meaning of the regulations in this part, since the predominant purposes of each are religion and philanthropic social service.

Example (2). A social settlement association which provides, among other things, dances and other social opportunities for a slum neighborhood is supported by contributions. Any person contributing $30 a year is called a "member" of the settlement association. The settlement association is not a social club within the meaning of the regulations in this part, since its predominant purpose is philanthropic social service.

Example (3). An automobile dealers' association is primarily organized and operated for the purpose of maintaining a social organization of persons residing in a certain city and engaged in the manufacture or sale of automobiles and accessories. The association affords its members an opportunity of enjoying healthful games and of promoting social welfare and social intercourse among the members. It also encourages debates and discussions at meetings of the members, promoting interest in automobile transporta-

tion, traffic, and knowledge of the industry. This organization is a social club within the meaning of the regulations in this part.

(3) *Athletic or sporting clubs or organizations.* Tennis, golf, boxing, boating, canoe, fishing, and hunting clubs, and all other organizations organized for the practice or promotion of athletics or sports are athletic or sporting clubs or organizations within the meaning of the regulations in this part. A local, sectional, or national athletic or sporting association, the membership of which is composed wholly or partly of member clubs, is not a social, athletic, or sporting club or organization. The possession and use of a gymnasium, swimming pool, or other athletic facilities by an organization having religion or philanthropic social service for its exclusive or predominant purpose will not make the organization an athletic or sporting club or organization.

(f) *Foreign clubs.* The tax imposed by section 4241 does not apply to amounts paid to a club which is located outside the United States and which has no branch or organization within the United States. However, if such a club has a branch or agency within the United States, amounts paid to the branch or agency on behalf of the club are subject to the tax to the same extent as amounts paid to a club situated within the United States.

(g) *Payment of tax*—(1) *Dues or membership fees and initiation fees.* Except as provided in paragraph (c) of § 49.4243–2, the tax imposed on amounts paid as dues or membership fees and the tax imposed on amounts paid as initiation fees shall be paid over to the club or organization by the person paying the dues, membership fees, or initiation fees. In general, the tax attaches at the time the payment of the dues or fees is made to the club or organization. In the case of initiation fees paid to a person or organization distinct from the club, the tax attaches with respect to the payment at the time of the incoming member's admission to membership. See, however, paragraph (c) of § 49.4243–2.

(2) *Life memberships.* Except as provided in paragraph (c) of § 49.4243–2, the tax imposed in respect of a life membership shall be paid over to the club or organization by the individual holding the life membership. Unless the life member elects to have the tax on his life membership determined on the basis of the amount paid for the life membership, the tax shall be paid by him at the time the tax attaches in respect of dues or membership fees of members having privileges most nearly comparable to the privileges conferred under the life membership. If the life member elects to have the tax on his life membership determined on the basis of the amount paid for the life membership, the tax shall be paid by him at the time each payment for the life membership is made (whether made by the life member himself or by some other person). See, however, paragraph (c) of § 49.4243–2.

(3) *Collection by club or organization.* For provisions relating to collection by the social, athletic, or sporting club or organization of the tax in respect of dues or membership fees, initiation fees, or life memberships, see section 4291 and the regulations thereunder.

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

Example (1). A social club has Class A and Class B members. Class A members may enjoy all privileges of the club, including use of the golf course, for dues of $40 per year. Class B members may enjoy all privileges of the club, except use of the golf course, for dues of $10 per year. The Class A member is an "active resident annual member". Since the dues of the Class A member (an active resident annual member) are in excess of $10 per year, the dues of both Class A and Class B members are subject to tax, even though the dues of the Class B member are not in excess of $10 per year.

Example (2). Assume the same facts as those stated in Example (1), except that Class A members pay an initiation fee of $15 and dues of $10 per year. Class B members also pay an initiation fee of $15 but pay dues of $5 per year. The dues paid by Class A or Class B members are not taxable in this case since the dues of the Class A member (an active resident annual member) are not in excess of $10 per year. The initiation fee paid by a Class A member or by a Class B member is taxable since it is in excess of $10, but this is immaterial in determining whether the dues of a member are subject to tax.

Example (3). The active resident annual members of an athletic club pay an initiation fee of $10 and dues of $30 per year. Associate members pay an initiation fee of $10 and dues of $5 per year. The initiation fees paid by an active resident annual member and by an associate member, as well as the dues paid by each, are subject to the tax, since the dues of an active resident annual member are in excess of $10 per year. The amount of the initiation fee in such case is immaterial in determining whether such fee is taxable.

Example (4). An individual purchases a life membership in an athletic club for which he pays $1,000 in a lump sum. His privileges under the life membership are most nearly comparable to those of a Class A member of such club. The dues or membership fees of a Class A member are $75 per year. The life member chooses to pay a tax on his life membership equivalent to the tax on the amount paid as dues or membership fees of any member (other than a life member) for privileges most nearly comparable to his own under the life membership. The tax in such case is $15 per year, payable at the time the tax attaches in respect of dues of Class A members. If the life member had elected to pay tax on the amount paid for his life membership, the tax in such case would have been $200, payable at the time of payment for the life membership, and no further tax would have been payable subsequently in respect of such life membership.

Example (5). An athletic club grants a life membership to an individual upon his having concluded 40 consecutive years as a Class A member. The dues paid by such individual as a Class A member amounted to $30 per year. Such dues are not regarded as payment for the life membership, and the individual is considered as holding a life membership for which no charge is made. However, if, as a life member, he is not entitled to all privileges of the club and if, in any particular year, he pays for privileges beyond those granted under his life membership, he will be liable for tax on his payments for the additional privileges to the same extent and in the same manner as any other member paying for such privileges.

§ 49.4242 Statutory provisions; definitions.

SEC. 4242. *Definitions*—(a) *Dues.* As used in this part the term "dues" includes any assessment, irrespective of the purpose for which made, and any charges for social privileges or facilities, or for golf, tennis, polo, swimming, or other athletic or sporting privileges or facilities, for any period of more than six days; and

(b) *Initiation fees.* As used in this part the term "initiation fees" includes any payment, contribution, or loan, required as a condition precedent to membership, whether or not any such payment, contribution, or loan is evidenced by a certificate of interest or indebtedness or share of stock, and irrespective of the person or organization to whom paid, contributed, or loaned.

[Sec. 4242 as originally enacted and in effect Jan. 1, 1959]

§ 49.4242–1 Definition; dues or membership fees.

(a) *In general.* The term "dues or membership fees", as used in the regulations in this part, means all charges made by a social, athletic, or sporting club or organization which are commonly understood to constitute dues or membership fees, as well as all other charges required to be paid to such a club or organization for the privilege of being a member of the club or organization or a member of a particular membership class. The term also includes—

(1) Any assessment made by a social, athletic, or sporting club or organization, irrespective of the purpose for which made, and

(2) All charges made by a social, athletic, or sporting club or organization for (i) social privileges or facilities for any period of more than 6 days (whether or not consecutive), or (ii) golf, tennis, polo, swimming, or other athletic or sporting privileges or facilities for any period of more than 6 days (whether or not consecutive).

In determining whether a charge by such a club or organization constitutes dues or membership fees within the meaning of subparagraph (2) of this paragraph, the test is whether payment of the charge confers the right to use a social, athletic, or sporting privilege or facility of the club or organization for the prescribed period. It is immaterial whether the privilege or facility is one for which a charge is mandatory, even though the member chooses not to avail himself of the privilege or facility, or whether the privilege or facility is one for which a charge is made only if the member, at his own election, chooses to have the privilege or facility made available to him. Any privilege or facility offered by a social, athletic, or sporting club or organization which is so directly related to a social, athletic, or sporting activity in which the club is engaged, or for which it was created, as to partake of the nature of the activity itself is considered to be a social, athletic, or sporting privilege or facility. This is true even though such privilege or facility, if considered entirely apart from any social, athletic, or sporting activity, would not in and of itself constitute a social, athletic, or sporting privilege or

facility. (However, see § 49.4243–2 for the exemption provided in respect of amounts paid for certain capital improvements.)

(b) *Initiation fees, fines, etc.* The term "dues or membership fees" does not include initiation fees. Neither does the term include fines imposed for misconduct or violation of rules. However, the term does include a penalty incurred for failure to make prompt payment of dues or membership fees since such a penalty is considered to be an increase in the amount of the dues or membership fees required to be paid by the member.

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

Example (*1*). A social club operates a restaurant and bar for the use of its members. The club requires of each member a minimum expenditure during the year of $200 for food or drink. If a member does not make actual expenditures totaling $200, he is billed for an additional amount equal to the difference between his actual expenditures and $200. This charge of $200 constitutes dues or membership fees, inasmuch as such charge must be paid for the privilege of being a member of the club.

Example (*2*). A social club collects no regular dues or membership fees but meets its operating expenses by levying assessments on its members as funds are required. These assessments constitute dues or membership fees.

Example (*3*). A social club collects $10 per year from each of its members as regular dues. Members are entitled to use the clubhouse facilities without payment of any additional charge. However, members who wish to use the golf course may do so only upon payment of an additional charge. The amount of such charge varies, depending on whether the privilege of using the golf course is extended for a day, a week, a month, or the entire year. Since use of the golf course is a social, athletic, or sporting privilege or facility, any charge made by the club for use of the course constitutes dues or membership fees if the period for which the charge is made is more than 6 days. Thus, charges made by the club for use of the golf course on a weekly, monthly, or yearly basis constitute dues or membership fees, and the fact that such charges are made only upon the member's election to have the privilege of using the course is immaterial. Charges made by the club for use of the course on a daily basis do not constitute dues or membership fees.

Example (*4*). A club qualifying as a social, athletic, or sporting club owns and operates various social, athletic, or sporting facilities, including a swimming pool, for the use of its members. Members who wish to use the pool may do so under one of three plans offered by the club. Under plan A, a payment of $30 entitles the member to the use of the pool on each day of the week from Monday through Friday for the 15 weeks of the swimming season. Under plan B, a payment of $35 entitles the member to the use of the pool on Saturday and Sunday of each of the 15 weeks. Under plan C, a payment of $40 entitles the member to the use of the pool every day during the 15 weeks of the swimming season. Only plan C confers a right to the use of the pool for more than 6 consecutive days. However, both plan A (which confers the right to the use of the pool for a period of 75 cumulative days) and plan B (which confers the right to the use of the pool for a period of 30 cumulative days) confer a right to the use of the pool for a period of more than 6 days within the meaning of section 4242(a). Therefore, the charges made under plan A and plan B, as well as those made under plan C, constitute dues or membership fees.

Example (*5*). A club organized and operated for the promotion of yachting, and other aquatic sports, and qualifying as a social, athletic, or sporting club owns and maintains docking and mooring facilities for the use of its members. The club makes a charge to each member using the facilities, the amount of the charge depending upon the size of the member's boat and the location of the docking and mooring facilities used. The docking and mooring facilities are considered to be social, athletic, or sporting privileges or facilities, since they are so closely associated with the yachting and other aquatic activities for which the club was created as to partake of the nature of those activities. Charges made by the club for these facilities constitute dues or membership fees if the period for which the charge is made is more than 6 days.

Example (*6*). A beach club qualifying as a social, athletic, or sporting club or organization owns a strip of ocean beach in connection with which it provides and maintains cabins and cabanas for the use of its members. Any member desiring to do so may rent a cabin or cabana for one or more days, one or more weeks, or for the season. Such cabins and cabanas are considered to be social, athletic, or sporting privileges or facilities, since they are so closely associated with the beach and swimming activities of the club as to partake of the nature of those activities. Charges made by the club for the use of such cabins and cabanas constitute dues or membership fees if the period for which the charge is made is more than 6 days.

Example (*7*). A social club which makes available to its members golfing, swimming, and skating facilities also maintains in its clubhouse suites of rooms for occupancy by members or their guests. Each suite consists of a living room, bedroom, and bathroom. The suites may be engaged by the day, week, or month at rates specified by the club. The suites are not considered to be social, athletic, or sporting privileges or facilities since they bear no direct relationship to any club activity. Charges made by the club for the use of the suites do not constitute dues or membership fees, regardless of the period for which the charges are made.

Example (*8*). A social club owns and operates a golf course for the use of its members. A professional golfer attached to the club offers the members the service of cleaning and storage of their golfing equipment. The service is offered by the professional golfer in his capacity as an independent contractor. The charges made by the professional golfer for this service do not constitute dues or membership fees since the service is provided by him and not the club. However, if the service were provided by the club, any charge made by the club for the service would constitute dues or membership fees, if the period for which the charge was made was more than 6 days.

Example (*9*). A member of an athletic club violates the house rules and is suspended until he pays a fine of $15. The fine does not constitute dues or membership fees.

Example (*10*). All members of a social club pay dues of $30 per year. A penalty of $1 is imposed on any member who fails to pay his dues promptly. The penalty is incurred and paid in a particular year by a member. The penalty is considered to be an increase in the amount of the member's dues or membership fees.

§ 49.4242–2 Definition; initiation fees.

The term "initiation fees", as used in the regulations in this part, includes any payment, contribution, or loan required as a condition precedent to membership in a social, athletic, or sporting club or organization, whether or not any such payment, contribution, or loan is evidenced by a certificate of interest or indebtedness or share of stock, and irrespective of the person or organization to whom paid, contributed, or loaned. It is immaterial whether the applicant has any hope or expectation of a return of his payment upon resignation, death, or other circumstances, nor is it material to whom he pays the money. For instance, if a golf club requires incoming members, as a condition precedent to membership, to purchase either from it or from retiring members a share of stock, the tax attaches to any such payment for the stock regardless of the fact that it represents a property interest in the assets of the club. Likewise, if the purchase of a share of stock in a landholding corporation is a necessary precedent to membership in the club, the amount paid for the share of stock is an initiation fee. In the case of a transfer of stock from a retiring member, the amount paid by the new member for the stock, as well as any transfer fee required from the new member, is an initiation fee. However, see § 49.4243–2 for the exemption provided in respect of amounts paid for certain capital improvements.

§ 49.4243 Statutory provisions; exemptions.

SEC. 4243. *Exemptions*—(a) *Fraternal organizations.* There shall be exempted from the provisions of section 4241 all amounts paid as dues or fees to a fraternal society, order, or association, operating under the lodge system, or to any local fraternal organization among the students of a college or university.

(b) *Payments for capital improvements.* Notwithstanding any other provision of this part, there shall be exempted from the provisions of section 4241 any amount paid as dues or membership fees or as initiation fees—

(1) For the construction or reconstruction of any social, athletic, or sporting facility, or

(2) For the construction or reconstruction of any capital addition to, or capital improvement of, any such facility, or

(3) For furnishings or fixtures (including installation charges) for any such facility, to the extent that such furnishings or fixtures are required, by reason of the construction or reconstruction described in paragraph (1) or (2), for the use of such facility upon completion of such construction or reconstruction;

except that, in the case of any such amount which is not expended for such construction, reconstruction, furnishings or fixtures (including installation charges) within 3 years after the date of payment of such amount, the exemption provided by this subsection shall cease to apply upon the expiration of such 3-year period, and the club or organization, rather than the person who made such payment, shall be liable for any tax imposed by section 4241 in respect of such payment, as if such payment had been made on the first day following the expiration of such 3-year period.

(c) *Nonprofit swimming or skating facilities.* Under regulations prescribed by the Secretary or his delegate, there shall be exempted from the provisions of section 4241 all amounts paid as dues or fees to any club or other organization organized and operated primarily for the purpose of providing swimming or skating facilities for its members, if no part of the net earnings of such organization inures to the benefit of any private stockholder or individual. This subsection shall apply with respect to an organi-

zation only if it is established to the satisfaction of the Secretary or his delegate that—

(1) Children will be permitted to use the swimming or skating facilities, on the basis of their own membership or the membership of adults;

(2) No beverage subject to tax under chapter 51 (distilled spirits, wines, and beer) will be served or permitted to be consumed on any premises under the control of such organization;

(3) No dining facilities (other than facilities for light refreshment), and no dancing facilities, will be provided on any premises under the control of such organization; and

(4) Such organization is not controlled by, or under common control with, any other organization.

[Sec. 4243 as amended and in effect Jan. 1, 1959, and as further amended by sec. 3 (a), Act of Sept. 21, 1959 (Pub. Law 86-344, 73 Stat. 618)]

§ 49.4243–1 Exemption; fraternal organizations.

In the case of a fraternal society, order, or association, operating under the lodge system, or a local fraternal organization among the students of a college or university, all amounts paid as dues or membership fees, as initiation fees, or for life memberships are exempt from the tax imposed under section 4241. The phrase "operating under the lodge system" means carrying on activities under a form of organization that comprises local branches, chartered by a parent organization and largely self-governing, called "lodges", "chapters", or the like. For example, an organization formed for purely social purposes by Masons of the higher degrees, consisting of local "lodges" and a "grand lodge", falls within the exemption. A "chapter" of a college fraternity and a "local" of a labor union are also within the exemption. However, a national organization of a social, athletic, or sporting character, comprising no local bodies but organized as a single and nationwide unit to which each member belongs directly, does not fall within the exemption.

§ 49.4243–2 Exemption; payments for capital improvements.

(a) *Assessments paid before November 1, 1959*—(1) *In general.* Membership assessments paid during the period January 1, 1959, to October 31, 1959, inclusive, for construction or reconstruction by the club or organization, begun on or after January 1, 1959, of a social, athletic, or sporting facility owned or leased by it are exempt from the tax imposed under section 4241(a)(1) on amounts paid as dues or membership fees. Any such assessment for construction or reconstruction begun on or after January 1, 1959, of a capital addition to, or capital improvement of, any such facility is also exempt from tax. Assessments paid for the retirement of indebtedness (a mortgage loan, for example) incurred by reason of the construction or reconstruction of any such facility, capital addition, or capital improvement are considered to be assessments for construction or reconstruction. Assessments paid for the replenishment of reserve funds expended by the club or organization for construction or reconstruction are also considered to be assessments for such construction or reconstruction. However, assessments for the purchase of land or for the purchase of existing facilities do not come within the exemption. Neither do assessments for ordinary maintenance or repair of club facilities come within the exemption. Moreover, assessments paid are not within the exemption unless they are earmarked by the club or organization at the time of receipt for use as provided in this paragraph.

(2) *Life memberships to which section 4241(a)(3)(A) has application.* In the case of an amount paid for a life membership to which section 4241(a)(3)(A) has application (see paragraph (c)(1) of § 49.4241–1), the benefit of the exemption provided in section 4243(b) accrues in respect of such life membership to the extent that the exemption applies in respect of amounts paid as dues or membership fees of members (other than life members) having privileges most nearly comparable to the person holding such life membership.

(3) *Meaning of terms.* The terms "facility", "capital addition", and "capital improvement" include, for purposes of this paragraph, buildings and any appurtenances thereto, as well as tennis courts, swimming pools, golf courses, etc. Such terms do not include items of personalty, such as furniture, furnishings, vehicles, mechanical or electrical appliances, etc.

(b) *Amounts paid after October 31, 1959, as dues or membership fees, as initiation fees, or for life memberships*—(1) *In general.* Except as otherwise provided in paragraph (c) of this section, any amount constituting dues or membership fees, initiation fees, or a payment for a life membership with respect to which the life member has elected to pay tax pursuant to section 4241(a)(3)(B) (see paragraph (c)(2) of § 49.4241–1), which is paid after October 31, 1959—

(i) For construction or reconstruction by the club or organization, begun on or after January 1, 1959, of any social, athletic, or sporting facility owned or leased by it, or

(ii) For construction or reconstruction by the club or organization, begun on or after January 1, 1959, of any capital addition to, or capital improvement of, any such facility, or

(iii) For furnishings or fixtures, such as furniture, drapes, carpeting, refrigerators, etc. (including installation charges), for any such facility, to the extent that such furnishings or fixtures are required, by reason of the construction or reconstruction described in subdivision (i) or (ii), for the use of such facility upon completion of such construction or reconstruction.

is exempt from the tax imposed under section 4241. Amounts paid for the retirement of indebtedness (a mortgage loan, for example) incurred by reason of the construction or reconstruction of any such facility, capital addition, or capital improvement, or purchase of such furnishings or fixtures for the use of the facility upon completion of construction or reconstruction are exempt from the tax imposed under section 4241. Amounts paid for the replenishment of reserve funds expended by the club or organization for purposes described in subdivisions (i), (ii), or (iii) of this subparagraph are also exempt from the tax imposed under section 4241. However, amounts paid for the purchase of land or for the purchase of existing facilities do not come within the exemption. Neither do amounts paid for ordinary maintenance or repair of club facilities come within the exemption. Moreover, amounts paid are not within the exemption unless they are earmarked by the club or organization at the time of receipt for use as provided in this paragraph.

(2) *Life memberships to which section 4241(a)(3)(A) has application.* In the case of an amount paid for a life membership to which section 4241(a)(3)(A) has application (see paragraph (c)(1) of § 49.4241–1, the benefit of the exemption provided in section 4243(b) accrues in respect of such life membership to the extent that the exemption applies in respect of amounts paid as dues or membership fees of members (other than life members) having privileges most nearly comparable to the person holding such life membership.

(c) *Amounts unexpended for construction or reconstruction, or for furnishings or fixtures.* In the case of any amount paid after October 31, 1959, which is not expended by the club or organization for construction, reconstruction, furnishings or fixtures (including installation charges) as provided in section 4243(b) of the Code, and in paragraph (b) of this section, within three years after date of payment to the club or organization, the exemption provided by section 4243(b) of the Code and in paragraph (b) of this section shall cease to apply upon the expiration of such three-year period. In such case, the club or organization shall be liable for any tax imposed by section 4241 in respect of the unexpended amount, as if the payment had been made on the first day following the expiration of such three-year period. Any basis consistent with the application of this section may be used by the club or organization in determining which amounts paid by its members have been expended for construction or reconstruction within the three-year period.

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

Example (1). A social club operating a golf course and swimming pool assesses each of its members $200, which is used to build locker room facilities and to increase the dining room area of the clubhouse. The amounts so paid by the members are exempt from the tax imposed under section 4241(a)(1).

Example (2). The social club in Example (1) assesses each of its members $20 for the purchase of new carpeting and furniture for use in its dining room which has recently been enlarged. Assessments are paid on July 1, 1959. The assessments are not exempt from the tax imposed under section 4241(a), since furniture and fixtures are not within the scope of the exemption provided by section 4243(b) as in effect prior to November 1, 1959. However, if the assessments are paid on or after November 1, 1959, the exemption provisions would apply to the assessments.

Example (3). The members of a social club paid an assessment of $150,000 for the purchase of 12 acres of land and the subsequent construction of a new clubhouse thereon. The cost of the unimproved real property was $37,500. Since amounts used for the purchase of land are not exempt from tax under section 4241(a)(1), only $112,500, or 75 percent of the $150,000 assessment, is exempt from the tax as an assessment for the construction of a social, athletic, or sporting facility.

Example (4). An athletic club assesses its members $50,000 for the purchase of a building to be used by such club for additional indoor facilities. The amount paid by each member is subject to tax under section 4241(a)(1), since the assessment is for the purchase of existing facilities and not for the construction or reconstruction of a facility.

Example (5). A social club requires the purchase of one share of its capital stock as the initiation fee to become a member. During a financial drive for funds to construct larger dining room facilities, twenty persons joined the club, each paying to the club $100 for a share of the club's capital stock. Information distributed by the club indicated that the money so raised would be used for the expansion of its dining room facilities. During the drive for additional funds, a retiring member of the club sold his share of capital stock to an incoming member. In this example, the initiation fees ($100 for purchase of one share of the club's capital stock) paid to the club by the twenty new members fall within the exemption provided by section 4243(b) as amounts paid for the construction or reconstruction of club facilities. However, the amount paid by the incoming member to the retiring member for his share of capital stock would not be exempt under that section of law, and the club is liable for the collection and reporting of the excise tax imposed under section 4241 on such amount.

Example (6). In 1960 a social club is engaged in a program of reconstruction of the club's dining room, as provided in a resolution adopted in December 1959 by the board of directors of the club. Pursuant to such resolution, all dues or membership fees, initiation fees, and one-half of each payment for a life membership in 1960 are used for such reconstruction. In January 1960, A, B, and C become members of the club. A and B each pay $1,000 for a life membership in the club. C pays an initiation fee of $500 and dues or membership fees in the amount of $50 for 1960 as an active resident annual member. A elects under section 4241(a)(3)(B) to pay the tax on the basis of the amount paid for his life membership (after application of any exemption provided in section 4243). B does not make such an election, and, pursuant to section 4241(a)(3)(A), the tax in respect of his life membership is equivalent to the tax on the amount paid as dues or membership fees of members (other than life members) having privileges most nearly comparable to the privileges afforded him as a life member. B's privileges as a life member are most nearly comparable to those of an active resident annual member. Thus, the tax in respect of the life membership held by B is equivalent to the tax on the amount paid as dues or membership fees of C. Since C's initiation fee and his dues or membership fees paid in 1960 are used for reconstruction of the club's dining room, no tax liability is incurred with respect to them. Inasmuch as no tax liability is incurred in 1960 with respect to C's dues or membership fees, no tax liability is incurred in 1960 with respect to the life membership held by B. However, tax liability of $100($500×20 percent) is incurred in respect of the life membership held by A, who elected under section 4241(a)(3)(B) to pay the tax on the basis of the amount paid for his life membership (after application of any exemption provided in section 4243). Thus, the tax in A's case is computed on $500, since one-half of the $1,000 paid by A for his life membership is used for reconstruction of the club's dining room.

§ 49.4243–3 Exemption; nonprofit swimming or skating facilities.

(a) *In general.* In the case of a club or other organization organized and operated primarily for the purpose of providing swimming or skating (ice or roller) facilities for its members, all amounts paid as dues or membership fees, as initiation fees, or for life memberships are exempt from the tax under section 4241, if—

(1) No part of the net earnings of the club or organization inures to the benefit of any private stockholder or individual,

(2) Children are permitted to use the swimming or skating facilities on the basis of their own membership or the membership of adults,

(3) No alcoholic beverages, such as distilled spirits, wines, or beer, are served or permitted to be consumed on any premises under the control of the organization,

(4) No dining facilities (other than facilities for light refreshment) and no dancing facilities are provided on any premises under the control of the organization, and

(5) The organization is not controlled by, or under common control with, any other organization.

(b) *Meaning of terms*—(1) *Facilities for light refreshment.* For purposes of this section, the term "facilities for light refreshment" means facilities, of a type sometimes referred to as a snack bar, for the preparation and serving of such food or drink as hamburgers, frankfurters, cheeseburgers, soft drinks, ice cream, coffee, milk, milk shakes, and sodas. The term does not include facilities for the preparation and serving of full course luncheons or dinners similar to those served in restaurants.

(2) *Dancing facilities.* The term "dancing facilities" includes facilities for the furnishing of music (live or mechanical) and space, for the purpose of social dancing. The term "social dancing" does not include the rhythmic and patterned movement to music by roller skaters or ice skaters.

(3) *Controlled by, or under common control with, any other organization.* The term "controlled by, or under common control with, any other organization" does not include membership in a national or regional organization for purposes of exchanging information or obtaining helpful guidance and advice.

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

Example (1). A nonprofit skating association provides a skating rink for the use of its adult members and their families, including children. The skating surface can accommodate approximately 150 skaters. Benches are arranged around the sides of the rink for the convenience of members who come to watch others skate and for skaters who desire to rest. Adjacent to the skating surface is a snack bar with 6 small tables. Potato chips, frankfurters, hamburgers, soft drinks, and milk are sold at the snack bar. These refreshments may either be eaten by the skaters while standing or may be carried by them to the tables or benches to be eaten while seated. The skating rink constitutes the only premises under the association's control. Neither dancing nor the consumption of alcoholic beverages is permitted on the premises, and no facilities for the furnishing of food are provided other than those found at the snack bar. The association is not controlled by, or under common control with, any other association. All amounts paid to the association as initiation fees, or as dues or membership fees, or for life memberships are exempt from the tax imposed by section 4241.

Example (2). A swimming club maintains a community swimming pool on a nonprofit basis. It serves no alcoholic beverages on its premises but provides setups for those members who bring their own liquor. In the case of this club, amounts paid as dues or membership fees, as initiation fees, or for life memberships are not within the exemption since the club permits alcoholic beverages to be consumed on the premises.

Example (3). A skating club, a nonprofit community organization, provides ice-skating facilities in the winter, and roller-skating facilities in the summer, for its adult members only. Incidental to its skating facilities, it maintains facilities for tennis, badminton, and ping pong. Light refreshments are sold on the premises. The club also operates a dance hall adjacent to the skating rink. The exemption is not available to the club for two reasons: (1) children are not permitted to use the skating rink, and (2) dancing facilities are provided by the club on premises under its control.

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SUBCHAPTER F—PROCEDURE AND ADMINISTRATION

[T.D. 6543]

PART 301—PROCEDURE AND ADMINISTRATION

Inspection of Returns of Certain Taxes By Certain Persons and State and Federal Government Establishments

Pursuant to sections 6103(a) and 6106 of the Internal Revenue Code of 1954 (68A Stat. 753, 756; 26 U.S.C. 6103(a), 6106) and the Executive order issued thereunder, the following regulations, relating to inspection by certain persons and State and Federal government establishments of returns made in respect of certain taxes imposed by the Internal Revenue Code of 1954, are hereby prescribed. These regulations shall be effective with respect to inspection of returns pursuant to section 6103(a) after the filing of this Treasury decision for publication in the FEDERAL REGISTER. Treasury Decision 6271, approved November 15, 1957, is superseded as to inspection of returns after the effective date of this Treasury decision by paragraph (d)(1) of § 301.6103(a)–1 of these regulations to the extent that such Treasury decision is prescribed under and made applicable to section 6103(a) of the Internal Revenue Code of 1954.

§ 301.6103(a) Statutory provisions; publicity of returns and lists of taxpayers; public record and inspection.

SEC. 6103. *Publicity of returns and lists of taxpayers*—(a) *Public record and inspection.*

(1) Returns made with respect to taxes imposed by chapters 1, 2, 3, and 6 upon which the tax has been determined by the Secretary or his delegate shall constitute public records; but, except as hereinafter provided in this section, they shall be open to inspection only upon order of the President and under rules and regulations prescribed by the Secretary or his delegate and approved by the President.

(2) All returns made with respect to the taxes imposed by chapters 1, 2, 3, 5, 6, 11, 12, and 32, subchapters B, C, and D of chapter 33, and subchapter B of chapter 37, shall constitute public records and shall be open to public examination and inspection to such extent as shall be authorized in rules and regulations promulgated by the President.

(3) Whenever a return is open to the inspection of any person, a certified copy thereof shall, upon request, be furnished to such person under rules and regulations prescribed by the Secretary or his delegate. The Secretary or his delegate may prescribe a reasonable fee for furnishing such copy.

§ 301.6103(a)–1 Inspection of returns by certain classes of persons and State and Federal government establishments pursuant to Executive order.

(a) *In general*—(1) *Authority.* The President is authorized by subsection (a) of section 6103 to open to public examination and inspection returns in respect of the taxes described in paragraphs (1) and (2) of such subsection. In addition, section 6106 provides that returns in respect of the tax described therein (unemployment tax imposed by chapter 23 of the Code) shall be open to inspection in the same manner, to the same extent, and subject to the same provisions of law, including penalties, as returns of the taxes described in section 6103, except that subsections (a)(2) and (b)(2) of section 6103, and subsection (a)(2) of section 7213 (relating to unauthorized disclosure of information) shall not apply.

(2) *Scope.* This section and the Executive order pursuant to which this section is prescribed govern the inspection of returns by the classes of persons and State and Federal government establishments designated in the succeeding paragraphs of this section insofar as such inspection is permissible only upon order of the President and under regulations approved by the President. Specifically, this section relates to inspection of returns made in respect of the taxes imposed by the following subdivisions of the Code: Chapters 1, 2, 3, and 6 (income taxes); chapter 5 (tax on transfers to avoid income tax); chapter 11 (estate tax); chapter 12 (gift tax); chapter 23 (unemployment tax); chapter 32 (manufacturers excise taxes); subchapters B, C, and D of chapter 33 (communications tax, transportation taxes, and tax on safe deposit boxes, respectively); and subchapter B of chapter 37 (tax on coconut and palm oil).

(3) *Terms used*—(i) *Return.* For purposes of section 6103(a), the term "return" includes information returns, schedules, lists, and other written statements filed with the Internal Revenue Service which are designed to be supplemental to or to become a part of the return, and, in the discretion of the Secretary or the Commissioner or the delegate of either, other records or reports containing information included or required by statute to be included in the return. An application for exemption from income tax under section 501(a) filed by an organization described in section 501(c) or (d) in order to establish its exemption is not a return for purposes of section 6103. For provisions opening to public inspection exemption applications with respect to which a determination has been made that the organization is entitled to exemption from income tax under section 501(a), see section 6104(a) and § 301.6104–1.

(ii) *Other terms.* Any word or term used in this section, other than the word "return", which is defined in any chapter of the Code shall be given the definition contained in the chapter which is applicable to the particular return made.

(4) *Cross references.* For special provisions relating to inspection of returns pursuant to Executive order by committees of Congress other than those enumerated in section 6103(d) or by certain designated Federal Government establishments, see the regulations under section 6103(a) in §§ 301.6103(a)–100, et seq.

(b) *Procedure for inspection*—(1) *Authority to permit inspection.* The Secretary or the Commissioner or the delegate of either may grant permission for the inspection of returns in accordance with this section.

(2) *Place of inspection.* Generally, returns may be inspected in the Internal Revenue Service office in which they were filed or in the national office. In appropriate cases, inspection may also be made in other offices of the Internal Revenue Service as designated by the Commissioner. Such inspection shall be made only in the presence of an internal revenue officer or employee and only during the regular hours of business of the Internal Revenue Service office.

(3) *Penalties.* For penalties for unauthorized disclosure of information, see section 7213.

(c) *Inspection by certain classes of persons*—(1) *Returns in respect of income tax, unemployment tax, and certain excise taxes*—(i) *In general.* Returns in respect of the taxes imposed by chapters 1, 2, 3, and 6 (income taxes), chapter 5 (tax on transfers to avoid income tax), chapter 23 (unemployment tax), chapter 32 (manufacturers excise taxes), subchapters B, C, and D of chapter 33 (communications tax, transportation taxes, and tax on safe deposit boxes, respectively), and subchapter B of chapter 37 (tax on coconut and palm oil) of the Code shall be open to inspection as hereinafter provided in this subparagraph by certain persons having a material interest which will be affected by information contained in such returns. The word "return," as used in the succeeding subdivisions of this subparagraph, refers to a return made in respect of any of the taxes described in the preceding sentence except as such word is expressly limited in any such subdivision to the return of a particular tax.

(ii) *Return of individual.* A return of an individual shall be open to inspection—

(*a*) By the individual for whom the return was made;

(*b*) If the individual for whom the return was made is legally incompetent, by the committee, trustee, or guardian of his estate;

(*c*) If the individual for whom the return was made has died, (*1*) by the administrator, executor, or trustee of his estate, (*2*) in the discretion of the Secretary or the Commissioner or the delegate of either, by any heir at law, next of kin, or beneficiary under the will, of such decedent, upon submission of satisfactory evidence that such heir at law, next of kin, or beneficiary has a material interest which will be affected by information contained in the return;

(*d*) If the property of the individual for whom the return was made is in the hands of a receiver or trustee in bankruptcy, by such receiver or trustee; and

(*e*) By the duly constituted attorney in fact of any of the foregoing persons, subject to the conditions of inspection prescribed for such person.

(iii) *Joint return of income tax.* A joint income tax return of husband and wife shall be open to inspection—

(*a*) By either of the individuals for whom the return was made;

(*b*) If either of the individuals for whom the return was made is legally incompetent, by the committee, trustee, or guardian of the estate of such individual;

(*c*) If either of the individuals for whom the return was made has died, (*1*) by the administrator, executor, or trustee of the estate of such decedent, and (*2*) in the discretion of the Secretary or the Commissioner or the delegate of either, by any heir at law, next of kin, or beneficiary under the will, of such decedent, upon submission of satisfactory evidence that such heir at law, next of kin, or beneficiary has a material interest which will be affected by information contained in the return;

(*d*) If the property of either of the individuals for whom the return was made is in the hands of a receiver or trustee in bankruptcy, by such receiver or trustee; and

(*e*) By the duly constituted attorney in fact of any of the foregoing persons, subject to the conditions of inspection prescribed for such person.

(iv) *Return of partnership.* A return of a partnership shall be open to inspection—

(*a*) By any person who was a member of the partnership during any part of the period covered by the return upon submission of satisfactory evidence of such membership;

(*b*) If an individual who was a member of the partnership during any part of the period covered by the return is legally incompetent, by the committee, trustee, or guardian of his estate;

(*c*) If an individual who was a member of the partnership during any part of the period covered by the return has died, (*1*) by the administrator, executor, or trustee of his estate, and (*2*) in the discretion of the Secretary or the Commissioner or the delegate of either, by any heir at law, next of kin, or beneficiary under the will, of such decedent, upon submission of satisfactory evidence

that such heir at law, next of kin, or beneficiary has a material interest which will be affected by information contained in the return;

(*d*) If the property of the partnership is in the hands of a receiver or trustee in bankruptcy, by such receiver or trustee; and

(*e*) By the duly constituted attorney in fact of any of the foregoing persons, subject to the conditions of inspection prescribed for such person.

(v) *Return of estate.* A return of an estate shall be open to inspection—

(*a*) By the administrator, executor, or trustee of the estate;

(*b*) In the discretion of the Secretary or the Commissioner or the delegate of either, by any heir at law, next of kin, or beneficiary under the will, of the decedent for whose estate the return was made, upon submission of satisfactory evidence that such heir at law, next of kin, or beneficiary has a material interest which will be affected by information contained in the return, or, if any such heir at law, next of kin, or beneficiary has died or is legally incompetent, by the administrator, executor, committee, trustee, or guardian of his estate, upon a like submission of evidence; and

(*c*) By the duly constituted attorney in fact of any of the foregoing persons, subject to the conditions of inspection prescribed for such person.

(vi) *Return of trust.* A return of a trust shall be open to inspection—

(*a*) By the trustee or trustees, jointly or severally;

(*b*) By any person who was a beneficiary of the trust during any part of the period covered by the return, upon submission of satisfactory evidence that the person was such a beneficiary;

(*c*) If any individual who was a beneficiary of the trust during any part of the period covered by the return is legally incompetent, by the committee, trustee, or guardian of his estate;

(*d*) If any individual who was a beneficiary of the trust during any part of the period covered by the return has died, (*1*) by the administrator, executor, or trustee of his estate, and (*2*) in the discretion of the Secretary or the Commissioner or the delegate of either, by any heir at law, next of kin, or beneficiary under the will, of such decedent, upon submission of satisfactory evidence that such heir at law, next of kin, or beneficiary has a material interest which will be affected by information contained in the return; and

(*e*) By the duly constituted attorney in fact of any of the foregoing persons, subject to the conditions of inspection prescribed for such person.

(vii) *Return of corporation.* A return of a corporation shall be open to inspection—

(*a*) By any person designated by action of its board of directors, or other similar governing body, upon submission of satisfactory evidence of such action;

(*b*) By any officer or employee of the corporation upon written request signed by any principal officer and attested by the secretary, or other officer, under the corporate seal, if any;

(*c*) By the duly constituted attorney in fact of the corporation;

(*d*) If the property of the corporation is in the hands of a receiver or trustee in bankruptcy, by such receiver or trustee, or by the duly constituted attorney in fact of such receiver or trustee; and

(*e*) In the discretion of the Secretary or the Commissioner or the delegate of either, if the corporation has been dissolved, by any person who under the regulations in this subdivision (vii) might have inspected the return at the date of dissolution.

For provisions relating to inspection of corporation income or unemployment tax returns by shareholders, see section 6103(c) and § 301.6103(c)–1.

(2) *Returns in respect of estate tax.* A return or notice in respect of estate tax imposed by chapter 11 of the Code shall be open to inspection—

(i) By the executor, or his successor in office, or the duly constituted attorney in fact of such executor or successor; and

(ii) In the discretion of the Secretary or the Commissioner or the delegate of either, by any other person upon submission of satisfactory evidence that such person has a material interest either in ascertaining any fact disclosed by the return or notice or in obtaining information as to the payment of the tax.

(3) *Returns in respect of gift tax.* A return in respect of gift tax imposed by chapter 12 of the Code shall be open to inspection—

(i) By the donor or his duly constituted attorney in fact; and

(ii) In the discretion of the Secretary or the Commissioner or the delegate of either, by any other person upon submission of satisfactory evidence that such person has a material interest either in ascertaining any fact disclosed by the return or in obtaining information as to the payment of the tax.

(4) *Applications for inspection.* Applications for permission to inspect returns under this paragraph shall be made in writing to the internal revenue officer (district director or Director of International Operations) with whom the return was filed and shall set forth (i) the name and address of the person for whom the return was made, (ii) the kind of tax reported on the return, (iii) the taxable period covered by the return, (iv) the reason why inspection is desired, and (v) a statement showing that the applicant is a person entitled under this paragraph to make the inspection requested.

(d) *Inspection by States, the District of Columbia, and Puerto Rico of returns in respect of certain taxes*—(1) *Inspection of estate and gift tax returns by States, the District of Columbia, and Puerto Rico.* Returns and notices in respect of estate tax imposed by chapter 11 of the Code and returns in respect of gift tax imposed by chapter 12 of the Code may, in the discretion of the Secretary or the Commissioner or the delegate of either, be made available for inspection by any properly authorized official, body, or commission, lawfully charged with the administration of any tax law of a State, the District of Columbia, or Puerto Rico, for the purpose of such administration, provided a like cooperation is given by the State, District of Columbia, or Puerto Rico to the Commissioner and his representatives with respect to the inspection of returns of estate, inheritance, legacy, succession, gift, or other tax of the State, District of Columbia, or Puerto Rico, for use in the administration of the Federal tax laws.

(2) *Inspection of unemployment tax returns by States, the District of Columbia, and Puerto Rico.* Returns in respect of the unemployment tax imposed by chapter 23 of the Code may, in the discretion of the Secretary or the Commissioner or the delegate of either, be made available for inspection by any properly authorized official of a State, the District of Columbia, or Puerto Rico, provided (i) such government has a law certified to the Secretary as having been approved in accordance with section 3304, and (ii) the inspection is solely for the purpose of administering such law.

(3) *Inspection of excise tax returns by States, the District of Columbia, and Puerto Rico.* Returns in respect of the excise taxes imposed by chapter 5 (tax on transfers to avoid income tax); chapter 32 (manufacturers excise taxes); subchapters B, C, and D of chapter 33 (communications tax, transportation taxes, and tax on safe deposit boxes, respectively); and subchapter B of chapter 37 (tax on coconut and palm oil) may, in the discretion of the Secretary or the Commissioner or the delegate of either, be made available for inspection by any properly authorized official, body, or commission, lawfully charged with the administration of any tax law of a State, the District of Columbia, or Puerto Rico, for the purpose of such administration.

(4) *Inspection of income tax returns by District of Columbia and Puerto Rico.* Returns in respect of income tax imposed by chapter 1, 2, 3, or 6 of the Code, may, in the discretion of the Secretary or the Commissioner or the delegate of either, be made available for inspection by any properly authorized official, body, or commission, lawfully charged with the administration of any tax law of the District of Columbia or Puerto Rico, for the purpose of such administration.

(5) *Applications for inspection*—(i) *In general.* Application for the inspection provided for in subparagraph (1), (2), (3), or (4) of this paragraph shall be made in writing and signed by the governor of the State or the executive head of the District of Columbia or Puerto Rico, and shall be addressed to the Commissioner of Internal Revenue, Washington 25, D.C. The application shall state—

(*a*) The title of the official, body, or commission by whom or which inspection is to be made;

(*b*) By specific reference, the law of the State, District of Columbia, or Puerto Rico which such official, body, or commission is charged with administering and the law under which he or it is so charged;

(*c*) The purpose for which the inspection is to be made; and

(*d*) If inspection of estate or gift tax returns is requested, that the State, Dis-

trict of Columbia, or Puerto Rico, as the case may be, gives to the Commissioner and his representatives like cooperation with respect to the inspection of returns of estate, inheritance, legacy, succession, gift, or other tax of the State, District of Columbia, or Puerto Rico, for use in the administration of the Federal tax laws.

(ii) *Returns filed in internal revenue district within or including State or other entity requesting inspection—(a) General inspection.* Upon application by a State, the District of Columbia, or Puerto Rico, permission may be granted for general inspection of returns of the taxes specified in subparagraph (1), (2), (3), or (4) of this paragraph which are filed in an internal revenue district within or including such State or District or, in the case of Puerto Rico, with the Director of International Operations. If such general inspection is desired, the application made to the Commissioner in accordance with subdivision (i) of this subparagraph shall include a statement that general inspection is desired of a specified class or classes of returns (for example, estate tax returns, gift tax returns, etc.). Permission granted to a State, the District of Columbia, or Puerto Rico for the general inspection provided for in this subdivision shall, except as hereinafter provided in the case of unemployment tax returns, continue in effect until such time as the Secretary or the Commissioner or the delegate of either, by written notice to the governor of the State or the executive head of the District of Columbia or Puerto Rico, provides that such inspection will be permitted only on the basis of periodic applications therefor. Permission for general inspection of unemployment tax returns will terminate without notice at such time as the State, District of Columbia, or Puerto Rico ceases to have a law certified to the Secretary as having been approved in accordance with section 3304. The governor of the State or the executive head of the District of Columbia or Puerto Rico, as the case may be, shall supply in writing to the internal revenue officer (district director or Director of International Operations) with whom the returns to be inspected were filed a list of the names of the individuals designated to make the inspection on behalf of the official, body, or commission named in the application to the Commissioner, and shall keep such list current by appropriate deletions or additions as may be necessary.

(b) *Inspection of specific returns.* Permission granted pursuant to (a) of this subdivision for general inspection of returns of a particular tax includes permission to inspect specifically identified returns of such tax when desired. However, if a State, the District of Columbia, or Puerto Rico is interested only in examining certain returns of particular taxpayers, the application for inspection of such returns shall be made to the Commissioner as provided in subdivision (i) of this subparagraph and, in addition to the information outlined in such subdivision, shall state the name and address of each taxpayer whose return or returns it is desired to inspect, the kind of tax reported on each such return, the taxable period covered by each such return, and the names of the individuals designated to make the inspection on behalf of the official, body, or commission named in the application.

(iii) *Returns filed in other internal revenue districts.* In the case of returns filed in an internal revenue district other than one within or including the State or District of Columbia requesting inspection or, if the inspection is requested by Puerto Rico, filed elsewhere than with the Director of International Operations, permission for the inspection provided for in subparagraphs (1), (2), (3), and (4) of this paragraph will be granted only with respect to specifically identified returns. The application for such inspection shall be made to the Commissioner as provided in subdivision (i) of this subparagraph and, in addition to the information outlined in such subdivision and in subdivision (ii) (*b*) of this subparagraph, shall specify the internal revenue district or office in which the returns to be inspected are believed to have been filed.

(6) *Time and place of inspection.* A convenient time and place for the inspection of returns permitted under this paragraph will be arranged by the internal revenue officer (district director or Director of International Operations) with whom the returns were filed.

(7) *Cross reference.* For other provisions relating to inspection of returns on behalf of States or political subdivisions thereof, see section 6103(b) and § 301.6103(b)–1.

(e) *Inspection of returns by Department of the Treasury.* Officers and employees of the Department of the Treasury whose official duties require inspection of returns made in respect of any tax described in paragraph (a) (2) of this section may inspect any such returns without making written application therefor. If the head of a bureau or office in the Department of the Treasury, not a part of the Internal Revenue Service, desires to inspect, or to have an employee of his bureau or office inspect, any such return in connection with some matter officially before him for reasons other than tax administration purposes, the inspection may, in the discretion of the Secretary or the Commissioner or the delegate of either, be permitted upon written application by the head of the bureau or office desiring the inspection. The application shall be made to the Commissioner of Internal Revenue, Washington 25, D.C, and shall show (1) the name and address of the person for whom the return was made, (2) the kind of tax reported on the return, (3) the taxable period covered by the return, and (4) the reason why inspection is desired. The information obtained from inspection pursuant to this paragraph may be used as evidence in any proceeding, conducted by or before any department or establishment of the United States, or to which the United States is a party.

(f) *Inspection of returns by executive departments other than the Department of the Treasury and by other establishments of the Federal Government.* Except as provided in paragraphs (d) and (g) of this section, if the head of an executive department (other than the Department of the Treasury), or of any other establishment of the Federal Government, desires to inspect, or to have some other officer or employee of his department or establishment inspect, a return in respect of any tax described in paragraph (a) (2) of this section in connection with some matter officially before him, the inspection may, in the discretion of the Secretary of the Treasury or the Commissioner of Internal Revenue or the delegate of either, be permitted upon written application signed by the head of the executive department or other Government establishment desiring the inspection. The application shall be made to the Commissioner of Internal Revenue, Washington 25, D.C., and shall set forth (1) the name and address of the person for whom the return was made, (2) the kind of tax reported on the return, (3) the taxable period covered by the return, (4) the reason why inspection is desired, and (5) the name and the official designation of the person by whom the inspection is to be made. The information obtained from inspection pursuant to this paragraph may be used as evidence in any proceeding, conducted by or before any department or establishment of the United States, or to which the United States is a party.

(g) *Inspection of returns by United States attorneys and attorneys of Department of Justice.* A return in respect of any tax described in paragraph (a) (2) of this section shall be open to inspection by a United States attorney or by an attorney of the Department of Justice where necessary in the performance of his official duties. The application for inspection shall be in writing and shall show (1) the name and address of the person for whom the return was made, (2) the kind of tax reported on the return, (3) the taxable period covered by the return, and (4) the reason why inspection is desired. The application shall, where the inspection is to be made by a United States attorney, be signed by such attorney, and, where the inspection is to be made by an attorney of the Department of Justice, be signed by the Attorney General, Deputy Attorney General, or an Assistant Attorney General. The application may be addressed to the Commissioner of Internal Revenue, Washington 25, D.C., or to the internal revenue officer (district director or Director of International Operations) with whom the return was filed.

(h) *Use of returns in litigation.* Returns made in respect of any tax described in paragraph (a) (2) of this section, or copies thereof, may be furnished by the Secretary or the Commissioner or the delegate of either to a United States attorney or an attorney of the Department of Justice for official use in proceedings before a United States grand jury or in litigation in any court, if the United States is interested in the result, or for use in preparation for such proceedings or litigation. The original return will be furnished only in exceptional

cases, and then only if it is made to appear that the ends of justice may otherwise be defeated. Returns or copies thereof will be furnished without written application therefor to United States attorneys and attorneys of the Department of Justice for official use in the prosecution of claims and demands by, and offenses against, the United States, or the defense of claims and demands against the United States or officers or employees thereof, in cases arising under the internal revenue laws or related statutes which were referred by the Department of the Treasury to the Department of Justice for such prosecution or defense. In all other cases, written application for a return or copies thereof shall be made to the Commissioner of Internal Revenue, Washington 25, D.C., or where it is desired that a return or copies thereof be furnished by the internal revenue officer (district director or Director of International Operations) with whom the return was filed, the application shall be made to such officer. The application shall be signed by the United States attorney if the return or copy is for his use, or by the Attorney General, the Deputy Attorney General, or an Assistant Attorney General if the return or copy is for the use of an attorney of the Department of Justice. For provisions relating to the certification of copies of returns, see § 301.6103(a)–2. If a return, or copy thereof, is furnished pursuant to this paragraph, it shall be limited in use to the purpose for which it is furnished and is under no condition to be made public except to the extent that publicity necessarily results from such use. Neither the original nor a copy of a return desired for use in litigation in court will be furnished if the United States is not interested in the result, but this provision is not a limitation on the use of copies of returns by the persons entitled thereto. See paragraphs (e) and (f) of this section for use, in proceedings to which the United States is a party, of information obtained by executive departments and other Federal Government establishments from inspection of returns.

(i) *Disclosures by internal revenue officers for investigative purposes.* An internal revenue officer engaged in an official investigation of the liability in connection with any return or notice in respect of estate tax imposed by chapter 11, or any return in respect of gift tax imposed by chapter 12, of the Code may disclose the returned value of any item, the amount of any specific deduction, or other limited information, if the disclosure is necessary in order to verify such value, deduction, or other information, or to arrive at a correct determination of the tax. This right of disclosure, however, is limited to the purpose of the investigation, and in no case extends to such information as the amount of the estate or gift, the amount of the tax, or other general data.

(j) *Inspection of accepted offers in compromise.* Subject to such rules and under such circumstances as the Secretary or the Commissioner shall determine to be in the public interest, returns in respect of income tax imposed by chapter 1, 2, 3, or 6, estate tax imposed by chapter 11, or gift tax imposed by chapter 12, of the Code, shall be open to inspection to the extent necessary to permit examination of any accepted offer in compromise under section 7122 relative to the liability for any such tax.

Because this Treasury decision constitutes a general statement of policy and establishes rules of Departmental practice and procedure, it is found that it is unnecessary to issue this Treasury decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4(c) of that Act.

[SEAL] FRED C. SCRIBNER, Jr.,
Acting Secretary of the Treasury.

Approved: January 17, 1961.

DWIGHT D. EISENHOWER,
The White House.

[F.R. Doc. 61–569; Filed, Jan. 18, 1961; 2:09 p.m.]

[T.D. 6544]

PART 301—PROCEDURE AND ADMINISTRATION

Inspection by Renegotiation Board of Income Tax Returns

§ 301.6103(a)–105 Inspection by Renegotiation Board of income tax returns made under the Internal Revenue Code of 1954.

(a) Pursuant to the provisions of section 6103(a) of the Internal Revenue Code of 1954 (68A Stat. 753; 26 U.S.C. 6103(a)) and of the Executive order issued thereunder, and in the interest of the internal management of the Government, income tax returns made under such Code shall be open to inspection by the Renegotiation Board. The inspection of returns herein authorized may be made by any officer or employee of the Renegotiation Board duly authorized by the Chairman of the Board to make such inspection. Upon written notice by the Chairman to the Secretary of the Treasury stating the classes of returns which it is desired to inspect, the Secretary, or any officer or employee of the Department of the Treasury with the approval of the Secretary, may furnish the Renegotiation Board with any data on such returns or may make the returns available for inspection and the taking of such data as the Chairman of the Board may designate. Such data shall be furnished, or such returns shall be made available for inspection, in the office of the Commissioner of Internal Revenue. Any information thus obtained shall be held confidential except that it may be published or disclosed in statistical form provided such publication does not disclose, directly or indirectly, the name or address of any taxpayer.

(b) This section shall be effective upon its filing for publication in the FEDERAL REGISTER.

[SEAL] FRED C. SCRIBNER, Jr.
Acting Secretary of the Treasury.

Approved: January 17, 1961.

DWIGHT D. EISENHOWER,
The White House.

[F.R. Doc. 61–570; Filed, Jan. 18, 1961; 2:09 p.m.]

[T.D. 6545]

PART 301—PROCEDURE AND ADMINISTRATION

Inspection by Federal Trade Commission of Income Tax Returns of Corporations

§ 301.6103(a)–106 Inspection by Federal Trade Commission of income tax returns of corporations made under the Internal Revenue Code of 1954.

(a) Pursuant to the provisions of section 6103(a) of the Internal Revenue Code of 1954 (68A Stat. 753; 26 U.S.C. 6103(a)) and of the Executive order issued thereunder, and in the interest of the internal management of the Government, income tax returns of corporations made under such Code shall be open to inspection by the Federal Trade Commission as an aid in executing the powers conferred upon such Commission by the Federal Trade Commission Act of September 26, 1914 (38 Stat. 717). The inspection of returns herein authorized may be made by any officer or employee of the Federal Trade Commission duly authorized by the Chairman of the Commission to make such inspection. Upon written notice by the Chairman to the Secretary of the Treasury, the Secretary, or any officer or employee of the Department of the Treasury with the approval of the Secretary, may furnish the Federal Trade Commission with any data on such returns or may make the returns available for inspection and the taking of such data as the Chairman of the Commission may designate. Such data shall be furnished, or such returns shall be made available for inspection, in the office of the Commissioner of Internal Revenue. Any information thus obtained shall be held confidential except that it may be published or disclosed in statistical form provided such publication does not disclose, directly or indirectly, the name or address of any taxpayer.

(b) This section shall be effective upon its filing for publication in the FEDERAL REGISTER.

[SEAL] FRED C. SCRIBNER, Jr.,
Acting Secretary of the Treasury.

Approved: January 17, 1961.

DWIGHT D. EISENHOWER,
The White House.

[F.R. Doc. 61–571; Filed, Jan. 18, 1961; 2:09 p.m.]

[T. D. 6546]

PART 301—PROCEDURE AND ADMINISTRATION

The following regulations, relating to publicity of returns and similar matters in respect of certain taxes imposed by the Internal Revenue Code of 1954, are hereby prescribed under section 6103 (other than subsection (a) (1) and (2)) and sections 6105 to 6109, inclusive, of such Code, effective upon their filing for publication in the FEDERAL REGISTER:

AUTHORITY: §§ 301.6103(a)-2 to 301.6109, issued under sec. 7805, I.R.C. 1954; 68A Stat. 917; 26 U.S.C. 7805.

§ 301.6103(a)-2 Copies of returns.

Any person who may be permitted to inspect a return under section 6103 and § 301.6103(a)-1, § 301.6103(b)-1, or § 301.6103(c)-1 may be furnished with a copy of such return upon request. If the request for a copy of a return is made other than at the time of inspection of such return by the applicant, the request shall be in writing, shall adequately identify the return a copy of which is desired, and shall be accompanied by satisfactory evidence that the applicant qualifies as one of the persons or governmental agencies to whom or which inspection of the return may be permitted. Except as otherwise provided in this section, applications for copies of returns should be submitted to the Commissioner of Internal Revenue, Washington 25, D.C., who is authorized to furnish such copies and to certify them upon request under the official seal of his office or under the official seal of the Department of the Treasury. Where the applicant is (a) a person who may be permitted under paragraph (c) of § 301.6103(a)-1 to inspect a return, (b) an official of a State, the District of Columbia, or Puerto Rico entitled to inspect returns under paragraph (d) of § 301.6103(a)-1 or under § 301.6103(b)-1, or (c) a shareholder entitled under § 301.6103(c)-1 to inspect returns of the corporation of which he is a shareholder, the application for a copy of the return should be submitted to, and such copy may be furnished by, the internal revenue officer (district director or the Director of International Operations) with whom the return was filed. Any copy so furnished by the district director or the Director of International Operations may, upon request, be certified by him under his official seal. Applications for copies of returns available to United States attorneys or attorneys of the Department of Justice pursuant to paragraph (g) or (h) of § 301.6103(a)-1 may be submitted to, and such copies may be furnished and certified under seal by, the Commissioner or, where desired, the district director or the Director of International Operations, as the case may be, with whom the returns were filed. Where such application is required to be in writing it shall be signed by the United States attorney if the copy is for his use, or by the Attorney General, the Deputy Attorney General, or an Assistant Attorney General if the copy is for the use of an attorney of the Department of Justice. The Commissioner may prescribe a reasonable fee for furnishing copies of returns.

§ 301.6103(b) Statutory provisions; publicity of returns and lists of taxpayers; inspection by States.

SEC. 6103. *Publicity of returns and lists of taxpayers.* * * *

(b) *Inspection by States*—(1) *State officers.* The proper officers of any State may, upon the request of the governor thereof, have access to the returns of any corporation, or to an abstract thereof showing the name and income of any corporation, at such times and in such manner as the Secretary or his delegate may prescribe.

(2) *State bodies or commissions.* All income returns filed with respect to the taxes imposed by chapters 1, 2, 3, and 6 (or copies thereof, if so prescribed by regulations made under this subsection), shall be open to inspection by any official, body, or commission, lawfully charged with the administration of any State tax law, if the inspection is for the purpose of such administration or for the purpose of obtaining information to be furnished to local taxing authorities as provided in this paragraph. The inspection shall be permitted only upon written request of the governor of such State, designating the representative of such official, body, or commission to make the inspection on behalf of such official, body, or commission. The inspection shall be made in such manner, and at such times and places, as shall be prescribed by regulations made by the Secretary or his delegate. Any information thus secured by any official, body, or commission of any State may be used only for the administration of the tax laws of such State, except that upon written request of the governor of such State any such information may be furnished to any official, body, or commission of any political subdivision of such State, lawfully charged with the administration of any political subdivision of such division, but may be furnished only for the purpose of, and may be used only for, the administration of such tax laws.

§ 301.6103(b)-1 Inspection by States.

(a) *Corporation returns of income tax or unemployment tax.* Under the provisions of sections 6103(b)(1) and 6106, the proper tax officers of a State shall have access, upon application made in accordance with the provisions of this paragraph, to the returns filed by any corporation with respect to the taxes imposed by chapters 1, 3, and 6 of the Code and with respect to the unemployment tax imposed by chapter 23 of the Code, or to abstracts of such returns. Application for access to the returns of any corporation, or abstracts thereof, shall be in writing signed by the governor of the State and addressed to the Commissioner of Internal Revenue, Washington 25, D.C. The application shall set forth the reason why access is desired; the names and official positions of the officers designated to have such access; and, with respect to each return to which access is desired, the name and address of the corporation filing the return, the kind of tax (income tax or unemployment tax) reported on the return, and the taxable year covered by the return.

(b) *Income tax returns*—(1) *In general.* Income tax returns filed with respect to the taxes imposed by chapters 1, 2, 3, and 6 of the Code shall, upon application made in accordance with the provisions of this paragraph, be open to inspection by any official, body, or commission, lawfully charged with the administration of any State tax law, or any properly designated representative of such official, body, or commission, if the inspection is for the purpose of such administration or for the purpose of obtaining information to be furnished to local taxing authorities as provided in section 6103(b)(2). The application shall be made in writing and signed by the governor of the State and shall be addressed to the Commissioner of Internal Revenue, Washington 25, D.C. The application shall state—

(i) The title of the official, body, or commission by whom or which the inspection is to be made;

(ii) By specific reference, the State tax law which such official, body, or commission is charged with administering and the law under which he or it is so charged;

(iii) The purpose for which the inspection is to be made; and

(iv) If the inspection is for the purpose of obtaining information to be furnished to local taxing authorities, (*a*) the title of the official, body, or commission of each political subdivision of the State, lawfully charged with the administration of the tax laws of such political subdivision, to whom or to which the information secured by the inspection is to be furnished, and (*b*) the purpose for

which the information is to be used by such official, body, or commission.

(2) *Returns filed in internal revenue district within or including State*—(i) *General inspection.* Permission may be granted by the Commissioner to any State for general inspection of returns of the taxes imposed by chapters 1, 2, 3, and 6 of the Code which are filed in an internal revenue district within or including such State. If such general inspection is desired, the application made to the Commissioner in accordance with subparagraph (1) of this paragraph shall include a statement that general inspection is desired of returns filed in the internal revenue district or districts within or including the State with respect to the taxes imposed by chapters 1, 2, 3, and 6 of the Code. Permission granted for the general inspection provided for in this subdivision shall continue in effect until such time as the Commissioner by written notice to the governor of the State provides that such inspection will be permitted only on the basis of periodic applications therefor. The governor shall supply to the district director with whom the returns to be inspected were filed a written list of the names of the individuals designated to make the inspection on behalf of the official, body, or commission named in the application to the Commissioner, and shall keep such list current by appropriate deletions or additions as may be necessary.

(ii) *Inspection of specific returns.* Permission for the general inspection provided in subdivision (i) of this subparagraph includes permission to inspect a specifically identified return when desired. However, a State interested only in examining the returns of particular taxpayers may inspect such returns on written application therefor to the Commissioner. The application in such case shall state, in addition to the information outlined in subparagraph (1) of this paragraph, the name and address of each taxpayer whose return or returns it is desired to inspect, the taxable year covered by each such return, and the names of the individuals designated to make the inspection on behalf of the official, body, or commission named in the application.

(3) *Returns filed in other internal revenue districts.* In the case of returns filed with the Director of International Operations or in an internal revenue district other than one within or including the State requesting the inspection, permission for the inspection provided for in subparagraph (1) of this paragraph will be granted only with respect to specifically identified returns. The application for such inspection shall be made to the Commissioner as provided in subparagraph (1) of this paragraph and, in addition to the information outlined in such subparagraph and in subparagraph (2)(ii) of this paragraph, shall specify the internal revenue district or office in which the returns to be inspected are believed to have been filed.

(c) *Time and place of inspection.* The internal revenue officer (district director or Director of International Operations) with whom the returns were filed is authorized to make such returns available in accordance with permission granted by the Commissioner pursuant to this section. Such officer shall set a convenient time and place for the inspection. The inspection will be permitted only in the presence of an internal revenue officer or employee and only in an office of the Internal Revenue Service during the regular hours of business of such office.

(d) *Definition of return.* For purposes of section 6103(b) and this section, the term "return" includes information returns, schedules, lists, and other written statements filed with the Internal Revenue Service which are designed to be supplemental to or to become a part of the return, and, in the discretion of the Commissioner, other records or reports containing information included or required by statute to be included in the return. An application for exemption from income tax under section 501 (a) filed by an organization described in section 501 (c) or (d) in order to establish its exemption is not a return for purposes of section 6103(b). For provisions opening to public inspection exemption applications with respect to which a determination has been made that the organization is entitled to exemption from income tax under section 501(a), see section 6104(a) and § 301.6104–1.

(e) *Cross reference.* For additional provisions relating to inspection of returns on behalf of States, see paragraph (d) of § 301.6103(a)–1. For penalties for unauthorized disclosure of information, see section 7213.

§ 301.6103(c) Statutory provisions; publicity of returns and lists of taxpayers; inspection by shareholders.

SEC. 6103. *Publicity of returns and lists of taxpayers.* * * *

(c) *Inspection by shareholders.* All bona fide shareholders of record owning 1 percent or more of the outstanding stock of any corporation shall, upon making request of the Secretary or his delegate, be allowed to examine the annual income returns of such corporation and of its subsidiaries.

§ 301.6103(c)–1 Inspection of corporation returns by shareholders.

(a) *In general.* Under the provisions of sections 6103(c) and 6106, a bona fide shareholder of record owning one percent or more of the outstanding stock of a corporation shall be allowed, upon request, to examine the annual income tax returns and unemployment tax returns of such corporation and its subsidiaries. A person is not a bona fide shareholder of record within the meaning of section 6103(c) if he acquired his shares for the purpose of obtaining the right to inspect the returns of the corporation. The privilege of inspecting returns in accordance with section 6103(c) and this section is personal to the shareholder and cannot be delegated. In the case of a corporation which has been dissolved, the returns may be examined by any shareholder who would have been entitled to examine them at the date of dissolution.

(b) *Applications.* Request for permission to inspect returns under this section shall be made in writing and verified by affidavit. The request shall be submitted to the district director or the Director of International Operations, as the case may be, with whom the return was filed. The request shall set forth (1) the name and address of the applicant, (2) the name and address of the corporation whose return or returns it is desired to inspect, (3) the kind of tax and the taxable period covered by each return it is desired to inspect, (4) the amount of the corporation's outstanding capital stock, (5) the number of shares owned by the applicant and the date or dates on which he acquired them, (6) whether the applicant has the beneficial as well as the record title to such shares, and (7) that the applicant did not acquire the shares for the purpose of obtaining the right to inspect the returns of the corporation. The request shall be accompanied by evidence establishing that the applicant is a bona fide shareholder of record of the required amount of stock of the corporation. Such evidence may be in the form of a certificate signed by the president or vice president of the corporation and countersigned by the secretary under the corporate seal.

(c) *Time and place of inspection.* The district director or the Director of International Operations, upon being satisfied from the evidence presented that the applicant meets the statutory requirements, shall grant permission to examine the returns and shall set a convenient time and place for the examination. Examination of returns by shareholders will be permitted only in the presence of an internal revenue officer or employee and only in an office of the Internal Revenue Service during the regular hours of business of such office.

(d) *Definition of return.* For purposes of section 6103(c) and this section, the term "return" includes information returns, schedules, lists, and other written statements filed with the Internal Revenue Service which are designed to be supplemental to or to become a part of the return, and, in the discretion of the Commissioner, other records or reports containing information included or required by statute to be included in the return. An application for exemption from income tax under section 501 (a) filed by an organization described in section 501 (c) or (d) in order to establish its exemption is not a return for purposes of section 6103(c). For provisions opening to public inspection exemption applications with respect to which a determination has been made that the organization is entitled to exemption from income tax under section 501(a), see section 6104(a) and § 301.6104–1.

(e) *Penalties.* For penalties for unauthorized disclosure of information, see section 7213.

§ 301.6103(d) Statutory provisions; publicity of returns and lists of taxpayers; inspection by committees of Congress.

SEC. 6103. *Publicity of returns and lists of taxpayers.* * * *

(d) *Inspection by committees of Congress*—(1) *Committees on Ways and Means and Finance.* (A) The Secretary and any

officer or employee of the Treasury Department, upon request from the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, or a select committee of the Senate or House specially authorized to investigate returns by a resolution of the Senate or House, or a joint committee so authorized by concurrent resolution, shall furnish such committee sitting in executive session with any data of any character contained in or shown by any return.

(B) Any such committee shall have the right, acting directly as a committee, or by or through such examiners or agents as it may designate or appoint, to inspect any or all of the returns at such times and in such manner as it may determine.

(C) Any relevant or useful information thus obtained may be submitted by the committee obtaining it to the Senate or the House, or to both the Senate and the House, as the case may be.

(2) *Joint Committee on Internal Revenue Taxation.* The Joint Committee on Internal Revenue Taxation shall have the same right to obtain data and to inspect returns as the Committee on Ways and Means or the Committee on Finance, and to submit any relevant or useful information thus obtained to the Senate, the House of Representatives, the Committee on Ways and Means, or the Committee on Finance. The Committee on Ways and Means or the Committee on Finance may submit such information to the House or to the Senate, or to both the House and the Senate, as the case may be.

§ 301.6103(d)–1 Inspection by committees of Congress.

(a) *Committees on Ways and Means and Finance and joint and select committees specially authorized to investigate returns.* The Secretary and any officer or employee of the Treasury Department, upon request from the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, or a select committee of the Senate or House specially authorized to investigate returns by a resolution of the Senate or House, or a joint committee so authorized by concurrent resolution, shall furnish such committee sitting in executive session with any data of any character contained in or shown by any return. Any such committee shall have the right, acting directly as a committee, or by or through such examiners or agents as it may designate or appoint, to inspect any or all of the returns at such times and in such manner as it may determine. Any relevant or useful information thus obtained may be submitted by the committee obtaining it to the Senate or the House, or to both the Senate and the House, as the case may be.

(b) *Joint Committee on Internal Revenue Taxation.* The Joint Committee on Internal Revenue Taxation shall have the same right to obtain data and to inspect returns as the Committee on Ways and Means or the Committee on Finance, and the right to submit any relevant or useful information thus obtained to the Senate, the House of Representatives, the Committee on Ways and Means, or the Committee on Finance. The Committee on Ways and Means or the Committee on Finance may submit such information to the House or to the Senate, or to both the House and the Senate, as the case may be. See also section 8023 for authority of the Joint Committee to obtain additional data.

(c) *Applications for tax exemption.* The application for exemption of any organization described in section 501 (c) or (d) which is exempt from taxation under section 501(a) for any taxable year, and any other papers which are in the possession of the Internal Revenue Service and which relate to such application, shall, in accordance with section 6104(a)(2), be made available to any committee of Congress designated in paragraph (a) or (b) of this section as if such papers constituted returns.

§ 301.6103(e) Statutory provisions; publicity of returns and lists of taxpayers; declarations of estimated tax.

SEC. 6103. *Publicity of returns and lists of taxpayers.* * * *

(e) *Declarations of estimated tax.* For purposes of this section, a declaration of estimated tax shall be held and considered a return under this chapter.

§ 301.6103(f) Statutory provisions; publicity of returns and lists of taxpayers; inspection of list of taxpayers.

SEC. 6103. *Publicity of returns and lists of taxpayers.* * * *

(f) *Inspection of list of taxpayers.* The Secretary or his delegate shall as soon as practicable in each year cause to be prepared and made available to public inspection in such manner as he may determine, in the office of the principal internal revenue officer for the internal revenue district in which the return was filed, and in such other places as he may determine, lists containing the name and the post-office address of each person making an income tax return in such district.

§ 301.6103(f)–1 Public lists of persons making returns of income tax and of unemployment tax.

In accordance with the provisions of sections 6103(f) and 6106, the district director for each internal revenue district (including the Director of International Operations) shall prepare as soon as practicable in each year and make available to public inspection in his office during regular hours of business—

(a) Lists containing the name and post-office address of each person filing an income tax return in such district; and

(b) Lists containing the name and post-office address of each person filing a return in such district in respect of unemployment tax imposed by chapter 23 of the Code.

NOTE: Sections 301.6104 to 301.6104–2, inclusive, were prescribed by Treasury Decision 6331, approved October 30, 1958, and amended in respect of § 301.6104–1 by Treasury Decision 6391, approved June 25, 1959.

§ 301.6105 Statutory provisions; compilation of relief from excess profits tax cases.

SEC. 6105. *Compilation of relief from excess profits tax cases.* The Secretary or his delegate shall compile for each fiscal year beginning after June 30, 1941, by internal revenue districts, and alphabetically arranged, all cases in which relief has been allowed during such year under the provisions of section 722 of the Internal Revenue Code of 1939, as amended, by the Secretary or his delegate and by the Tax Court of the United States, as the case may be. Such compilation shall contain the name and address of each taxpayer to which relief has been so allowed, the business in which the taxpayer is engaged, the amount of the excess profits credit before such allowance, the increase in such credit claimed, the increase in such credit allowed, and the amount of the gross reduction in the tax under subchapter E of chapter 2 of the Internal Revenue Code of 1939, as amended, and of the gross increase in the tax under chapter 1 of such Code, which results from the operation of section 722 of the Internal Revenue Code of 1939, as amended. In the case of relief allowed by the Tax Court of the United States, the Secretary or his delegate shall set forth the data previously reported under this section or section 722(g) of the Internal Revenue Code of 1939, as amended, with respect to relief previously allowed in such case by the Secretary or his delegate. Such compilation shall be published in the FEDERAL REGISTER.

§ 301.6105–1 Compilation of relief from excess profits tax cases.

Pursuant to and in accordance with the provisions of section 6105, the Commissioner shall make and publish in the FEDERAL REGISTER a compilation, for each fiscal year beginning after June 30, 1941, of all cases in which relief under the provisions of section 722 of the Internal Revenue Code of 1939, as amended, has been allowed during such fiscal year by the Commissioner and by the Tax Court of the United States.

§ 301.6106 Statutory provisions; publicity of unemployment tax returns.

SEC. 6106. *Publicity of unemployment tax returns.* Returns filed with respect to the tax imposed by chapter 23 shall be open to inspection in the same manner, to the same extent, and subject to the same provisions of law, including penalties, as returns described in section 6103, except that paragraph (2) of subsections (a) and (b) of section 6103 and section 7213(a)(2) shall not apply.

§ 301.6106–1 Publicity of unemployment tax returns.

For provisions relating to publicity of returns made in respect of unemployment tax imposed by chapter 23 of the Code, see §§ 301.6103(a)–1, 301.6103(b)–1, 301.6103(c)–1, 301.6103(d)–1, and 301.6103(f)–1.

§ 301.6107 Statutory provisions; list of special taxpayers for public inspection.

SEC. 6107. *List of special taxpayers for public inspection.* In the principal internal revenue office in each internal revenue district there shall be kept, for public inspection, an alphabetical list of the names of all persons who have paid special taxes under subtitle D or E within such district. Such list shall be prepared and kept pursuant to regulations prescribed by the Secretary or his delegate, and shall contain the time, place, and business for which such special taxes have been paid, and upon application of any prosecuting officer of any State, county, or municipality there shall be furnished to him a certified copy thereof, as

of a public record, for which a fee of $1 for each 100 words or fraction thereof in the copy or copies so requested may be charged.

§ 301.6107–1 Public list of persons paying special taxes.

Each district director shall prepare and keep in his office, for public inspection, an alphabetical list showing the name of each person who shall have paid within his district any of the special taxes imposed by subtitles D or E of the Code, together with the time, place, and business for which such tax was paid. The district director shall furnish, as of a public record, a certified copy of such list or any portion thereof to any prosecuting officer of any State, county, or municipality upon written request by such officer. A fee of $1 for each 100 words or fraction thereof in the copy or copies so requested may be charged.

§ 301.6108 Statutory provisions; publication of statistics of income.

SEC. 6108. *Publication of statistics of income.* The Secretary or his delegate shall prepare and publish annually statistics reasonably available with respect to the operation of the income tax laws, including classifications of taxpayers and of income, the amounts allowed as deductions, exemptions, and credits, and any other facts deemed pertinent and valuable.

§ 301.6108–1 Publication of statistics of income.

Pursuant to and in accordance with the provisions of section 6108, statistics reasonably available with respect to the operation of the income tax laws shall be prepared and published annually by the Commissioner.

§ 301.6109 Statutory provisions; cross references.

SEC. 6109. *Cross references.* (1) For reports of Secretary of Agriculture concerning cotton futures, see section 4876.

(2) For inspection of returns, order forms, and prescriptions concerning narcotics, see section 4773.

(3) For inspection of returns, order forms, and prescriptions concerning marihuana, see section 4773.

(4) For authority of Secretary or his delegate to furnish list of special taxpayers, see section 4775.

(5) For inspection of records, returns, etc., concerning gasoline or lubricating oils, see section 4102.

Because this Treasury decision constitutes a general statement of policy and establishes rules of Departmental practice and procedure, it is found that it is unnecessary to issue this Treasury decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4(c) of that Act.

[SEAL] DANA LATHAM,
Commissioner of Internal Revenue.

Approved: December 2, 1960.

FRED C. SCRIBNER, Jr.,
Acting Secretary of the Treasury.

[F.R. Doc. 61–572; Filed, Jan. 18, 1961; 2:09 p.m.]

[T.D. 6547]

PART 301—PROCEDURE AND ADMINISTRATION

Inspection by Department of Commerce of Income Tax Returns

§ 301.6103(a)–104 Inspection by Department of Commerce of income tax returns made under the Internal Revenue Code of 1954.

(a) Pursuant to the provisions of section 6103(a) of the Internal Revenue Code of 1954 (68A Stat. 753; 26 U.S.C. 6103(a)) and of the Executive order issued thereunder, and in the interest of the internal management of the Government, income tax returns made under such Code shall be open to inspection by the Department of Commerce. The inspection of returns herein authorized may be made by any officer or employee of the Department of Commerce duly authorized by the Secretary of Commerce to make such inspection. Upon written notice by the Secretary of Commerce to the Secretary of the Treasury stating the classes of returns which it is desired to inspect, the Secretary of the Treasury, or any officer or employee of the Department of the Treasury with the approval of the Secretary may furnish the Department of Commerce with any data on such returns or may make the returns available for inspection and the taking of such data as the Secretary of Commerce may designate. Such data shall be furnished, or such returns shall be made available for inspection, in the office of the Commissioner of Internal Revenue. Any information thus obtained shall be held confidential except that it may be published or disclosed in statistical form provided such publication does not disclose, directly or indirectly, the name or address of any taxpayer.

(b) This section shall be effective upon its filing for publication in the FEDERAL REGISTER.

FRED C. SCRIBNER, Jr.,
Acting Secretary of the Treasury.

Approved: January 17, 1961.

DWIGHT D. EISENHOWER,
The White House.

[F.R. Doc. 61–575; Filed, Jan. 18, 1961; 2:35 p.m.]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Agency

[Reg. Docket No. 375; Civil Air Regs. Amdt. 60–21]

PART 60—AIR TRAFFIC RULES

Definition of Controlled Airspace

Draft Release No. 60–8, published in the FEDERAL REGISTER on May 7, 1960, (25 F.R. 4083) gave notice that the Federal Aviation Agency proposed to adopt an alternate amendment to Part 60 for the revision of the base of controlled airspace and, in a separate action, to rescind Amendments 60–14 and 60–14A. The reasons for the rescission of the amendments and the adoption of a substitute amendment were set forth in detail in the draft release. The majority of the comments received in response to the draft release either endorsed the proposed rescission of Amendments 60–14 and 60–14A or posed no objection to such action. Amendments 60–14 and 60–14A were subsequently rescinded effective June 30, 1960, (25 F.R. 6015).

After reviewing comments received in response to the draft release, the Agency concluded that it was necessary to provide the public the opportunity to present additional oral comments regarding the proopsal. Accordingly, an informal public hearing was held on August 10, 1960, (25 F.R. 6706). In their written comments and at the hearing certain organizations within the aviation industry recommended the adoption of the proposal as contained in Draft Release 60–8. Other interests recommended adoption of the proposal with certain revisions, while a third group voiced emphatic opposition to the proposed rule. However, the majority endorsed its general concepts, although various recommendations were offered relative to the method and timing of the implementing airspace actions.

After considering both the written and the oral comments received, the Agency has concluded that:

1. Any increase in the size of control zones should be held to a minimum consistent with the requirements of instrument flight rules operations.

2. Transition areas should be established to extend upward from 700 feet above the surface when designated to overlie uncontrolled airports for which an instrument approach procedure has been prescribed.

3. Transition areas should be established to extend upward from 1,200 feet above the surface when designated to complement control zones.

4. Transition areas should be established to extend upward from 1,200 feet or higher above the surface when designated between airway route structures or route segments.

5. Unless otherwise limited, transition areas should extend upwards to the base of overlying controlled airspace.

6. Control areas should be established at least 500 feet below the Minimum En Route Altitude (MEA) and not below 1,200 feet above the surface. In some cases, however, it may not be feasible or practical to directly associate the floor of a control area with the MEA. Sufficient flexibility should be provided to permit alternate designation through appropriate airspace actions in such cases.

The preamble to Draft Release 60–8 stated that it would be necessary to increase the radius of control zones from the current five miles to approximately nine miles. Exact lateral dimensions of control zones would be derived from appropriate aircraft climb and approach criteria. Some industry representatives objected to an increase in the size of

the control zone while others maintained that it should be as large as necessary to serve IFR requirements.

In recognizing a responsibility to accommodate the needs of both the VFR and IFR airspace user, the Agency agrees that the increase in the size of the control zone should be held to a minimum. However, some increase appears necessary due to the raising of the floor of controlled airspace. Therefore the basic circular area of control zones will normally be 5 statute miles in radius with extensions where necessary to encompass the flight paths of instrument approach and departure operations. Aircraft climb criteria specifically designed for use in determining the size of control zone extensions will be developed for use in analyzing individual airspace cases. The size of control zone extensions will be dependent on the individual airport requirements, however, only that controlled airspace required by IFR terminal operations will be designated as control zones. It may prove necessary at a future date to amend the definition of control zone to increase or decrease its normal size if so determined by the completed aircraft climb criteria.

The draft release also proposed that the floors of transition areas be established at 1,200 feet or higher above the surface, with VFR corridors as required and as possible. This action would raise the base of controlled airspace at those uncontrolled airports having a prescribed instrument approach procedure. To recognize the requirements of the IFR user operating at such airports, the floor of transition areas at such uncontrolled airports will be established at 700 feet above the surface. Lateral dimensions of such airspace will be limited to that airspace required to contain the flight paths of IFR aircraft as determined by the application of appropriate criteria.

The base of those transition areas serving controlled airports will normally be established at 1,200 feet above the surface. However, in certain exceptional cases it may be more appropriate to establish the base at a higher level to accommodate specific requirements. This concept will provide for a standard floor, rather than a segmented floor as proposed in Draft Release 60–8, and will simplify charting. As in the case of control zones, the size of transition areas as determined by the aircraft climb criteria will be contingent upon IFR requirements but will be established so as to include only airspace necessary to accommodate such requirements. In addition, at least a 300 foot buffer zone will be provided between VFR and IFR operations since air traffic control will not assign an altitude less than 1,500 feet above the surface.

Floors of those transition areas designated between different airway route structures or segments will be established with a base at 1,200 feet or more above the surface. For example, it may prove necessary to designate a transition area between two route segments for use of IFR flights at altitudes of 8,000 feet or more above the surface. In such a case, the transition area floor might be established at 7,500 feet or lower, if appropriate. In no case, however, would the floors of such transition areas be less than 1,200 feet above the surface.

The draft release also proposed that the floors of control areas (airway) be designated at 500 feet below a cardinal altitude level as determined from the lowest altitude normally used by IFR flights. It has been contended that this action would result in the loss of many lower IFR altitudes and would impose an undue hardship on some IFR airspace users. Control area floors will therefore in most cases be established at least 500 feet below the MEA and, in all cases, not below 1,200 feet above the surface. Implementation of this portion of the regulation will not result in the loss of lower IFR altitudes except when necessary to raise the MEA to provide for a 500 foot buffer between IFR and VFR operations. The floor of control areas may be established by reference either to the surface or to the minimum en route altitudes.

It may, however, be necessary on occasion to designate the floor of a control area above an established MEA. When action of this nature is necessary, it shall be done in accordance with the Administrative Procedure Act and the public will be afforded an opportunity to comment on the proposed rule making action. To dispel any ambiguity regarding the term "MEA," a new definition is added to this part.

A study is currently underway to determine the present and future airspace needs of helicopter operations. While this rule is not specifically designed to meet their requirements, it may prove necessary to designate control area below 1,200 feet for this purpose. The definition of "control area" would permit the processing of such an airspace rule making case. It is anticipated, however, that, if the results of the study indicate an airspace requirement for helicopters, a proposal specifically addressed to this problem wil be published.

The Agency reaffirms its policy that provision of obstruction free airspace to insure the safe use of the navigable airspace by both the VFR and the IFR user shall remain a major factor in the consideration of airspace proposals regarding the erection of high obstructions. In further recognition of its responsibility in this matter, the Agency has proposed a new Part 626 of the regulations of the Administrator, "Notice of Construction or Alteration; Criteria, Procedures and Rules for Determination of the Effect Upon the Use of the Navigable Airspace of Obstructions to Air Navigation" (Airspace Docket 60–WA–159; 25 F.R. 8911.) This regulation would establish the criteria for the determination of what proposed structurcs would constitute hazards to air commerce by reason of their location or height.

Standardizing, insofar as possible, the floor of controlled airspace at 1,200 feet above the surface will reduce the complexities of charting, thus increasing the ability of the pilot to make maximum use of uncontrolled airspace. Except during flight in the vicinity of controlled airports and those uncontrolled airports with a prescribed instrument approach procedures, the pilot will have only to maintain an altitude of 1,200 feet or less above the surface to insure that he remains clear of controlled airspace.

Implementation of the provisions of this regulation is a task of considerable magnitude. Preparation of detailed airspace rule making proposals will require considerable time and effort. Implementation will be accomplished as rapidly as possible. Revisions will be accomplished on an area basis. Since unanticipated difficulties might complicate implementation in certain areas, establishment of a mandatory completion date provision in this regulation is not considered feasible.

This amendment also affects § 60.30 and this section is being amended to incorporate the term "transition area" and to provide for the conduct of VFR flight outside controlled airspace "clear of clouds" below 1,200 feet. Section 60.60 is also amended to add the new definitions "transition area" and "MEA" and to revise the definitions of "control area", "control zone" and "controlled airspace."

In consideration of the foregoing, Part 60 of the Civil Air Regulations (14 CFR, Part 60) is hereby amended as follows:

1. By amending § 60.30(a)(2) by changing the phrase "700 feet" in the two places it occurs to read "1,200 feet."

2. By amending § 60.30(b) by redesignating subparagraph (3) as subparagraph (4) and by adding a new subparagraph (3) to read as follows:

§ 60.30 Basic VFR minimum weather conditions.

* * * * *

(b) *Visibility within controlled airspace.* * * *

(3) *Transition area.* When the flight visibility is less than three miles, no person shall operate an aircraft VFR within a transition area. * * *

3. By amending § 60.30(c) by changing the phrase "700 feet" in the second sentence to read "1,200 feet."

4. By amending the "Basic VFR Minimum" chart contained in this part by adding the words "AND TRANSITION AREA" following the words "CONTROL AREA" in the first column; by changing the headings "700 feet or BELOW" and "ABOVE 700 feet" in the "DISTANCE FROM CLOUDS" column to read "1,200 feet or BELOW" and "ABOVE 1,200 feet" respectively; by changing the phrase "700 feet" in footnote 2 to read "1,200 feet."

5. By amending § 60.60 by deleting the definitions "continental control area," "control area," "control zone" and "controlled airspace" and by adding in proper alphabetical order the following new definitions:

§ 60.60 Definitions.

* * * * *

Controlled airspace. Airspace of defined dimensions designated in Part 601 of this title as continental control area, control area, control zone or transition area, within which air traffic control is exercised.

(1) *Continental control area.* The continental control area is an area designated by the Administrator which includes that airspace within the conti-

nental United States at and above 24,000 feet (mean sea level), exclusive of prohibited and restricted areas.

(2) *Control area.* Unless otherwise provided in appropriate cases, control areas extend upward from 700 feet above the surface until designated from 1,200 feet above the surface or from at least 500 feet below the MEA, whichever is higher, to the base of the continental control area.

(3) *Control zone.* Control zones extend upward from the surface. A control zone may include one or more airports and is normally a circular area of 5 statute miles in radius with extensions where necessary to include instrument approach and departure paths.

(4) *Transition area.* Transition areas extend upward from 1,200 feet or higher above the surface when designated to complement control zones; from 700 feet above the surface when designated in conjunction with an airport with no control zone but for which an instrument approach procedure has been prescribed; or from 1,200 feet or higher above the surface when designated in conjunction with airway route structures or segments. Unless otherwise limited, transition areas terminate at the base of the overlying controlled airspace.

* * * * *

MEA. The minimum en route IFR altitude applicable to a particular route or route segment, from radio fix to radio fix, as specified in Part 610 of this title.

This amendment shall become effective on February 21, 1961.

Issued in Washington, D.C., on January 16, 1961.

(Secs. 313(a), 307, 72 Stat. 752, 749; 49 U.S.C., 1354(a), 1348)

JAMES T. PYLE,
Acting Administrator.

[F.R. Doc. 61-522; Filed, Jan. 19, 1961; 8:49 a.m.]

Chapter III—Federal Aviation Agency

SUBCHAPTER E—AIR NAVIGATION REGULATIONS

[Airspace Docket No. 60-WA-155]

PART 600—DESIGNATION OF FEDERAL AIRWAYS

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

PART 608—RESTRICTED AREAS

Revocation of Restricted Area and Modification of Control Area Extension, Federal Airways and Control Zones

On June 18, 1960, a Notice of Proposed Rule Making was published in the FEDERAL REGISTER (25 F.R. 5543) stating that the Federal Aviation Agency was considering an amendment to § 608.55 of the regulations of the Administrator, which would revoke the Fort Lewis, Wash., Restricted Area (R-503) (Seattle Chart).

Although not mentioned in the notice, this action requires the deletion of all reference to R-503 in the description of VOR Federal airway No. 23, Amber Federal airway No. 1, the Tacoma, Wash., control zone and control area extension, and the Seattle, Wash., control area extension. Such action is also taken herein.

No adverse comments were received regarding the proposed amendments.

Interested persons have been afforded an opportunity to participate in the making of the rules herein adopted, and due consideration has been given to all relevant matter presented.

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

1. In § 608.55 *Washington,* the Fort Lewis, Wash., Restricted Area (R-503) (Seattle Chart) (24 F.R. 3231) is revoked.

2. In the text of § 600.6023 (14 CFR 600.6023, 25 F.R. 632, 2041) "the Fort Lewis Restricted Areas (R-503) and (R-504)" is deleted and "the Fort Lewis Restricted Area (R-504)" is substituted therefor.

3. In the text of § 600.101 (14 CFR 600.101, 25 F.R. 3458) "radio range station excluding the portion below 1,500 feet mean sea level which lies over Fort Lewis, Wash., restricted area (R-503), and the portion below 5,000 feet mean sea level which lies over Fort Lewis, Wash., restricted area (R-504);" is deleted and "RR excluding the portion which lies within the Fort Lewis, Wash., Restricted Area (R-504);" is substituted therefor.

4. In the text of § 601.2281 (14 CFR 601.2281) "restricted areas R-503 and R-504." is deleted and "Restricted Area R-504." is substituted therefor.

5. In the text of § 601.1133 (14 CFR 601.1133) "(R-503, R-504 and R-505)" is deleted and "(R-504 and R-505)" is substituted therefor.

6. In the text of § 601.1331 (14 CFR 601.1331, 25 F.R. 8248) "R-503, R-504 and R-505)" is deleted and "(R-504 and R-505)" is substituted therefor.

These amendments shall become effective 0001 e.s.t. March 9, 1961.

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

Issued in Washington, D.C., on January 16, 1961.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 61-479; Filed, Jan. 19, 1961; 8:45 a.m.]

[Airspace Docket No. 60-NY-103]

PART 600—DESIGNATION OF FEDERAL AIRWAYS

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

Revocation of Segment of Federal Airway, Associated Control Areas and Modification of Control Area Extension

On October 27, 1960, a Notice of Proposed Rule Making was published in the FEDERAL REGISTER (25 F.R. 10320) stating that the Federal Aviation Agency proposed to revoke the segment of Amber Federal airway No. 6 and its associated control area between Cincinnati, Ohio, and the West Jefferson, Ohio, intersection and modify the Columbus, Ohio, control area extension.

No adverse comments were received regarding the proposed amendments.

Interested persons have been afforded an opportunity to participate in the making of the rules herein adopted, and due consideration has been given to all relevant matter presented.

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

§ 600.106 [Amendment]

1. In § 600.106 (25 F.R. 4955) the following changes are made:

(a) In the caption *"Cincinnati, Ohio, to Columbus, Ohio, and"* is deleted.

(b) In the text "From the Cincinnati, Ohio, RR to the INT of the NE course of the Cincinnati RR and the W course of the Columbus, Ohio, RR." is deleted.

§ 601.106 [Amendment]

2. In the caption of § 601.106 (25 F.R. 4955) *"Cincinnati, Ohio, to Columbus, Ohio, and"* is deleted.

§ 601.4106 [Amendment]

3. In the caption of § 601.4106 (25 F.R. 4955) *"Cincinnati, Ohio, to Columbus, Ohio, and"* is deleted.

4. Section 601.1042 (14 CFR 601.1042) is amended to read:

§ 601.1042 Control area extension (Columbus, Ohio).

Within a 15-mile radius of the Appleton, Ohio, VOR, including the area S of Columbus bounded on the E by VOR Federal airway No. 133 and on the SE by VOR Federal airway No. 44, on the W by a line extending from the N boundary of VOR Federal airway No. 44 at latitude 38°42'55" N., longitude 83°00'15" W., via latitude 38°48'30" N., longitude 83°02'00" W.; latitude 39°30'00" N., longitude 83°02'00" W., and latitude 39°30'00" N., longitude 83°47'00" W., to the S boundary of

VOR Federal airway No. 5 at latitude 39°37'10" N., longitude 83°47'00" W.; on the NW by VOR Federal airway No. 5; and on the N by VOR Federal airway No. 214. The portion of this control area extension which coincides with the Columbus, Ohio (Lockbourne AFB) Restricted Area/Military Climb Corridor (R-543) shall be used only after obtaining prior approval from the controlling agency.

These amendments shall become effective 0001 e.s.t. March 9, 1961.

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

Issued in Washington, D.C. on January 16, 1961.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 61-486; Filed, Jan. 19, 1961; 8:46 a.m.]

[Airspace Docket No. 60-NY-121]

PART 600—DESIGNATION OF FEDERAL AIRWAYS

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

Revocation of Federal Airway, Associated Control Areas, and Reporting Points

On November 11, 1960, a Notice of Proposed Rule Making was published in the FEDERAL REGISTER (25 F.R. 10775) stating that the Federal Aviation Agency proposed to revoke Blue Federal airway No. 18, its associated control areas and reporting points.

No adverse comments were received regarding the proposed amendments.

Interested persons have been afforded an opportunity to participate in the making of the rules herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendments having been published, therefore, pursuant to the authority delegated to me by the Administrator (25 F.R. 12582) and for the reasons stated in the notice, Parts 600 and 601 (14 CFR Parts 600, 601) are amended as follows:

1. Section 600.618 *Blue Federal airway No. 18 (Albany, N.Y., to Burlington, Vt.).* is revoked.

2. Section 601.618 *Blue Federal airway No. 18 control areas (Albany, N.Y., to Burlington, Vt.)* is revoked.

3. Section 601.4618 *Blue Federal airway No. 18 (Albany, N.Y., to Burlington, Vt.)* is revoked.

These amendments shall become effective 0001 e.s.t. March 9, 1961.

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

Issued in Washington, D.C., on January 16, 1961.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 61-487; Filed, Jan. 19, 1961; 8:46 a.m.]

[Airspace Docket No. 60-NY-102]

PART 600—DESIGNATION OF FEDERAL AIRWAYS

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

Revocation of Federal Airway, Associated Control Areas and Reporting Points

On November 3, 1960, a Notice of Proposed Rule Making was published in the FEDERAL REGISTER (25 F.R. 10552) stating that the Federal Aviation Agency proposed to revoke Blue Federal airway No. 20 in its entirety, its associated control areas and reporting points.

No adverse comments were received regarding the proposed amendments.

Interested persons have been afforded an opportunity to participate in the making of the rules herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendments having been published, therefore, pursuant to the authority delegated to me by the Administrator (25 F.R. 12582) and for the reasons stated in the notice, Parts 600 and 601 (14 CFR Parts 600, 601) are amended as follows:

1. Section 600.620 *Blue Federal airway No. 20 (Millville, N.J., to Allentown, Pa.)* is revoked.

2. Section 601.620 *Blue Federal airway No. 20 control areas (Millville, N.J., to Allentown, Pa.)* is revoked.

3. Section 601.4620 *Blue Federal airway No. 20 (Millville, N.J., to Allentown, Pa.)* is revoked.

These amendments shall become effective 0001 e.s.t. March 9, 1961.

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

Issued in Washington, D.C., on January 16, 1961.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 61-489; Filed, Jan. 19, 1961; 8:46 a.m.]

[Airspace Docket No. 60-NY-9]

PART 600—DESIGNATION OF FEDERAL AIRWAYS

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

PART 608—RESTRICTED AREAS

Modification of Restricted Area, Federal Airways and Control Area Extensions

The purpose of these amendments to §§ 608.54, 600.6157, 600.6286, 600.656, 601.1129, and 601.1457 of the regulations of the Administrator is to revoke the Dahlgren, Va., Restricted Area (R-38) (Washington and Norfolk Charts), redesignate R-38 as three areas, R-38A, R-38B, and R-38C, and change the descriptions of VOR Federal airways No. 157 and 286, Blue Federal airway No. 56, and the Washington, D.C., and Dahlgren, Va., control area extensions so that the airways and control area extensions will conform to the new restricted area descriptions.

Restricted Area (R-38) (presently described on aeronautical charts as R-38A and R-38B) is a 157-square-mile area south of Washington, D.C., located over the Potomac River that is used by the Department of the Navy for ground to air firing and demolition on a continuous basis and is controlled by the Federal Aviation Agency (FAA) on a joint use basis. The portion of the area west of a line 5 miles east of, and parallel to, a direct line between the Richmond, Va., radio range station and the Washington, D.C., radio range station is designated from surface to 7,000 feet MSL. The remainder of the area is designated from surface to unlimited. As a result of coordination between the FAA and the Department of the Navy, it has been determined that the present size of R-38 can be reduced by approximately 50 percent and that the designated altitudes and time of designation can be reduced. To accomplish this modification, the FAA is revoking R-38 and designating three areas in the Dahlgren Complex as R-38A, R-38B, and R-38C. This action will result in R-38B being designated as two overlapping circular areas with 7,000 foot radii centered at latitude 38°17'59" N., longitude 77°02'15" W., and latitude 38°18'23" N., longitude 77°02'57" W., extending from the surface to 7,000 feet MSL, Monday through Friday from 0800 to 1700 local standard time. R-38A and R-38C are designated from the surface to 40,000 feet MSL, Monday through Friday from 0800 to 1700 local standard time. These two areas adjoin each other and are contained in approximately half of the area now shown on aeronautical charts as R-38A. The FAA is designated Controlling Agency for all three areas. In addition, the descriptions of Victors 157 and 286, Blue 56, and the Washington, D.C., and Dahlgren control area extensions are modified to reflect the actions taken herein on R-38.

Since part of these amendments are minor in nature and the others impose no additional burden on the public, notice and public procedure hereon are unnecessary and they may be made effective upon publication in the FEDERAL REGISTER.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (25 F.R. 12582), the following actions are taken:

§ 608.54 [Amendment]

1. In § 608.54 *Virginia*, the Dahlgren, Va., Restricted Area (R-38) (Washington and Norfolk Charts) (23 F.R. 8589, 24 F.R. 1305) is revoked.

2. In § 608.54 *Virginia* (14 CFR 608.54) the following are added:

Dahlgren Complex, Va., Restricted Area (R-38A) (Washington Chart):

Description by geographical coordinates. From latitude 38°21'30" N., longitude 77°01'15" W.; southeast to latitude 38°17'30" N., longitude 76°56'00" W.; southeast to latitude 38°15'45" N., longitude 76°52'00" W.; southwest to latitude 38°13'00" N., longitude 76°54'35" W.; northwest to latitude 38°19'15" N., longitude 77°02'00" W.; northeast to point of beginning.

Designated altitude. Surface to 40,000 feet MSL.

Time of designation. 0800 to 1700 local standard time, Monday through Friday.

Controlling agency. Federal Aviation Agency (Washington ARTCC).

Dahlgren Complex, Va., Restricted Area (R-38B) (Washington Chart):

Description by geographical coordinates. Two overlapping circular areas with 7,000 foot radii centered at latitude 38°17'59" N., longitude 77°02'15" W., and latitude 38°18'23" N., longitude 77°02'57" W.

Designated altitudes. Surface to 7,000 feet MSL.

Time of designation. 0800 to 1700 local standard time, Monday through Friday.

Controlling agency. Federal Aviation Agency (Washington ARTCC).

Dahlgren Complex, Va., Restricted Area (R-38C) (Washington Chart):

Description by geographical coordinates. Beginning at latitude 38°15'45" N., longitude 76°52'00" W.; southeast to latitude 38°13'30" N., longitude 76°46'35" W.; southwest to latitude 38°10'00" N., longitude 76°50'00" W.; northwest to latitude 38°13'00" N., longitude 76°54'35" W., northeast to point of beginning.

Designated altitudes. Surface to 40,000 feet MSL.

Time of designation. 0800 to 1700 local standard time, Monday through Friday.

Controlling agency. Federal Aviation Agency (Washington ARTCC).

§ 600.6157 [Amendment]

3. In § 600.6157 (14 CFR 600.6157, 25 F.R. 1990, 2885, 6266, 3814, 8861) "the Dahlgren (West) Restricted Area (R-38)" is deleted and "the Dahlgren Restricted Area (R-38B)" is substituted therefor.

§ 600.6286 [Amendment]

4. In § 600.6286 (14 CFR 600.6286) "the Dahlgren Restricted Areas (R-38A and R-38B) and" is deleted.

5. Section 601.1457 (14 CFR 601.1457) is amended to read:

§ 601.1457 Control area extension (Dahlgren, Va.).

The airspace lying within the geographical limits of the Dahlgren Complex Restricted Areas (R-38A, R-38B, R-38C). The portions of this control area extension that coincide with R-38A, R-38B and R-38C shall be used only after obtaining prior approval from the Washington ARTCC.

§ 601.1129 [Amendment]

6. In § 601.1129 (14 CFR 601.1129) "the West Dahlgren Restricted Area (R-38)" is deleted and "the Dahlgren Complex Restricted Areas (R-38A, R-38B, R-38C)" is substituted therefor.

§ 600.656 [Amendment]

7. In § 600.656 (14 CFR 600.656, 25 F.R. 9672) "radio range, and excluding that portion more than 3 miles west of the southeast course of the Andrews, Md., radio range and the north course of the Langley, Va. (AFB), radio range between the Andrews, Md., radio range station and a point 18 miles south of the intersection of the north course of the Langley, Va. (AFB), radio range and the southeast course of the Andrews, Md., radio range." is deleted and "RR." is substituted therefor.

These amendments shall become effective upon date of publication in the FEDERAL REGISTER.

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

Issued in Washington, D.C., on January 16, 1961.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 61-491; Filed, Jan. 19, 1961; 8:46 a.m.]

[Airspace Docket No. 60-WA-225]

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

Modification of Control Area Extension

On November 1, 1960, a Notice of Proposed Rule Making was published in the FEDERAL REGISTER (25 F.R. 10482) stating that the Federal Aviation Agency proposed to modify the Greenville, Miss., control area extension.

No adverse comments were received regarding the proposed amendment.

Interested persons have been afforded an opportunity to participate in the making of the rule herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendment having been published, therefore, pursuant to the authority delegated to me by the Administrator (25 F.R. 12582) and for the reasons stated in the notice, § 601.1356 (14 CFR 601.1356) is amended to read:

§ 601.1356 Control area extension (Greenville, Miss.)

The airspace within 8 miles E. and 5 miles W. of the 006° True and 186° True bearings from the Greenville Municipal Airport (latitude 33°23'10" N., longitude 91°00'00" W.) extending from VOR Federal Airway No. 278 to 17 miles S. of the Greenville Municipal Airport.

This amendment shall become effective 0001 e.s.t., March 9, 1961.

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

Issued at Washington, D.C., on January 16, 1961.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 61-481; Filed, Jan. 19, 1961; 8:45 a.m.]

[Airspace Docket No. 60-LA-64]

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

Modification of Control Zone

On October 22, 1960, a Notice of Proposed Rule Making was published in the FEDERAL REGISTER (25 F.R. 10105) stating that the Federal Aviation Agency proposed to modify the Lewistown, Mont., control zone.

No adverse comments were received regarding the proposed amendments.

Interested persons have been afforded an opportunity to participate in the making of the rules herein adopted, and due consideration has been given to all relevant matter presented.

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

§ 601.1983 [Amendment]

1. In the text of § 601.1983 (14 CFR 601.1983) "Lewistown, Mont.: Lewistown Municipal Airport." is deleted.

2. In Part 601 (14 CFR Part 601) the following section is added:

§ 601.2120 Lewistown, Mont., control zone.

Within a 5-mile radius of the Lewistown Airport (latitude 47°03'00" N., longitude 109°28'30" W.), within 2 miles either side of the 090° True radial of the Lewistown VOR extending from the 5-mile radius zone to the VOR, and within 2 miles either side of the W course of the Lewistown RR extending from the 5-mile radius zone to 12 miles W of the RR.

These amendments shall become effective 0001 e.s.t., March 9, 1961.

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

Issued in Washington, D.C., on January 16, 1961.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 61-492; Filed, Jan. 19, 1961; 8:46 a.m.]

[Airspace Docket No. 60-KC-72]

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

Modification of Control Zone

On October 19, 1960, a notice of proposed Rule Making was published in the FEDERAL REGISTER (25 F.R. 9956) stating that the Federal Aviation Agency proposed to modify the St. Joseph, Mo., control zone.

No adverse comments were received regarding the proposed amendments.

Interested persons have been afforded an opportunity to participate in the making of the rules herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendments having been published, therefore, pursuant to the authority delegated to me by the Administrator (24 F.R. 12582) and for the reasons stated in the notice, § 601.2069 (14 CFR 601.2069) is amended to read:

§ 601.2069 St. Joseph, Mo., control zone.

Within a 5-mile radius of the Rosecrans Memorial Airport (latitude 39°46′23″ N., longitude 94°54′31″ W.), and within 2 miles either side of the St. Joseph ILS localizer south course extending from the 5-mile radius zone to the ILS outer marker.

This amendment shall become effective 0001 e.s.t. March 9, 1961.

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

Issued in Washington, D.C., on January 16, 1961.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 61-483; Filed, Jan. 19, 1961; 8:45 a.m.]

[Airspace Docket No. 60-KC-73]

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

Modification of Control Zone

On October 19, 1960, a Notice of Proposed Rule Making was published in the FEDERAL REGISTER (25 F.R. 9957) stating that the Federal Aviation Agency proposed to modify the Lafayette, Ind., control zone.

No adverse comments were received regarding the proposed amendments.

Interested persons have been afforded an opportunity to participate in the making of the rules herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendments having been published, therefore, pursuant to the authority delegated to me by the Administrator (25 F.R. 12582) and for the reasons stated in the notice, § 601.2109 (14 CFR 601.2109) is amended to read:

§ 601.2109 Lafayette, Ind., control zone.

Within a 5-mile radius of the Purdue University Airport (latitude 40°24′46″ N., longtitude 86°55′57″ W.), within 2 miles either side of the 038° True radial of the Westpoint, Ind., VOR extending from the 5-mile radius zone to the VOR; and within 2 miles either side of the 144° True radial of the Lafayette VOR extending from the 5-mile radius zone to the VOR.

This amendment shall become effective 0001 e.s.t. March 9, 1961.

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

Issued in Washington, D.C., on January 16, 1961.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 61-484; Filed, Jan. 19, 1961; 8:45 a.m.]

[Airspace Docket No. 60-FW-80]

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

Modification of Control Zone

On October 29, 1960, a Notice of Proposed Rule Making was published in the FEDERAL REGISTER (25 F.R. 10437) stating that the Federal Aviation Agency proposed to modify the Fort Smith, Ark., control zone.

No adverse comments were received regarding the proposed amendment.

Interested persons have been afforded an opportunity to participate in the making of the rule herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendment having been published, therefore, pursuant to the authority delegated to me by the Administrator (25 F.R. 12582) and for the reasons stated in the notice, § 601.2260 (14 CFR 601.2260) is amended to read:

§ 601.2260 Fort Smith, Ark., control zone.

Within a 5-mile radius of the Fort Smith Municipal Airport (latitude 35°20′10″ N., longitude 94°22′10″ W.), within 2 miles either side of the 234° True radial of the Fort Smith VOR, extending from the 5-mile radius zone to the VOR, and within 2 miles either side of the ILS localizer east course extending from the 5-mile radius zone to the ILS outer marker.

This amendment shall become effective 0001 e.s.t. March 9, 1961.

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

Issued in Washington, D.C., on January 16, 1961.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 61-485; Filed, Jan. 19, 1961; 8:46 a.m.]

[Airspace Docket No. 60-AN-2]

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

Designation of Control Zone

On June 17, 1960, a Notice of Proposed Rule Making was published in the FEDERAL REGISTER (25 F.R. 5455) stating that the Federal Aviation Agency (FAA) proposed to designate a control zone at Adak, Alaska.

Subsequent to the publication of the Notice, the Department of the Navy, who will provide air traffic control services in this area, and the FAA have determined that present requirements for controlled airspace at Adak make it desirable to establish a ceiling of 24,000 feet mean sea level for this control zone. This change is reflected in the action taken herein.

No adverse comments were received regarding the proposed amendment.

Interested persons have been afforded an opportunity to participate in the making of the rule herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendment having been published, therefore, pursuant to the authority delegated to me by the Administrator (25 F.R. 12582) and for the reasons stated herein and in the notice, Part 601 (14 CFR Part 601) is amended by adding the following section:

§ 601.2428 Adak, Alaska, control zone.

Within a 5-mile radius of the Adak Naval Station (latitude 51°53′00″ N., longitude 176°39′00″ W.), extending vertically from the surface to 24,000 feet MSL.

This amendment shall become effective 0001 e.s.t. March 9, 1961.

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

Issued in Washington, D.C., on January 16, 1961.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 61-482; Filed, Jan. 19, 1961; 8:45 a.m.]

[Airspace Docket No. 60-WA-278]

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

Revocation of Reporting Points

The purpose of these amendments to § 601.7001 of the regulations of the Administrator is to revoke the Shawnee, Fla., intersection and the Oakwood, S. Dak., intersection as domestic reporting points.

Flight progress reports over designated locations, automatically initiated by pilots, facilitate air traffic management and assist the controller in the performance of his duties. However, due to the continuous modernization of the airway structure, the need for reporting points at particular locations is constantly being revised. The actions taken herein reflect this changing need on the part of air traffic management.

Since these amendments are of a procedural nature and do not assign or reassign the use of navigable airspace, notice and public procedure hereon are unnecessary. However, since it is neces-

sary that sufficient time be allowed to permit appropriate changes to be made on aeronautical charts, these amendments will become effective more than 30 days after publication.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (25 F.R. 12582), the following actions are taken:

In the text of § 601.7001 (14 CFR 601.7001, 25 F.R. 7489) the following are deleted:

1. Shawnee INT: The INT of the West Palm Beach, Fla., VORTAC 266° True and the Biscayne Bay VOR 346° True radials.

2. Oakwood Intersection: The intersection of the Watertown, S. Dak., omnirange 169° True and the Huron, S. Dak., omnirange 088° True radials.

These amendments shall become effective 0001 e.s.t. March 9, 1961.

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

Issued in Washington D.C., on January 16, 1961.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 61-488; Filed, Jan. 19, 1961; 8:46 a.m.]

[Airspace Docket No. 60-WA-239]

PART 602—ESTABLISHMENT OF CODED JET ROUTES AND NAVIGATIONAL AIDS IN THE CONTINENTAL CONTROL AREA

Designation of Coded Jet Route

On October 13, 1960, a Notice of Proposed Rule Making was published in the FEDERAL REGISTER (25 F.R. 9815) stating that the Federal Aviation Agency (FAA) proposed to designate VOR/VORTAC jet route No. 10 from Los Angeles, Calif., to Denver, Colo.

As stated in the Notice, J-10-V would be designated from Los Angeles to Denver via the Los Angeles VOR; the intersection of the Los Angeles VOR 089° True and the Rice, Calif., VORTAC 258° True radials; Rice VORTAC; Prescott, Ariz., VORTAC; Farmington, N. Mex., VORTAC, to the Denver VORTAC. The establishment of this jet route would assist air traffic management by providing an additional jet route from Los Angeles to Denver for the high volume of high altitude traffic operating between these terminals.

The Department of the Air Force offered no objection to the proposal. However, they pointed out that the proposed route would transgress the "Full Load" air refueling area. This route will cross the eastern part of the refueling area which is established for use from 26,000 to 29,000 feet. Since the portion of J-10-V that coincides with the refueling area will have radar flight advisory service, the FAA anticipates no air traffic problems in the area that will derogate the Air Force refueling activities. The Department of the Navy objected to the portion of J-10-V that would not have radar advisory service. This objection was subsequently withdrawn after discussion between representatives of the FAA and the Department of the Navy. The Air Transport Association of America concurred with the proposal.

No other adverse comments were received regarding the proposed amendment.

Interested persons have been afforded an opportunity to participate in the making of the rule herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendment having been published, therefore, pursuant to the authority delegated to me by the Administrator (25 F.R. 12582) and for the reasons stated herein and in the notice, Part 602 (14 CFR Part 602) is amended by adding the following section:

§ 602.510 VOR/VORTAC jet route No. 10 (Los Angeles, Calif., to Denver, Colo.).

From the Los Angeles, Calif., VOR via the INT of the Los Angeles 089° True and the Rice, Calif., VORTAC 258° True radials; Rice VORTAC; Prescott, Ariz., VORTAC; Farmington, N. Mex., VORTAC to the Denver, Colo., VORTAC.

This amendment shall become effective 0001 e.s.t. March 9, 1961.

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

Issued in Washington, D.C. on January 16, 1961.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 61-480; Filed, Jan. 19, 1961; 8:45 a.m.]

[Airspace Docket No. 60-WA-274]

PART 608—RESTRICTED AREAS

Modification

The purpose of this amendment to Part 608 of the regulations of the Administrator is to modify the Fallon, Nev., Restricted Area (R-267) (Reno Chart).

A continuing study of Special Use Airspace assignments has indicated that it is feasible to reduce the geographical area of R-267 by approximately 15 square miles and change the time of use to Monday through Saturday. The Department of the Navy, the user agency of this restricted area, has concurred in these changes. Moreover, to eliminate confusion caused by identical names for R-267 and R-268, the name of R-267 is changed herein from Fallon, Nev., to Lone Rock, Nev.

The change from "Continuous during VFR conditions only" to "Continuous, except Sunday" will not result in an increased burden on the public. The Navy restricted areas in the Fallon area have been intentionally located in areas wherein there is very limited general aviation traffic and no air carrier traffic. Additionally, due to the high terrain in this area, VFR traffic is normally above the ceiling of R-267, which is 8,000 feet. The lowest minimum en route altitude on airways in the vicinity of R-267 is 10,000 feet.

Since this amendment imposes no additional burden on the public, notice and public procedure hereon are unnecessary and it may be made effective immediately.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (25 F.R. 12582), the following action is taken:

In § 608.36 *Nevada*, the Fallon, Nev., Restricted Area (R-267) (Reno Chart) (24 F.R. 8929) is amended to read:

Lone Rock, Nev., Restricted Area (R-267) (Reno Chart):

Description by geographical coordinates. A circular area within a 3-mile radius of latitude 39°52'36" N., longitude 118°20'47" W.

Designated altitudes. Surface to 8,000 feet MSL.

Time of designation. Continuous, except Sunday.

Controlling agency. Commander, Naval Air Bases, 12th Naval District.

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

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

Issued in Washington, D.C., on January 16, 1961.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 61-490; Filed, Jan. 19, 1961; 8:46 a.m.]

Title 6—AGRICULTURAL CREDIT

Chapter IV—Commodity Stabilization Service and Commodity Credit Corporation, Department of Agriculture

SUBCHAPTER B—LOANS, PURCHASES AND OTHER OPERATIONS

[1960 C.C.C. Grain Price Support Bulletin 1, Supp. 2, Amdt. 6, Wheat]

PART 421—GRAINS AND RELATED COMMODITIES

Subpart—1960-Crop Wheat Loan and Purchase Agreement Program

BASIC COUNTY SUPPORT RATES

The regulations issued by the Commodity Credit Corporation and the Commodity Stabilization Service published in (25 F.R. 3915, 4631, 7479, 7731, 8321, 9137, 9138, 9196, 12282, and 13682) containing the specific requirements of the 1960-crop wheat price support program are hereby amended as follows:

Section 421.5047(b) is amended by increasing the following basic county support rates:

ILLINOIS

County:	Rate per bushel From—	To—
Champaign	$1.87	$1.88
Cook	1.91	1.93
Douglas	1.87	1.88
Du Page	1.91	1.92
Iroquois	1.87	1.90
Jefferson	1.87	1.91
Johnson	1.80	1.82
Kankakee	1.90	1.91
Lake	1.91	1.93

ILLINOIS—Continued

County	Rate per bushel From—	To—
Massac	$1.86	$1.87
Monroe	1.89	1.91
Moultrie	1.87	1.88
Randolph	1.87	1.91
Vermilion	1.87	1.90
Washington	1.87	1.89
Will	1.91	1.92

(Sec. 4, 62 Stat. 1070, as amended; 15 U.S.C. 714b. Interpret or apply sec. 5, 62 Stat. 1072, secs. 101, 401, 63 Stat. 1051, as amended; Title II, 73 Stat. 178, 15 U.S.C. 714c, 7 U.S.C. 1421, 1441)

Issued this 13th day of January 1961.

CLARENCE D. PALMBY,
Acting Executive Vice President,
Commodity Credit Corporation.

[F.R. Doc. 61-520; Filed, Jan. 19, 1961; 8:48 a.m.]

[1960 C.C.C. Grain Price Support Bulletin 1, Supp. 2, Amdt. 5, Barley]

PART 421—GRAINS AND RELATED COMMODITIES

Subpart—1960-Crop Barley Loan and Purchase Agreement Program

BASIC COUNTY SUPPORT RATES

The regulations issued by the Commodity Credit Corporation and the Commodity Stabilization Service published in 25 F.R. 3570, 4445, 4894, 5263, 8179, 9197, 12282, and 14010, and containing the specific requirements for the 1960-crop barley price support program are hereby amended as follows:

Section 421.5087(b) is amended by increasing the following basic county support rates:

ILLINOIS

County:	Rate per bushel From—	To—
Champaign	$0.85	$0.86
Cook	.88	.90
Douglas	.85	.86
Du Page	.88	.89
Iroquois	.85	.88
Johnson	.79	.81
Lake	.88	.90
Vermilion	.85	.88

(Sec. 4, 62 Stat. 1070, as amended; 15 U.S.C. 714b. Interpret or apply sec. 5, 63 Stat. 1072, secs. 105, 401, 63 Stat. 1051, as amended, Title II, 73 Stat. 178, 15 U.S.C. 714, 1421, 1441)

Issued this 13th day of January 1961.

CLARENCE D. PALMBY,
Acting Executive Vice President,
Commodity Credit Corporation.

[F.R. Doc. 61-517; Filed, Jan. 19, 1961; 8:48 a.m.]

[1960 C.C.C. Grain Price Support Bulletin 1, Supp. 2, Amdt. 4, Rye]

PART 421—GRAINS AND RELATED COMMODITIES

Subpart—1960-Crop Rye Loan and Purchase Agreement Program

BASIC COUNTY SUPPORT RATES

The regulations issued by the Commodity Credit Corporation and the Commodity Stabilization Service published in (25 F.R. 3781, 4895, 6497, 9196, 12282, and 13682), containing the specific requirements of the 1960-crop rye price support program are hereby amended as follows:

Section 421.5387(b) is amended by increasing the following basic county support rates:

ILLINOIS

County:	Rate per bushel From—	To—
Cook	$1.03	$1.05
Iroquois	.99	1.02
Kane	1.02	1.03
Kankakee	1.02	1.03
Lake	1.03	1.05
Vermilion	.99	1.02

(Sec. 4, 62 Stat. 1070, as amended; 15 U.S.C. 714b. Interpret or apply sec. 5, 62 Stat. 1072, secs. 105, 401, 63 Stat. 1051, as amended; Title II, 73 Stat. 178, 15 U.S.C. 714c, 7 U.S.C. 1421, 1441)

Issued this 13th day of January 1961.

CLARENCE D. PALMBY,
Acting Executive Vice President,
Commodity Credit Corporation.

[F.R. Doc. 61-519; Filed, Jan. 19, 1961; 8:48 a.m.]

[Amdt. 5]

PART 446—PEANUTS

Subpart—1960 Crop Peanut Price Support Program

MISCELLANEOUS AMENDMENTS

The regulations issued by Commodity Credit Corporation (hereinafter referred to as "CCC") with respect to the 1960 Crop Peanut Price Support Program, as amended (25 F.R. 5437, 7091, 8472, 9594 and 10647) are further amended by revising certain provisions relating to the purchase of No. 2 peanuts in order to clarify the eligibility requirements and the provisions regarding the purchase price of No. 2 peanuts when two or more lots are delivered pursuant to one offer.

The regulations issued in §§ 446.1201 to 446.1250 are amended as specified below.

1. Subdivision (ii) of § 446.1237(a) is amended to read as follows:

§ 446.1237 Eligibility requirements for No. 2 shelled peanuts.

* * * * *

(a) * * *

(ii) The requirements of this paragraph (a) shall apply to each lot of peanuts included in any one offer, and a composite sample, which is representative of the quantity of peanuts in a lot, shall be used to determine whether the peanuts meets such requirements: *Provided, however,* That nothing contained herein shall be construed as a waiver of any right of CCC under paragraph (c) of § 446.1244, or under any other provision in this subpart: *Provided further,* That no straight shelled peanuts shall be eligible for sale to CCC.

2. Paragraph (a)(1) of § 446.1246 is amended to read as follows:

§ 446.1246 Payment for No. 2 peanuts.

(a)(1) CCC will purchase eligible No. 2 peanuts at the price in effect on the date the offer is accepted by the association. When two or more lots are included in one offer, the sum of the prices determined individually for all lots will be the purchase price of all peanuts delivered pursuant to such offer.

(Sec. 4, 62 Stat. 1070, as amended; 15 U.S.C. 714b. Interpret or apply sec. 5, 62 Stat. 1072, secs. 101, 401, 63 Stat. 1051, 1054, sec. 201, 68 Stat. 899; 73 Stat. 178; 15 U.S.C. 714c, 7 U.S.C. 1441, 1421)

Issued this 13th day of January 1961.

CLARENCE D. PALMBY,
Acting Executive Vice President,
Commodity Credit Corporation.

[F.R. Doc. 61-518; Filed, Jan. 19, 1961; 8:48 a.m.]

Title 7—AGRICULTURE

Subtitle A—Office of the Secretary of Agriculture

PART 6—IMPORT QUOTAS AND FEES

Miscellaneous Amendments

Import Regulation 1, Revision 2, made effective upon publication in the FEDERAL REGISTER of October 7, 1960 (7 CFR, 6.20 et seq., 25 F.R. 9634) invited proposals for amendment or modification thereof with the statement that all proposals received by October 30, 1960, would be given immediate consideration.

After consideration of such relevant suggestions as were presented by interested parties regarding the amendment or modification of Import Regulation 1, Revision 2, it is, by virtue of the authority (19 F.R. 76) vested in me under Proclamation 3019 of the President of the United States, dated June 8, 1953 (3 CFR 1949–1953 Comp., p. 189), as amended by Proclamation 3025, dated June 30, 1953 (3 CFR 1949–1953 Comp., p. 194), and further amended by Proclamation 3347, dated May 11, 1960 (25 F.R. 4343), hereby determined that the following amendment of Import Regulation 1, Revision 2, designed to clarify and correct the regulation, is necessary and appropriate to carry out the objectives of the said amended Proclamation.

It is, therefore, ordered that Import Regulation 1, Revision 2 (25 F.R. 9634) is hereby amended as follows:

Section 6.21(m) of the regulation is amended to read as follows:

(m) Malted milk means malted milk, or compounds or mixtures of or substitutes for milk or cream, and all other products dutiable as such.

Section 6.25(d) of the regulation is amended by adding at the end thereof the following new sentence: "There shall be submitted to the Collector of Customs by or on behalf of the licensee, at the time of importation of any commodity under such license, a through bill of lading from the country-of-origin to the United States or a carrier's certificate evidencing the fact that the shipment is a through shipment from the country-of-origin to the United States."

This amendment shall become effective with respect to any entry, or withdrawal from warehouse, for consumption, made on or after March 1, 1961.

(Sec. 3, 62 Stat. 1248, as amended; 7 U.S.C. 624; Proclamation 3019 (3 CFR 1949–1953 Comp., p. 189); Proclamation 3025 (3 CFR, 1949–1953 Comp., p. 194); Proclamation 3347 (25 F.R. 4343))

Issued at Washington, D.C., this 11th day of January 1961.

MAX MYERS,
Administrator.

[F.R. Doc. 61–539; Filed, Jan. 19, 1961; 8:51 a.m.]

Chapter I—Agricultural Marketing Service (Standards, Inspections, Marketing Practices)

PART 52—PROCESSED FRUITS AND VEGETABLES, PROCESSED PRODUCTS THEREOF, AND CERTAIN OTHER PROCESSED FOOD PRODUCTS

Subpart—United States Standards for Grades of Frozen Spinach [1]

During the period of April 1956 to June 1959 two notices of proposed rule making, and extensions of time for submission of data, views, or arguments in connection therewith, were published in the FEDERAL REGISTER (21 F.R. 2624, 3877; 22 F.R. 6767, 10123; and 23 F.R. 395) regarding the proposed revision of the United States Standards for Grades of Frozen Spinach. On March 24, 1960, a third notice of proposed rule making was published in the FEDERAL REGISTER (25 F.R. 2493) regarding the proposed revision of the grade standards for this product.

After consideration of all relevant matters presented, including the proposal set forth in the aforesaid notices, the following United States Standards for Grades of Frozen Spinach are hereby promulgated pursuant to the authority contained in the Agricultural Marketing Act of 1946 (secs. 202–208, 60 Stat. 1087, as amended; 7 U.S.C. 1621–1627).

The revision is as follows:

PRODUCT DESCRIPTION, STYLES, AND GRADES

Sec.
52.1921 Product description.
52.1922 Styles of frozen spinach.
52.1923 Grades of frozen spinach.

FACTORS OF QUALITY

52.1924 Ascertaining the grade.
52.1925 Ascertaining the score for the factors which are rated.
52.1926 Color.
52.1927 Defects.
52.1928 Character.

METHOD OF ANALYSIS

52.1929 Method of analysis.

LOT INSPECTION AND CERTIFICATION

Sec.
52.1930 Ascertaining the grade of a lot.

SCORE SHEET

52.1931 Score sheet for frozen spinach.

AUTHORITY: §§ 52.1921 to 52.1931 issued under secs. 202–208, 60 Stat. 1087, as amended; 7 U.S.C. 1621–1627.

PRODUCT DESCRIPTION, STYLES, AND GRADES

§ 52.1921 Product description.

Frozen spinach is the frozen product prepared from the whole or cut, clean, sound, succulent leaves and stems of fresh spinach by sorting, trimming, washing, and proper blanching and draining of such leaves and stems. The product is then frozen in accordance with good commercial practices and maintained at temperatures necessary for the preservation of the product.

§ 52.1922 Styles of frozen spinach.

(a) "Whole leaf" spinach is the style of frozen spinach that consists substantially of the leaf and adjoining portion of the stem.

(b) "Cut" or "chopped" spinach is the style of frozen spinach that consists of the leaf and adjoining portion of the stem which has been cut or chopped into small pieces.

§ 52.1923 Grades of frozen spinach.

(a) "U.S. Grade A" (or "U.S. Fancy") is the quality of frozen spinach that possesses a good flavor; that possesses a good color; that is practically free from defects; that possesses a good character; and that scores not less than 90 points when scored in accordance with the scoring system outlined in this subpart.

(b) "U.S. Grade B" (or "U.S. Extra Standard") is the quality of frozen spinach that possesses a reasonably good flavor; that possesses a reasonably good color; that is reasonably free from defects; that possesses a reasonably good character; and that scores not less than 80 points when scored in accordance with the scoring system outlined in this subpart.

(c) "Substandard" is the quality of frozen spinach that fails to meet the requirements of U.S. Grade B.

FACTORS OF QUALITY

§ 52.1924 Ascertaining the grade.

(a) In addition to considering other requirements outlined in the standards the following quality factors are evaluated:

(1) *Factor not rated by score points.*
(i) Flavor;

(2) *Factors rated by score points.* The relative importance of each factor which is rated is expressed numerically on the scale of 100. The maximum number of points that may be given such factors are:

Factors:	Points
Color	20
Defects	60
Character	20
Total score	100

(b) The score for the factors of color and defects is determined immediately after thawing to the extent that the product is substantially free from ice crystals and can be handled as individual units. The evaluation of the factors of character and flavor of frozen spinach is made after thawing and after the product is cooked.

(c) "Good flavor" means that the product has a good characteristic, normal flavor and odor and is free from objectionable flavors and objectionable odors of any kind.

(d) "Reasonably good flavor" means that the product may be lacking good flavor and odor but is free from objectionable flavors and objectionable odors of any kind.

§ 52.1925 Ascertaining the score for the factors which are rated.

The essential variations within each factor which is rated are so described that the value may be ascertained for each factor and expressed numerically. The numerical range within each factor which is rated is inclusive (for example, "18 to 20 points" means 18, 19, or 20 points).

§ 52.1926 Color.

(a) (*A*) *classification.* Frozen spinach that possesses a good color may be given a score of 18 to 20 points. "Good color" means that the frozen spinach possesses a bright, characteristic good green color; that yellow-green leaves, or portions thereof, or discolored leaves and stems, or portions thereof, which may be present do not materially affect the color appearance of the product.

(b) (*B*) *classification.* Frozen spinach that possesses a reasonably good color may be given a score of 16 or 17 points. Frozen spinach that falls into this classification shall not be graded above U.S. Grade B, regardless of the total score for the product (this is a limiting rule). "Reasonably good color" means that the frozen spinach possesses a characteristic green color that may be dull but is not off color; that yellow-green leaves, or portions thereof, or discolored leaves and stems, or portions thereof, which may be present do not seriously affect the color appearance of the product.

(c) (*SStd.*) *classification.* Frozen spinach that fails to meet the requirements of paragraph (b) of this section may be given a score of 0 to 15 points and shall not be graded above Substandard, regardless of the total score for the product (this is a limiting rule).

[1] Compliance with the provisions of these standards shall not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act or with applicable State laws and regulations.

§ 52.1927 Defects.

(a) *General.* The factor of defects refers to the degree of freedom from grit, sand, or silt; from harmless extraneous vegetable material, seed heads, root stubs, crowns, and damaged leaves and stems or portions thereof. Yellow-green leaves which are not otherwise damaged are not considered under the factor of defects but are scored under the factor of color.

(b) *Definitions of terms.* (1) "Aggregate area" means the aggregated damaged areas of leaves, stems, or portions thereof, when placed in a contiguous position with practically no intervening spaces.

(2) "Grit, sand, or silt" means particles of any earthy material.

(3) "Harmless extraneous vegetable material" means:

(i) *Group I.* Green, fine, tender string-like blades and stems of grass and weeds;

(ii) *Group II.* Green, coarse grass and weeds; and

(iii) *Group III.* Grass and weeds other than green.

(4) "Seed head" means the seed bearing portion of a spinach plant that is longer than one inch or that is objectionable in appearance.

(5) "Root stub" means any portion of the root whether or not leaves are attached.

(6) "Crown" means the solid area of a spinach plant between the root and attached leaf or cluster of leaves.

(7) Damage in the varying degrees has the following meanings with respect to the following styles:

(i) *Whole leaf.* (*a*) "Insignificant damage" means transparent areas not associated with discoloration of any kind that in the aggregate are not more than ½ square inch (equivalent to ½ inch x 1 inch) on a leaf; and discoloration or other injury including transparent areas associated with discoloration that in the aggregate is not more than 3/32 square inch (equivalent to ¼ inch x ⅜ inch) on a leaf or stem or portion thereof: *Provided,* That such transparent areas, discoloration or other injury does not materially affect the appearance or eating quality of the unit.

(*b*) "Minor damage" means damage by discoloration or other injury including transparent areas associated with discoloration which covers an aggregate area of more than 3/32 square inch but less than 1 square inch (equivalent to 1 inch x 1 inch) on a leaf or stem or portion thereof; transparent areas not associated with discoloration when such transparent area is more than ½ square inch but less than 1 square inch; or damage which covers an aggregate area of 3/32 square inch or less on a leaf or stem or portion thereof that materially affects the appearance or eating quality of the unit.

(*c*) "Major damage" means damage by discoloration or other injury which covers an aggregate area of 1 square inch or more, but not more than 4 square inches (equivalent to 4 inches x 1 inch) on a leaf or stem or portion thereof; or damage less than 1 square inch when such damage seriously affects the appearance or eating quality of the unit.

(*d*) "Severe damage" means damage by discoloration or other injury which covers an aggregate area of more than 4 square inches on a leaf or stem or portion thereof.

(ii) *Cut or chopped.* (*a*) "Insignificant damage" means transparent areas on a portion of leaf not associated with discoloration of any kind when such transparent portion is not more than ½ square inch; and any discoloration that does not materially affect the appearance or eating quality of the unit.

(*b*) "Damage" with respect to chopped style means any area of discoloration or other injury, including transparent areas associated with discoloration, on a portion of leaf or stem that materially affects the appearance or eating quality of the unit; and transparent areas whether or not associated with discoloration when such transparent area is more than ½ square inch.

(c) (*A*) *classification.* Frozen spinach that is practically free from defects may be given a score of 54 to 60 points. "Practically free from defects" means that no grit, sand, or silt may be present that affects the appearance or eating quality of the product; and in addition has the following meanings with respect to the following styles:

(1) *Whole leaf style.* The product does not exceed the applicable allowances prescribed for the respective type of defect in Table I and Table II of this section;

(2) *Cut or chopped style.* The area of damage does not exceed the area prescribed for the applicable sample size in Table III of this section;

(3) *All styles.* Notwithstanding the specified allowances, the presence of harmless extraneous vegetable material, root stubs, seed heads, crowns, damaged leaves and stems, or portions thereof, including insignificant damage or other injury, individually or collectively, does not materially affect the appearance or eating quality of the product.

(d) (*B*) *classification.* Frozen spinach that is reasonably free from defects may be given a score of 48 to 53 points. Frozen spinach that falls into this classification shall not be graded above U.S. Grade B, regardless of the total score for the product (this is a limiting rule). "Reasonably free from defects" means that a trace of grit, sand, or silt may be present that does not materially affect the appearance or eating quality of the product; and in addition has the following meanings with respect to the following styles:

(1) *Whole leaf style.* The product does not exceed the applicable allowances prescribed for the respective type of defect in Table I and Table II of this section;

(2) *Cut or chopped.* The area of damage does not exceed the area prescribed for the applicable sample size in Table III of this section;

(3) *All styles.* Notwithstanding the specified allowances, the presence of harmless extraneous vegetable material, root stubs, seed heads, crowns, damaged leaves and stems, or portions thereof, including insignificant damage or other injury, individually or collectively, does not seriously affect the appearance or eating quality of the product.

(e) (*SStd.*) *classification.* Frozen spinach that fails to meet the requirements of paragraph (d) of this section may be given a score of 0 to 47 points and shall not be graded above Substandard, regardless of the total score for the product (this is a limiting rule).

TABLE I—SUMMARY OF ALLOWANCES FOR CERTAIN DEFECTS IN WHOLE LEAF STYLE SPINACH

Grade classification	Maximum allowances					
	Each 10 ounces net weight					Each 48 ounces net weight
	Damaged leaves			Seed heads	Crowns	Root stubs
	Minor	Major	Severe			
A	6	0	0	1	1	1
	4	1	0			
	2	2	0			
	2	0	1			
B	12	0	0	3	3	3
	10	1	0			
	8	2	0			
	8	0	1			
	6	3	0			
	6	1	1			
	4	0	2			
	2	1	2			
	0	2	2			
SStd	Fails to meet foregoing requirements for Grade B classification.					

TABLE II—SUMMARY OF ALLOWANCES FOR HARMLESS EXTRANEOUS VEGETABLE MATERIAL IN WHOLE LEAF STYLE SPINACH

Grade classification	Group	Per sample unit—Provided, the average for all the sample units in the sample does not exceed the allowance for such average		Average for all sample units in the sample
		20 ounces net weight or less	More than 20 ounces net weight	
A	I	Pieces aggregating 0.8 inch per 1 ounce; or 1 piece.		Total aggregate length of 0.4 inch per 1 ounce but no more than 0.1 inch per 1 ounce of Group II.
	or II	Pieces aggregating 4 inches; or 1 piece.	Pieces aggregating 0.2 inch per 1 ounce; or 1 piece.	
	or I and II combined.	Total aggregate of 0.8 inch per 1 ounce; but no more than 4 inches of Group II.	Total aggregate of 0.8 inch per 1 ounce but no more than 0.2 inch per 1 ounce of Group II.	
	III	None	None	None.
B	I	Pieces aggregating 1.2 inch per 1 ounce; or 1 piece.		Total aggregate length of 0.6 inch per 1 ounce but no more than 0.2 inch per 1 ounce of Group II and Group III.
	or II	Pieces aggregating 8 inches; or 1 piece.	Pieces aggregating 0.4 inch per 1 ounce; or 1 piece.	
	or III	Pieces aggregating 8 inches; or 1 piece.	Pieces aggregating 0.4 inch per 1 ounce; or 1 piece.	
	or I, II, and III combined.	Total aggregate of 1.2 inch per 1 ounce but no more than 8 inches of Group II and Group III.	Total aggregate of 1.2 inch per 1 ounce but no more than 0.4 inch per 1 ounce of Group II and Group III.	
SStd	Fails to meet foregoing requirements for Grade B classification.			

Sample size	Area of damaged portions of leaves				
Initial 2 ounces	17/16 square inches or less pass for A	18/16 to 22/16 square inches inclusive take additional 1 ounce	23/16 to 37/16 square inches inclusive pass for B	38/16 to 42/16 square inches inclusive take additional 1 ounce	More than 42/16 square inches fails grade B
Cumulative 3 ounces	30/16 square inches or less pass for A	31/16 to 60/16 square inches pass for B	More than 60/16 square inches fails grade B		

§ 52.1928 Character.

(a) *General.* The factor of character refers to the tenderness of the leaves and stems, or portions thereof, the relation of stem to leaf material, and the degree of freedom from pieces of leaves and shredded portions of leaves and stems.

(1) "Stem material" means that portion of the spinach material below the point of attachment to the leaf.

(2) "Pieces of leaf" means any piece of a leaf (excluding stem material) having an area less than 2 square inches in Whole Leaf style.

(b) (*A*) *classification.* Frozen spinach that possesses a good character may be given a score of 18 to 20 points. "Good character" has the following meanings with respect to the following styles:

(1) *Whole Leaf style.* (i) The spinach is tender; and there may be present:

(ii) Not more than 25 percent, by weight, of the spinach may be stem material; and

(iii) Not more than 20 percent, by weight, of the spinach that may be pieces of leaves.

(2) *Cut or chopped style.* (i) The spinach is tender; and

(ii) The appearance and eating quality of the product is not materially affected by the presence of stem material or that the product does not present a pureed or stringy appearance.

(c) (*B*) *classification.* Frozen spinach that possesses a reasonably good character may be given a score of 16 or 17 points. Frozen spinach that falls into this classification shall not be graded above U.S. Grade B, regardless of the total score for the product (this is a limiting rule). "Reasonably good character" has the following meanings with respect to the following styles:

(1) *Whole leaf style.* (i) The spinach is reasonably tender; and there may be present:

(ii) Not more than 30 percent, by weight, of the spinach that is stem material; and

(iii) Not more than 30 percent, by weight, of the spinach that is pieces of leaves.

(2) *Cut or chopped style.* (i) The spinach is reasonably tender; and

(ii) The appearance and eating quality of the product is not seriously affected by the presence of stem material.

(d) (*SStd.*) *classification.* Frozen spinach that fails to meet the requirements of paragraph (c) of this section may be given a score of 0 to 15 points and shall not be graded above Substandard, regardless of the total score for the product (this is a limiting rule).

METHOD OF ANALYSIS

§ 52.1929 Method of analysis.

(a) "Weight of stem material" and "weight of pieces of leaves" are determined by the following method:

(1) *Equipment.*

8 inch, 8 mesh screen.
Flat surface suitable as cutting board.
Small knife.
Suitable scales.

(2) *Procedure.* (i) If the sample is 10 ounces or less use the entire sample, but if the sample is of a size exceeding 10 ounces, use a representative portion which will yield at least 10 ounces of drained spinach.

(ii) Place sample in deep grading tray and add water to a depth of approximately 1 inch. Separate leaves for defects and at the same time separate pieces of leaves and stem material, cutting the stem from the leaf at the lowest point of attachment. After separating, place whole leaves, pieces of leaves, and stem material on the sieve in separate piles, drain for two minutes, weigh, and record total combined weights. Determine weight of stem material and pieces of leaves separately. The weight of stem materials divided by the total combined weights multiplied by 100 is the percent, by weight, of stem material. The weight of pieces of leaves divided by the total combined weights multiplied by 100 is the percent, by weight, of pieces of leaves.

LOT INSPECTION AND CERTIFICATION

§ 52.1930 Ascertaining the grade of a lot.

The grade of a lot of frozen spinach covered by these standards is determined by the procedures set forth in the Regulations governing Inspection and Certification of Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Food Products (§§ 52.1 to 52.87).

SCORE SHEET

§ 52.1931 Score sheet for frozen spinach.

Container size
Container code or marking
Label
Net Weight (ounces)
Style
Stem material (percent)
Pieces of leaves (percent)

Factors		Score points
Color	20	(A) 18–20 (B) [1] 16–17 (SStd.) [1] 0–15
Defects	60	(A) 54–60 (B) [1] 48–53 (SStd.) [1] 0–47
Character	20	(A) 18–20 (B) [1] 16–17 (SStd.) [1] 0–15
Total score	100	

Grade
Flavor and odor

[1] Indicates limiting rule.

The United States Standards for Grades of Frozen Spinach (which is the

sixth issue) contained in this subpart shall become effective 45 days after the date of publication hereof in the FEDERAL REGISTER, and thereupon will supersede the United States Standards for Grades of Frozen Spinach (7 CFR Part 52) which have been in effect since October 26, 1951.

Dated: January 17, 1961.

ROY W. LENNARTSON,
Deputy Administrator,
Marketing Services.

[F.R. Doc. 61-538; Filed, Jan. 19, 1961; 8:51 a.m.]

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders), Department of Agriculture

[Navel Orange Reg. 202]

PART 914—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

§ 914.502 Navel Orange Regulation 202.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 14, as amended (7 CFR Part 914), regulating the handling of navel oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the Navel Orange Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such navel oranges, as hereinafter provided, will tend to effectuate the declared policy of the act by tending to establish and maintain such orderly marketing conditions for such oranges as will provide, in the interests of producers and consumers, an orderly flow of the supply thereof to market throughout the normal marketing season to avoid unreasonable fluctuations in supplies and prices, and is not for the purpose of maintaining prices to farmers above the level which it is declared to be the policy of Congress to establish under the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 1001-1011) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for navel oranges and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting, the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such navel oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on January 18, 1961.

(b) *Order.* (1) The respective quantities of navel oranges grown in Arizona and designated part of California which may be handled during the period beginning at 12:01 a.m., P.s.t., January 22, 1961, and ending at 12:01 a.m., P.s.t., January 29, 1961, are hereby fixed as follows:

(i) District 1: 450,000 cartons;
(ii) District 2: 350,000 cartons;
(iii) District 3: Unlimited movement;
(iv) District 4: Unlimited movement.

(2) As used in this section, "handled," "District 1," "District 2," "District 3," "District 4," and "carton" have the same meaning as when used in said amended marketing agreement and order.

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

Dated: January 19, 1961.

FLOYD F. HEDLUND,
Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 61-654; Filed, Jan. 19, 1961; 11:16 a.m.]

[Lemon Reg. 882]

PART 953—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

§ 953.989 Lemon Regulation 882.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 53, as amended (7 CFR Part 953; 23 F.R. 9053), regulating the handling of lemons grown in California and Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.; 68 Stat. 906, 1047), and upon the basis of the recommendation and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such lemons as hereinafter provided will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (60 Stat. 237; 5 U.S.C. 1001 et seq.) because the time intervening between the date when information upon which this section is based become available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for lemons and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such lemons; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on January 17, 1961.

(b) *Order.* (1) The respective quantities of lemons grown in California and Arizona which may be handled during the period beginning at 12:01 a.m., P.s.t., January 22, 1961, and ending at 12:01 a.m., P.s.t., January 29, 1961, are hereby fixed as follows:

(i) District 1: 13,950 cartons;
(ii) District 2: 139,500 cartons;
(iii) District 3: Unlimited movement.

(2) As used in this section, "handled," "District 1," "District 2," "District 3," and "carton" have the same meaning as when used in the said amended marketing agreement and order.

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

Dated: January 18, 1961.

FLOYD F. HEDLUND,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 61-601; Filed, Jan. 19, 1961; 8:52 a.m.]

PART 1031—ORANGES AND GRAPEFRUIT GROWN IN THE LOWER RIO GRANDE VALLEY IN TEXAS

Container Regulation; Amendment

Findings. (1) Pursuant to the Marketing Agreement No. 141 and Order No. 131

(7 CFR Part 1031; 25 F.R. 9093) regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations of the Texas Valley Citrus Committee, established under the aforesaid marketing agreement and order, and upon other available information, it is hereby found that the limitation on the handling of oranges and grapefruit, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this amendment until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 1001–1011) in that, as hereinafter set forth, the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient; and such amendment relieves restrictions on the handling of oranges and grapefruit.

It is, therefore, ordered that paragraph (a) of § 1031.307 (Container Regulation; 25 F.R. 12505) is hereby amended by adding at the end thereof a new subparagraph (11) reading as follows:

(11) Containers with inside dimensions of 16$\frac{5}{16}$ x 10$\frac{5}{8}$ x 10$\frac{5}{8}$ inches.

The provisions of this amendment shall become effective at 12:01 a.m., e.s.t., January 23, 1961.

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

Dated: January 18, 1961.

FLOYD F. HEDLUND,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 61–599; Filed, Jan. 19, 1961; 8:52 a.m.]

[Orange Reg. 8]

PART 1031—ORANGES AND GRAPEFRUIT GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS

Limitation of Shipments

§ 1031.316 Orange Regulation 8.

(a) *Findings.* (1) Pursuant to the marketing agreement, and Order No. 131 (7 CFR Part 1031; 25 F.R. 9093), regulating the handling of oranges and grapefruit grown in the lower Rio Grande Valley in Texas, effective September 22, 1960, under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendation of the Texas Valley Citrus Committee established under the aforesaid marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of oranges, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 1001–1011) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. Shipments of oranges, grown in the production area, are presently subject to regulation by grades and sizes, pursuant to the marketing agreement and order; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after an open meeting of the Texas Valley Citrus Committee on January 16, 1961, such meeting was held to consider recommendations for regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; the provisions of this section, including the effective time hereof, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period hereinafter set forth so as to provide for the continued regulation of the handling of oranges, and compliance with this section will not require any special preparation on the part of the persons subject thereto which cannot be completed by the effective time hereof.

(b) *Order.* (1) Terms used in the marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said marketing agreement and order; and terms relating to grade and diameter, when used herein, shall have the same meaning as is given to the respective term in the United States Standards for Oranges (Texas and States other than Florida, California, and Arizona) (§§ 51.680 to 51.712 of this title).

(2) During the period beginning at 12:01 a.m., c.s.t., January 23, 1961, and ending at 12:01 a.m., c.s.t., February 6, 1961, no handler shall handle:

(i) Any oranges of any variety, grown in the production area, unless such oranges grade at least U.S. No. 2;

(ii) Any Navel or Early and Midseason oranges, grown as aforesaid, which are of a size smaller than 2$\frac{7}{16}$ inches in diameter, except that not more than ten (10) percent, by count, of such oranges in any lot of containers and not more than fifteen (15) percent, by count, of such oranges in any individual container in such lot may be of a size smaller than 2$\frac{7}{16}$ inches in diameter;

(iii) Any Valencia and similar late type oranges, grown as aforesaid, which are of a size smaller than 3$\frac{3}{16}$ inches in diameter, except that not more than ten (10) percent, by count, of such oranges in any lot of containers, and not more than fifteen (15) percent, by count, of such oranges in any individual container in such lot, may be of a size smaller than 3$\frac{3}{16}$ inches in diameter; or

(iv) Any oranges of any variety, grown as aforesaid, which are place packed in containers, unless such oranges meet the requirements of standard pack or, if not so packed, such oranges meet all applicable requirements of standard sizing and fill: *Provided,* That the minimum and maximum diameters of the individual oranges in any container shall conform to the following applicable range of diameter measurements except that not to exceed ten (10) percent, by count, of the oranges in any such container may measure less than the minimum or more than the maximum applicable diameter limits specified for the particular size: *Provided, further,* That the provisions of this subdivision (iv) shall not apply to the oranges in any gift package of fruit.

Pack sizes in 1⅗ bushel box:	Diameter limits in inches	
	Minimum	*Maximum*
100	3$\frac{7}{16}$	3$\frac{13}{16}$
125	3$\frac{3}{16}$	3$\frac{9}{16}$
163	2$\frac{15}{16}$	3$\frac{5}{16}$
200	2$\frac{11}{16}$	3$\frac{1}{16}$
252	2$\frac{7}{16}$	2$\frac{13}{16}$

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

Dated: January 18, 1961.

FLOYD F. HEDLUND,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 61–602; Filed, Jan. 19, 1961; 8:53 a.m.]

[Grapefruit Reg. 8]

PART 1031—ORANGES AND GRAPEFRUIT GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS

Limitation of Shipments

§ 1031.317 Grapefruit Regulation 8.

(a) *Findings.* (1) Pursuant to the marketing agreement, and Order No. 131 (7 CFR Part 1031; 25 F.R. 9093), regulating the handling of oranges and grapefruit grown in the lower Rio Grande Valley in Texas, effective September 22, 1960, under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendation of the Texas Valley Citrus Committee established under the aforesaid marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of grapefruit, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this

section until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 1001–1011) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. Shipments of all grapefruit, grown in the production area, are presently subject to regulation by grades and sizes, pursuant to the marketing agreement and order; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after an open meeting of the Texas Valley Citrus Committee on January 16, 1961, such meeting was held to consider recommendations for regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; the provisions of this section, including the effective time hereof, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such grapefruit; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period hereinafter set forth so as to provide for the continued regulation of the handling of grapefruit, and compliance with this section will not require any special preparation on the part of the persons subject thereto which cannot be completed by the effective time hereof.

(b) *Order.* (1) Terms used in the marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said marketing agreement and order; and terms relating to grade and diameter when used herein, shall have the same meaning as is given to the respective term in the United States Standards for Grapefruit (Texas and States other than Florida, California, and Arizona) (§§ 51.620 to 51.658 of this title).

(2) During the period beginning at 12:01 a.m., c.s.t., January 23, 1961, and ending at 12:01 a.m., c.s.t., February 6, 1961, no handler shall handle:

(i) Any container of grapefruit of any variety, grown in the production area, unless such grapefruit grade U.S. Fancy, U.S. No. 1 Bright, U.S. No. 1, or U.S. No. 2: *Provided,* That seedless grapefruit which grade U.S. Combination may also be handled if at least 60 percent, by count, of such grapefruit in such container grade at least U.S. No. 1;

(ii) Any seedless grapefruit, grown as aforesaid, which are of a size smaller than 3$^{9}/_{16}$ inches in diameter, except that not more than ten (10) percent, by count, of such seedless grapefruit in any lot of containers, and not more than fifteen (15) percent, by count, of such seedless grapefruit in any individual container in such lot, may be of a size smaller than 3$^{9}/_{16}$ inches in diameter: *Provided,* That none of such seedless grapefruit that is smaller than 3$^{9}/_{16}$ inches in diameter may be smaller than 3$^{9}/_{16}$ inches in diameter;

(iii) Any seeded grapefruit, grown as aforesaid, which are of a size smaller than 3$^{13}/_{16}$ inches in diameter, except that not more than ten (10) percent, by count, of such seeded grapefruit in any lot of containers, and not more than fifteen (15) percent, by count, of such seeded grapefruit in any individual container in such lot, may be of a size smaller than 3$^{13}/_{16}$ inches in diameter; or

(iv) Any grapefruit of any variety, grown as aforesaid, which are place packed in boxes or cartons unless such grapefruit meet the requirements of standard pack or, if not so packed, such grapefruit are fairly uniform in size and the containers are well filled: *Provided,* That, with respect to any such grapefruit that are packed in any container with inside dimensions of 19¾ x 13 x 13½ inches, 19¾ x 13 x 12½ inches, 19¾ x 13½ x 13½ inches, or 19¾ x 13 x 12¼ inches, such container is packed in accordance with one of the following pack sizes and contains the applicable number of grapefruit specified for the pack size: *Provided, further,* That the provisions of this subdivision (iv) shall not apply to the grapefruit in any gift package of fruit:

Pack size:	*Number of grapefruit*
46	48
54	56
64	64
70	72
80	80
96	96

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

Dated: January 18, 1961.

FLOYD F. HEDLUND,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 61–600; Filed, Jan. 19, 1961; 8:52 a.m.]

Title 15—COMMERCE AND FOREIGN TRADE

Chapter III—Bureau of Foreign Commerce, Department of Commerce

[Amdt. No. 48]

SUBCHAPTER B—EXPORT REGULATIONS

[9th Gen. Rev. of Export Regs.]

PART 371—GENERAL LICENSES

Commodities Destined to the Dominican Republic

Section 371.53 *Supplement 3; Commodities destined to the Dominican Republic which are excepted from General License GRO* is amended in the following particulars:

1. The following commodities are added to the list of commodities:

Schedule B No.	*Commodity description*
	Rubber (natural, allied gums, and synthetics) and manufactures:
20610	Pneumatic tires and tire casings, new, truck and bus.
20624	Pneumatic tires and tire casings, new, passenger car.
20658	Inner tubes, new or used, truck, bus, and passenger car.
20662	Solid and cushion tires, new, truck.
20861	Automotive V-type fan belts and belting.
20998	Tires, used, truck, bus, and passenger car.
	Petroleum and products:
50110	Petroleum, crude (including shale oil).
50120	Natural gasoline.
50150	Gasoline blending agents (hydrocarbon compounds only), n.e.c.
50161	Aviation gasoline, 100 octane number and over.
50163	Aviation gasoline, 90 octane number up to, but not including 100.
50165	Aviation gasoline, under 90 octane number.
50170	Gasoline, except aviation, n.e.c.
50270	Kerosene, except jet fuel and distillate fuel oil.
50300	Distillate fuel oil (light fuel oil).
50310	Residual fuel oil.
	Lubricating oils, except hydraulic:
50330	Red and pale oils.
50340	Black oils (including all black and dark green oils, except those intended for use in steam cylinders, for which see 50351 and 50352).
50351	Cylinder bright stock (including bright stock and industrial lubricating oils which are predominantly bright stock and have a Saybolt Universal Viscosity at 210° F. of 95 seconds or more).
50352	Cylinder steam refined stocks (including cylinder stock, steam cylinder oil, gear, and other lubricating oils, consisting principally of such stocks).
50380	Insulating or transformer oils.
50391	Diesel engine lubricating oils.
50392	Turbine engine lubricating oil.
50394	Other industrial engine lubricating oil.
50399	Industrial lubricating oils, n.e.c.
50400	Aviation engine lubricating oils, petroleum base.
50403	Automotive engine lubricating oils.
50405	Automotive gear oils.
50407	Lubricating oils, n.e.c. (including raw or semirefined stocks, or distillates from which lubricants may be produced).
50408	Cutting oil and compounds, petroleum base.
50410	Lubricating greases, except graphite lubricants.
50435	Liquefied petroleum gases (fuel type) (mixed or unmixed).
50590	Hydraulic or automatic transmission fluids, petroleum base.
	Other nonmetallic minerals and products:
54580	Asbestos clutch facing, molded, semimolded and woven, including clutch lining.
54583	Asbestos brake lining in rolls (molded, semimolded, and woven).
54587	Asbestos brake lining, n.e.c. (molded, semi-molded, and woven), including sets.
54809	Graphite greases and lubricants.
	Electrical machinery and apparatus:
70130	Automotive storage batteries, 6 and 12 volt, lead-acid type.
70630	Sealed beam headlamps, automotive.
70903	Spark plugs, automobile, bus, motorcycle, tractor and truck.
	Automobiles, trucks, busses, and trailers, parts, accessories and service equipment:
	Special-purpose vehicles, new, n.e.c.:
79114	Special-purpose military vehicles, new, n.e.c.

Schedule B No.	Commodity description
	Automobiles, trucks, busses, and trailers, parts, accessories and service equipment:
	Parts and accessories for commercial automobiles, trucks, and busses:
	Engines for assembly:
79156	Passenger car.
79165	Bodies for assembly, truck (including Jeep).
79170	Shock absorbers, and specially fabricated parts and accessories, n.e.c., for replacement.

2. The following entries are substituted for entries presently on the list of commodities:

Schedule B No.	Commodity description
79148	Parts specially fabricated, ordered and invoiced as original equipment for trucks (including Jeeps).
	Parts and accessories for commercial automobiles, trucks, and busses:
	Engines for assembly:
79151	Motor truck and bus, diesel and semidiesel.
79153	Motor truck and bus, gasoline, gas, or kerosene.
	Engines for replacement:
79159	Motor truck and bus, diesel and semidiesel.
79162	Motor truck, bus, and passenger car, gasoline, gas, and kerosene.
79261	Parts and accessories, n.e.c., specially fabricated—for assembly.
79262	Parts, n.e.c. (except accessories), specially fabricated—for spares or replacement.
79277	Parts and accessories, n.e.c., for military automobiles, trucks, and busses.

This amendment shall become effective 12:01 a.m., January 20, 1961, except that with respect to shipments of any commodities removed from general license as a result of this amendment which were on dock for lading, on lighter, laden aboard an exporting carrier, or in transit to a port of exit pursuant to actual orders for export prior to 12:01 a.m., January 20, 1961, may be exported under the previous general license provisions up to and including February 20, 1961. Any such shipment not laden aboard the exporting carrier on or before February 20, 1961 requires a validated license for export.

(Sec. 3, 63 Stat. 7; 50 U.S.C. App. 2023. E.O. 9630, 10 F.R. 12245, 3 CFR, 1945 Supp., E.O. 9919, 13 F.R. 59, 3 CFR, 1948 Supp.)

LORING K. MACY,
Director,
Bureau of Foreign Commerce.

[F.R. Doc. 61-540; Filed, Jan. 19, 1961; 8:51 a.m.]

Title 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

[Dockets 7764 c.o., 8030 c.o.]

PART 13—PROHIBITED TRADE PRACTICES

Fame Records, Inc., et al.

Subpart—Bribing customers' employees: § 13.315 *Employees of private concerns.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist orders: Fame Records, Inc., et al., New York, N.Y., Docket 7764, Oct. 27, 1960; and Schwartz Brothers, Inc., et al., Washington, D.C., Docket 8030, Oct. 27, 1960]

In the Matters of: Fame Records, Inc., a Corporation, and Lee A. C. Gallo, Jr., Individually, and as an Officer of Said Corporation; and Schwartz Brothers, Inc., a Corporation, and Harry Schwartz, James Schwartz, Bertram H. Schwartz and Stuart D. Schwartz, Individually and as Officers of Said Corporation

Consent orders requiring a manufacturer in New York City and distributors in Washington, D.C., to cease giving concealed payola to disc jockeys and other personnel of television and radio stations to induce frequent playing of their records in order to increase sales.

Similar orders to cease and desist are as follows, combining respondents in these two cases:

It is ordered, That respondents, Fame Records, Inc., a corporation, and its officers; and Schwartz Brothers, Inc., a corporation, and its officers, and Harry Schwartz, James Schwartz, Bertram H. Schwartz and Stuart D. Schwartz, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with phonograph records which have been distributed in commerce, or which are used by radio or television stations in broadcasting programs in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Giving or offering to give, without requiring public disclosure, any sum of money or other material consideration, to any person, directly or indirectly, to induce that person to select, or participate in the selection of, and the broadcasting of, any such records in which respondents, or any of them, have a financial interest of any nature;

(2) Giving or offering to give, without requiring public disclosure, any sum of money, or other material consideration, to any person, directly or indirectly, as an inducement to influence any employee of a radio or television broadcasting station, or any other person, in any manner, to select, or participate in the selection of, and the broadcasting of, any such records in which respondents, or any of them, have a financial interest of any nature.

There shall be "public disclosure" within the meaning of this order, by any employee of a radio or television broadcasting station, or any other person, who selects or participates in the selection and broadcasting of a record when he shall disclose, or cause to have disclosed, to the listening public at the time the record is played, that his selection and broadcasting of such record are in consideration for compensation of some nature, directly or indirectly received by him or his employer.

The following additional order is included in Fame Records, Inc., et al. (Docket 7764):

It is further ordered, That the complaint be, and hereby is, dismissed as to Lee A. C. Gallo, Jr., individually, and as an officer of said corporate respondent.

By "Decision of the Commission", etc., in each of these two cases, reports of compliance were required as follows (combining the respondents):

It is ordered, That respondents, Fame Records, Inc., a corporation; and Schwartz Brothers, Inc., a corporation, and Harry Schwartz, James Schwartz, Bertram H. Schwartz and Stuart D. Schwartz, individually and as officers of said corporation, shall, within sixty (60) days after service upon them of these orders, file with the Commission reports in writing, setting forth in detail the manner and form in which they have complied with the orders to cease and desist.

Issued: October 28, 1960.

By the Commission.

[SEAL] ROBERT M. PARRISH,
Secretary.

[F.R. Doc. 61-497; Filed, Jan. 19, 1961; 8:47 a.m.]

Title 50—WILDLIFE AND FISHERIES

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

PART 33—SPORT FISHING

Desert Game Range, Nevada

The following special regulation is issued.

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

NEVADA

DESERT GAME RANGE

Sport fishing on the Desert Game Range, Nevada, is permissible only under the following conditions:

(a) Species permitted to be taken: All species.

(b) Open season: May 7, 1961, through October 31, 1961.

(c) Daily creel limits: as prescribed by State regulations (5 game fish).

(d) Methods of fishing:

Tackle: As prescribed by State regulation.

Boats: The use of boats for fishing is prohibited.

(e) Description of areas open to fishing: Fishing is permitted in accordance with (a) above on the posted area which comprises approximately one acre and less than 1 percent of the total refuge and which is described as follows:

COLD CREEK AND WILLOW CREEK

(f) Other provisions:

(1) The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas

generally which are set forth in Title 50, Code of Federal Regulations, Part 33.

(2) A Federal permit is not required to enter the public fishing area.

(3) The provisions of this special regulation are effective May 7, 1961, through October 31, 1961.

RICHARD E. GRIFFITH,
Acting Regional Director, Bureau of Sport Fisheries and Wildlife.

DECEMBER 12, 1961.

[F.R. Doc. 61-498; Filed, Jan. 19, 1961; 8:47 a.m.]

PART 33—SPORT FISHING

Sheldon National Antelope Range, Nevada

The following special regulation is issued.

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

NEVADA

SHELDON NATIONAL ANTELOPE RANGE

Sport fishing on the Sheldon National Antelope Range, Nevada, is permissible only under the following conditions:

(a) Species permitted to be taken: All species.

(b) Open season: January 20, 1961, through December 31, 1961.

(c) Daily creel limits: As prescribed by current regulations of Nevada Fish and Game Commission.

(d) Methods of fishing:

1. Tackle: As prescribed by State regulations.

2. Boats: Boats without motors may be used for fishing.

(e) Description of areas open to fishing: Fishing is permitted in accordance with (a) above on the posted area which comprises approximately 600 acres and less than 1 percent of the total refuge and which is described as follows:

BIG SPRINGS RESERVOIR, VIRGIN CREEK AND TRIBUTARIES

(f) Other provisions:

(1) The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33.

(2) A Federal permit is not required to enter the public fishing area.

(3) The provisions of this special regulation are effective January 20, 1961, through December 31, 1961.

RICHARD E. GRIFFITH,
Acting Regional Director, Bureau of Sport Fisheries and Wildlife.

JANUARY 12, 1961.

[F.R. Doc. 61-499; Filed, Jan. 19, 1961; 8:47 a.m.]

Proposed Rule Making

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 1]

INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Dealers in Tax-Exempt Securities, Amortizable Bond Premium, and Adjustments to Basis

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, in duplicate, to the Commissioner of Internal Revenue, Attention: T:P, Washington 25, D.C., within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner within the 30-day period. In such 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. 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] CHARLES I. FOX,
Acting Commissioner of Internal Revenue.

In order to conform the Income Tax Regulations (26 CFR Part 1) relating to sections 75, 171, and 1016 of the Internal Revneue Code of 1954, to sections 2, 13, and 64(d)(2) of the Technical Amendments Act of 1958 (72 Stat. 1606, 1610, 1656), such regulations are amended as follows:

PARAGRAPH 1. Section 1.75 is amended to read as follows:

§ 1.75 Statutory provisions; dealers in tax-exempt securities.

SEC. 75. *Dealers in tax-exempt securities*—(a) *Adjustment for bond premium.* In computing the gross income of a taxpayer who holds during the taxable year a municipal bond (as defined in subsection (b)(1)) primarily for sale to customers in the ordinary course of his trade or business—

(1) If the gross income of the taxpayer from such trade or business is computed by the use of inventories and his inventories are valued on any basis other than cost, the cost of securities sold (as defined in subsection (b)(2)) during such year shall be reduced by an amount equal to the amortizable bond premium which would be disallowed as a deduction for such year by section 171(a)(2) (relating to deduction for amortizable bond premium) if the definition in section 171(d) of the term "bond" did not exclude such municipal bond; or

(2) If the gross income of the taxpayer from such trade or business is computed without the use of inventories, or by use of inventories valued at cost, and the municipal bond is sold or otherwise disposed of during such year, the adjusted basis (computed without regard to this paragraph) of the municipal bond shall be reduced by the amount of the adjustment which would be required under section 1016(a)(5) (relating to adjustment to basis for amortizable bond premium) if the definition in section 171(d) of the term "bond" did not exclude such municipal bond.

Notwithstanding the provisions of paragraph (1), no reduction to the cost of securities sold during the taxable year shall be made in respect of any obligation described in subsection (b)(1)(A)(ii) which is held by the taxpayer at the close of the taxable year; but in the taxable year in which any such obligation is sold or otherwise disposed of, if such obligation is a municipal bond (as defined in subsection (b)(1)), the cost of securities sold during such year shall be reduced by an amount equal to the adjustment described in paragraph (2), without regard to the fact that the taxpayer values his inventories on any basis other than cost.

(b) *Definitions.* For purposes of subsection (a)—

(1) The term "municipal bond" means any obligation issued by a government or political subdivision thereof if the interest on such obligation is excludable from gross income; but such term does not include such an obligation if—

(A)(i) It is sold or otherwise disposed of by the taxpayer within 30 days after the date of its acquisition by him, or

(ii) Its earliest maturity or call date is a date more than five years from the date on which it was acquired by the taxpayer; and

(B) When it is sold or otherwise disposed of by the taxpayer—

(i) In the case of a sale, the amount realized, or

(ii) In the case of any other disposition, its fair market value at the time of such disposition,

is higher than its adjusted basis (computed without regard to this section and section 1016(a)(6)).

Determinations under subparagraph (B) shall be exclusive of interest.

(2) The term "cost of securities sold" means the amount ascertained by subtracting the inventory value of the closing inventory of a taxable year from the sum of—

(A) The inventory value of the opening inventory for such year, and

(B) The cost of securities and other property purchased during such year which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year.

[Sec. 75 as amended by sec. 2, Technical Amendments Act 1958 (72 Stat. 1606)]

PAR. 2. Section 1.75–1 is amended to read as follows:

§ 1.75–1 Treatment of bond premiums in case of dealers in tax-exempt securities.

(a) *In general.* (1) Section 75 requires certain adjustments to be made by dealers in securities with respect to premiums paid on municipal bonds which are held for sale to customers in the ordinary course of the trade or business. The adjustments depend upon the method of accounting used by the taxpayer in computing the gross income from the trade or business. See paragraphs (b) and (c) of this section.

(2) The term "municipal bond" under section 75 means any obligation issued by a government or political subdivision thereof if the interest on the obligation is excludable from gross income under section 103. However, such term does not include an obligation—

(i) If the earliest maturity or call date of the obligation is more than 5 years from the date of acquisition by the taxpayer or the obligation is sold or otherwise disposed of by the taxpayer within 30 days after the date of acquisition by him, and

(ii) If, in case of an obligation acquired after December 31, 1957, the amount realized upon its sale (or, in the case of any other disposition, its fair market value at the time of disposition) is higher than its adjusted basis.

For purposes of this subparagraph, the amount realized on the sale of the obligation or the fair market value of the obligation shall not include any amount attributable to interest, and the adjusted basis shall be computed without regard to any adjustment for amortization of bond premium required under section 75 and section 1016(a)(6). A bond which is otherwise within the definition of "municipal bond" is subject to the provisions of section 75 if held by the taxpayer for a period of more than 30 days, whether or not such period is entirely within one taxable year.

(3) The term "cost of securities sold" means the amount ascertained by subtracting the inventory value of the closing inventory of a taxable year from the sum of the inventory value of the opening inventory for such year and the cost of securities and other property purchased during such year which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year.

(b) *Inventories not valued at cost.* (1) In the case of a dealer in securities who computes gross income from his trade or business by the use of inventories and values such inventories on any basis other than cost, the adjustment required by section 75 is, except as provided in subparagraph (2) of this paragraph, the reduction of "cost of securities sold" by the amount equal to the amortizable bond premium which would be disallowed as a deduction under section 171(a)(2) with respect to

the municipal bond if the dealer were an ordinary investor holding such bond. Such amortizable bond premium is computed under section 171(b) by reference to the cost or other original basis of the bond on the date of acquisition (determined without regard to section 1013, relating to inventory value on a subsequent date).

(2) No reduction to the cost of securities sold during the taxable year shall be made in respect of any obligation held by the dealer at the close of such taxable year if the earliest maturity or call date of such obligation is more than 5 years from the date on which it was acquired by the taxpayer. However, if such obligation was acquired after December 31, 1957, and is either sold for less than its adjusted basis or otherwise disposed of when its fair market value is less than its adjusted basis, the cost of securities sold for the taxable year in which such obligation is sold or otherwise disposed of shall be reduced. For purposes of making this determination, adjusted basis is computed without regard to section 75 and section 1016(a)(6). The amount of such reduction is the amount by which the adjusted basis of such bond would be required to be reduced under section 1016(a)(5) were such bond subject to the amortizable bond premium provisions of section 171; that is, the amount of the amortizable bond premium which would be disallowed as a deduction under section 171(a)(2) if the taxpayer were an ordinary investor.

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

Example (1). X, a dealer in securities who values his inventories on a basis other than cost, makes his income tax returns on the calendar year basis. On July 1, 1954, he bought, for $1,060 each, three municipal bonds (A, B, and C) having a face obligation of $1,000, and maturing on July 1, 1959. Bond A is sold on December 31, 1954, bond B is sold on December 31, 1955, and bond C is sold on June 30, 1956. For each bond the amortizable bond premium to maturity is $60, the period from date of acquisition to maturity is 60 months, and the amortizable bond premium per month is $1. The adjustment for each of the years 1954, 1955, and 1956 is as follows:

Bond	Date acquired	Date sold	Adjustment to "cost of securities sold" for—		
			1954	1955	1956
A	July 1, 1954	Dec. 31, 1954	$6		
B	July 1, 1954	Dec. 31, 1955	6	$12	
C	July 1, 1954	June 30, 1956	6	12	$6
Total			$18	$24	$6

Example (2). Y is a dealer in securities who values his inventories on a basis other than cost. He makes his income tax returns on the calendar year basis. On January 1, 1958, Y bought five bonds (D, E, F, G, and H) issued by various municipalities. Each bond has a face obligation of $1,000 and was purchased for $1,060. The interest on each is excludable from gross income under section 103. Bonds D, E, and F mature on December 31, 1962, and bonds G and H mature on December 31, 1967. The amortizable bond premium per month is $1 with respect to bonds D, E, and F, and is $0.50 with respect to bonds G and H. The following table indicates the reduction in cost of securities sold which Y should make for the years shown, assuming that he sells the bonds on the dates and for the prices set forth:

Bond	Date sold	Sale price	Adjustment to "cost of securities sold" for—		
			1958	1959	1960
D	Feb. 1, 1959	$1,090	$12	$1	
E	Jan. 30, 1958	1,100	None		
F	Jan. 30, 1958	1,000	1		
G	Dec. 31, 1960	1,065	None	None	None
H	Dec. 31, 1960	1,050	None	None	$18
			13	1	18

An adjustment to cost of securities sold must be made with respect to bond D (even though it was ultimately sold at a gain) because the bond neither had an earliest maturity or call date of more than 5 years from the date on which Y acquired it, nor was it disposed of within 30 days after such date. An adjustment must be made for the years 1958 and 1959 since section 75(a)(1) requires that an adjustment be made with respect to such a bond at the close of each taxable year in which it is held. On the other hand, since bonds E, F, G, and H either were disposed of within 30 days after the date of such acquisition or had an earliest maturity or call date more than 5 years from the date of acquisition, and were acquired after December 31, 1957, it is necessary to determine whether Y disposed of them at a loss so as to require an adjustment under section 75. No adjustment is necessary with respect to bonds E and G because they were sold at a gain. An adjustment to cost of securities sold is required with respect to bonds F and H because they were sold at a loss. As in the case of bond D, an adjustment with respect to bond F is made in 1958 in accordance with section 75(a)(1); however, the adjustment with respect to bond H is made entirely in 1960, the taxable year in which Y sold that bond, in accordance with the last sentence of section 75(a). If Y had acquired bonds before January 1, 1958, it would be unnecessary to determine whether they were disposed of at a lost since that factor is significant only with respect to bonds acquired on or after that date.

(c) *Inventories not used or inventories valued at cost.* (1) In the case of a dealer in securities who computes gross income from his trade or business without the use of inventories or by use of inventories valued at cost, the adjustment required by section 75 is a reduction of the adjusted basis of each municipal bond sold or otherwise disposed of during the taxable year. The amount of such reduction is the amount by which the adjusted basis of such bond would be required to be reduced under section 1016(a)(5) were such bond subject to the amortizable bond premium provisions of section 171, that is, the amount of the amortizable bond premium which would be disallowed as a deduction under section 171(a)(2) if the taxpayer were an ordinary investor.

(2) Subparagraph (1) of this paragraph may be illustrated by the following example:

Example. Z, a dealer in securities who values his inventories on the basis of cost, makes his income tax returns on the calendar year basis. On January 1, 1954, he buys, for $1,060 each, three municipal bonds (I, J, and K) having a face obligation of $1,000, and maturing on January 1, 1959. Bond I is sold on December 31, 1954, bond J is sold on June 30, 1955, and bond K is sold on December 31, 1956. For each bond, the amortizable bond premium to maturity is $60, the period from the date of acquisition to maturity is 60 months, and the amortizable bond premium per month is $1.

Bond	Date acquired	Date sold	Adjustment for—		
			1954	1955	1956
I	Jan. 1, 1954	Dec. 31, 1954	$12		
J	Jan. 1, 1954	June 30, 1955	None	$18	
K	Jan. 1, 1954	Dec. 31, 1956	None	None	$36

(d) *Bonds acquired before July 1, 1950.* Under section 203(c) of the Revenue Act of 1950, adjustment is required for a municipal bond acquired before July 1, 1950, only with respect to taxable years beginning on or after that date. Accordingly, if the municipal bond was acquired before July 1, 1950, then for purposes of section 75 the amortizable bond premium under section 171 must be computed after adjusting the bond premium to the extent proper to reflect unamortized bond premium for so much of the holding period (as determined under section 1223) as precedes the taxable year of the dealer beginning on or after July 1, 1950. Thus, in example (1) of paragraph (b) and in the example in paragraph (c) of this section, the first taxable year beginning on or after July 1, 1950, is, for each dealer, the taxable year beginning January 1, 1951. If each dealer had purchased for $1,060 on April 1, 1950, a municipal bond having a face obligation of $1,000 and maturing April 1, 1955, and had sold such bond on February 28, 1955, the adjustment under section 75 would be computed as follows:

	Dealer X	Dealer Z
Bond premium	$60	$60
Adjustment for holding period prior to Jan. 1, 1951	9	9
Amortizable bond premium to maturity, as adjusted	51	51
Amortizable bond premium per month	1	1
Total adjustments under sec. 22(o), 1939 Code, for years 1951–53	36	None
Adjustment under sec. 75 for 1954	12	None
Adjustment under sec. 75 for 1955	2	50

PAR. 3. Section 1.171 is amended (A) by revising paragraphs (1) and (2) of section 171(b), and (B) by revising the historical note at the end thereof. The revised provisions read as follows:

§ 1.171 Statutory provisions; amortizable bond premium.

SEC. 171. *Amortizable bond premium.* * * *

(b) *Amortizable bond premium*—(1) *Amount of bond premium.* For purposes of paragraph (2), the amount of bond premium, in the case of the holder of any bond, shall be determined—

(A) With reference to the amount of the basis (for determining loss on sale or exchange) of such bond,

(B) (i) With reference to the amount payable on maturity or on earlier call date, in the case of any bond other than a bond to which clause (ii) or (iii) applies,

(ii) With reference to the amount payable on maturity (or if it results in a smaller amortizable bond premium attributable to the period to earlier call date, with reference to the amount payable on earlier call date), in the case of any bond described in subsection (c) (1) (B) which is acquired after December 31, 1957, or

(iii) With reference to the amount payable on maturity, in the case of any bond described in subsection (c) (1) (B) which was acquired after January 22, 1954, and before January 1, 1958, but only if such bond was issued after January 22, 1951, and has a call date not more than 3 years after the date of such issue, and

(C) With adjustments proper to reflect unamortized bond premium, with respect to the bond, for the period before the date as of which subsection (a) becomes applicable with respect to the taxpayer with respect to such bond.

In no case shall the amount of bond premium on a convertible bond include any amount attributable to the conversion features of the bond.

(2) *Amount amortizable.* The amortizable bond premium of the taxable year shall be the amount of the bond premium attributable to such year. In the case of a bond to which paragraph (1) (B) (ii) or (iii) applies and which has a call date, the amount of bond premium attributable to the taxable year in which the bond is called shall include an amount equal to the excess of the amount of the adjusted basis (for determining loss on sale or exchange) of such bond as of the beginning of the taxable year over the amount received on redemption of the bond or (if greater) the amount payable on maturity.

* * * * *

[Sec. 171 as amended by sec. 13, Technical Amendments Act 1958 (72 Stat. 1610)]

PAR. 4. Paragraph (a) (2) of § 1.171–2 is amended to read as follows:

§ 1.171–2 Determination of bond premium.

(a) *In general.* * * *

(2) (i) In the case of wholly taxable bonds described in section 171(c) (1) (B) which are issued after January 22, 1951, and acquired after January 22, 1954, but before January 1, 1958, the earlier call date may be used in computing the amortizable bond premium only if such earlier call date is a date more than 3 years after the date of original issue. If a bond described in the preceding sentence is subject to a call date which falls within 3 years of the date of original issue, the amortizable bond premium shall be computed by reference to the amount payable on maturity. If a wholly taxable bond described in section 171(c) (1) (B) is acquired after December 31, 1957, the amortizable bond premium shall be computed by reference to the amount payable on maturity, or if it results in a smaller amortizable bond premium attributable to the period of earlier call date, the computation shall be made by reference to the amount payable on the earlier call date. For purposes of this subdivision, the date of acquisition of a bond shall be the date such bond was ordered under a firm commitment to buy and not the date the bond was delivered to the taxpayer. For determining whether an earlier call date is a date more than 3 years after the date of original issue, consideration will be given to the terms under which a bond is issued.

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

Example (1). Assume that the taxpayer acquired at the date of issue, January 1, 1956, a $100 wholly taxable bond for $112, callable at any time thereafter upon 30 days' notice. The premium of $12 attributable to such bond may be amortized only with reference to the maturity date of the bond. Similarly, assume that in 1957 the taxpayer acquired a $100, 20-year bond, issued on January 1, 1954, for $115. The bond was callable 2 years after the date of issuance or, if not then called, 10 years after the date of issuance. The premium of $15 attributable to such bond may be amortized only with reference to the maturity date of the bond.

Example (2). On January 1, 1958, the taxpayer (who is on a calendar year basis) pays $1,200 for a $1,000 wholly taxable bond which matures on December 31, 1977. The bond is callable on January 1, 1963, at $1,165. The premium computed with reference to the maturity date of the bond is $200. The premium computed with reference to the earlier call date is $35. Although the premium amortized ratably to maturity would yield a deduction of $10 for each year ($200 divided by 20 years), under section 171(b) (1) (B) (ii) the deduction for each taxable year for the period before January 1, 1963, will be $7 ($35 divided by 5 years). If the bond is not called, the deduction for each taxable year in the period from 1963 through 1977 will be $11 ($165 divided by 15 years). If the earliest call date in this example had been January 1, 1961, instead of January 1, 1963, the premium amortized ratably to maturity would be used to obtain a deduction of $10 per year since this would be less than the premium amortized ratably to earlier call date of $11.67 ($35 divided by 3, the number of years to the earliest call date).

(iii) In the case of a wholly taxable bond described in section 171(b) (1) (B) (ii) or (iii), which has a call date, the amount of bond premium attributable to the taxable year in which the bond is called shall include an amount equal to the excess of the amount of the adjusted basis (for determining loss on sale or exchange) of such bond as of the beginning of the taxable year over the amount received on redemption of the bond or (if greater than the amount received on redemption) the amount payable on maturity. For adjustments proper to reflect unamortized bond premium for the period before the date as of which section 171 becomes applicable to the bond in the hands of the taxpayer, see subparagraph (4) of this paragraph. For example, if a wholly taxable bond, issued on January 1, 1954, and acquired by the taxpayer on January 1, 1955, at a price of $109, matures in 10 years from the date of issue (9 years from the date of acquisition) but is callable at $105 on 30 days' notice, section 171(b) (1) (B) (iii) requires that the bond be amortized to maturity, that is, at the rate of $1 per year. If the bond is called on December 31, 1956, for $105, then $3, the excess of the adjusted basis of $108 ($109 less $1 deducted in 1955) over the amount received on redemption, $105, may be deducted for the year 1956.

PAR. 5. Section 1.1016 is amended (A) by revising section 1016(a) (6), (B) by adding section 1016(a) (18), and (C) by adding a historical note at the end thereof. The revised and added provisions read as follows:

§ 1.1016 Statutory provisions; adjustments to basis.

SEC. 1016. *Adjustments to basis*—(a) *General rule.* * * *

(6) In the case of any municipal bond (as defined in section 75(b)), to the extent provided in section 75(a) (2);

* * * * *

(18) To the extent provided in section 1376 in the case of stock of, and indebtedness owing, shareholders of an electing small business corporation (as defined in section 1371 (b)).

* * * * *

[Sec. 1016 as amended by sec. 4(c), Act of June 29, 1956 (Pub. Law 629, 84th Cong., 70 Stat. 407); secs. 2(b) and 64(d) (2), Technical Amendments Act 1958 (72 Stat. 1607, 1656)]

PAR. 6. Section 1.1016–5 is amended (A) by revising paragraph (c), and (B) by adding a new paragraph (n). The revised and new provisions read as follows:

§ 1.1016–5 Miscellaneous adjustments to basis.

* * * * *

(c) *Municipal bonds.* In the case of a municipal bond (as defined in section 75(b)), basis shall be adjusted to the extent provided in section 75 or as provided in section 22(o) of the Internal Revenue Code of 1939, and the regulations thereunder.

* * * * *

(n) *Stock and indebtedness of electing small business corporation.* In the case of a shareholder of an electing small business corporation, as defined in section 1371(b), the basis of the shareholder's stock in such corporation, and the basis of any indebtedness of such corporation owing to the shareholder, shall be adjusted to the extent provided in §§ 1.1375–4, 1.1376–1, and 1.1376–2.

[F.R. Doc. 61–508; Filed, Jan. 19, 1961; 8:45 a.m.]

[26 CFR Part 1]

INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1932

Pre-1954 Adjustments Resulting From Change in Method of Accounting

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, in duplicate, to the Commissioner of Internal Revenue, Attention: T:P, Washington 25, D.C., within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner within the 30-day period. In such 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. 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] DANA LATHAM,
Commissioner of Internal Revenue.

The following regulations are hereby prescribed under section 381(c)(21) of the Internal Revenue Code of 1954, relating to pre-1954 adjustments resulting from change in method of accounting, added by section 29(c) of the Technical Amendments Act of 1958 (72 Stat. 1628):

§ 1.381(c)(21) Statutory provisions; carryovers in certain corporate acquisitions; items of the distributor or transferor corporation; pre-1954 adjustments resulting from change in method of accounting.

SEC. 381. *Carryovers in certain corporate acquisitions.* * * *

(c) *Items of the distributor or transferor corporation.* The items referred to in subsection (a) are:

* * * * *

(21) *Pre-1954 adjustments resulting from change in method of accounting.* The acquiring corporation shall take into account any net amount of any adjustment described in section 481(b)(4) of the distributor or transferor corporation—

(A) To the extent such net amount of such adjustment has not been taken into account by the distributor or transferor corporation, and

(B) In the same manner and at the same time as such net amount would have been taken into account by the distributor or transferor corporation.

[Sec. 381(c)(21) as added by sec. 29(c), Technical Amendments Act 1958 (72 Stat. 1628)]

§ 1.381(c)(21)–1 Pre-1954 adjustments resulting from change in method of accounting.

(a) *Carryover requirement.* Section 381(c)(21) provides that, in a transaction to which section 381(a) applies, an acquiring corporation shall take into account the net amount of any adjustments described in section 481(b)(4) (relating to adjustments arising from changes in accounting methods initiated by the taxpayer attributable to pre-1954 Code years) of the distributor or transferor corporation to the extent that such net amount of such adjustments has not been taken into account in any taxable year, including a short taxable year, by the distributor or transferor corporation. The acquiring corporation shall take into account in each taxable year beginning with the taxable year ending after the date of distribution or transfer the net amount of such adjustments in the same manner and at the same time as such net amount would have been taken into account by the distributor or transferor corporation. Thus, the amount of any such adjustment which the acquiring corporation shall take into account in each taxable year shall be the same amount that would have been taken into account in each taxable year by the distributor or transferor corporation.

(b) This section may be illustrated by the following example:

Example. On January 1, 1960, X Corporation, a calendar year taxpayer, voluntarily changed its method of accounting giving rise to a $50,000 adjustment under section 481(a), of which $20,000 is attributable to pre-1954 Code years. Under section 481(b)(4) the $20,000 adjustment is to be spread over 1960 and the following 9 years at the rate of $2,000 each year. On November 1, 1963, all the assets of X Corporation are acquired by Y Corporation in a transaction to which section 381(a) applies. Y Corporation reports its income on a fiscal year ending June 30. X and Y Corporations must take into account the $20,000 adjustment at the rate of $2,000 in each taxable year in the following time and manner:

X Corporation		
Calendar years 1960–62 ($2,000×3)	$6,000	
Short taxable year ending Nov. 1, 1963 ($2,000×1)	2,000	$8,000
Y Corporation		
Fiscal years ending:		
June 30, 1964 ($2,000×1)	2,000	
June 30, 1965–69 ($2,000×5)	10,000	12,000
		20,000

(c) *Successive transactions to which section 381(a) applies.* The provisions of this section shall apply in the case of successive transactions to which section 381(a) applies. Thus, if R Corporation, which was taking into account adjustments described in section 481(b)(4), distributes or transfers its assets to S Corporation in a transaction to which section 381(a) applies, and S Corporation was required to take into account any remaining portion of such adjustments under section 381(c)(21) and this section, and if subsequently S Corporation distributes or transfers its assets to T Corporation in a transaction to which section 381(a) applies, then T Corporation, under section 381(c)(21) and this section, shall take into account any remaining portion of such adjustments not previously taken into account by R and S Corporations.

(d) *Acquiring corporation not receiving all the assets.* The adjustments described in this section acquired from a distributor or transferor corporation by an acquiring corporation in a transaction to which section 381(a) applies is not reduced by reason of the fact that the acquiring corporation does not acquire 100 percent of the assets of the distributor or transferor corporation.

[F.R. Doc. 61–509; Filed, Jan. 19, 1961; 8:45 a.m.]

[26 CFR Part 1]

INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Life Insurance Companies

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, in duplicate, to the Commissioner of Internal Revenue, Attention: T:P, Washington 25, D.C., within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner within the 30-day period. In such 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. 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] DANA LATHAM,
Commissioner of Internal Revenue.

In order to provide regulations under sections 817, 818, 819, and 820 of the Internal Revenue Code of 1954, as added by the Life Insurance Company Income Tax Act of 1959 (73 Stat. 132), the

Income Tax Regulations (26 CFR Part 1) are amended as follows:

There are inserted immediately after § 1.816 the following new sections:

MISCELLANEOUS PROVISIONS

§ 1.817 Statutory provisions; life insurance companies; rules relating to certain gains and losses.

SEC. 817 Rules relating to certain gains *and losses*—(a) *Treatment of capital gains and losses, etc.* In the case of a life insurance company—

(1) In applying section 1231(a), the term "property used in the trade or business" shall be treated as including only—

(A) Property used in carrying on an insurance business, of a character which is subject to the allowance for depreciation provided in section 167, held for more than 6 months, and real property used in carrying on an insurance business, held for more than 6 months, which is not described in section 1231(b)(1)(A), (B), or (C), and

(B) Property described in section 1231(b)(2), and

(2) In applying section 1221(2), the reference to property used in trade or business shall be treated as including only property used in carrying on an insurance business.

(b) *Gain on property held on December 31, 1958, and certain substituted property acquired after 1958*—(1) *Property held on December 31, 1958.* In the case of property held by the taxpayer on December 31, 1958, if—

(A) The fair market value of such property on such date exceeds the adjusted basis for determining gain as of such date, and

(B) The taxpayer has been a life insurance company at all times on and after December 31, 1958,

the gain on the sale or other disposition of such property shall be treated as an amount (not less than zero) equal to the amount by which the gain (determined without regard to this subsection) exceeds the difference between the fair market value on December 31, 1958, and the adjusted basis for determining gain as of such date.

(2) *Certain property acquired after December 31, 1958.* In the case of property acquired after December 31, 1958, and having a substituted basis (within the meaning of section 1016(b))—

(A) For purposes of paragraph (1), such property shall be deemed held continuously by the taxpayer since the beginning of the holding period thereof, determined with reference to section 1223,

(B) The fair market value and adjusted basis referred to in paragraph (1) shall be that of that property for which the holding period taken into account includes December 31, 1958,

(C) Paragraph (1) shall apply only if the property or properties the holding periods of which are taken into account were held only by life insurance companies after December 31, 1958, during the holding periods so taken into account,

(D) The difference between the fair market value and adjusted basis referred to in paragraph (1) shall be reduced (not less than zero) by the excess of (i) the gain that would have been recognized but for this subsection on all prior sales or dispositions after December 31, 1958, of properties referred to in subparagraph (C), over (ii) the gain that was recognized on such sales or other dispositions, and

(E) The basis of such property shall be determined as if the gain which would have been recognized but for this subsection were recognized gain.

(3) *Property defined.* For purposes of paragraphs (1) and (2), the term "property" does not include insurance and annuity contracts (and contracts supplementary thereto) and property described in paragraph (1) of section 1221.

(c) *Limitation on capital loss carryovers.* A net capital loss for any taxable year beginning before January 1, 1959, shall not be taken into account.

(d) *Gain on transactions occurring prior to January 1, 1959.* For purposes of this part, there shall be excluded any gain from the sale or exchange of a capital asset, and any gain considered as gain from the sale or exchange of a capital asset, resulting from sales or other dispositions of property prior to January 1, 1959. Any gain after December 31, 1958, resulting from the sale or other disposition of property prior to January 1, 1959, which, but for this sentence, would be taken into account under section 1231, shall not be taken into account under section 1231 for purposes of this part.

(e) *Certain reinsurance transactions in 1958.* For purposes of this part, the reinsurance in a single transaction, or in a series of related transactions, occurring in 1958, by a life insurance company of all of its insurance contracts of a particular type, through the assumption by another company or companies of all liabilities under such contracts, shall be treated as a sale of a capital asset.

[Sec. 817 as added by sec. 2, Life Insurance Company Tax Act 1955 (70 Stat. 46); amended by sec. 2, Life Insurance Company Income Tax Act 1959 (73 Stat. 132)]

§ 1.817–1 Taxable years affected.

Sections 1.817–2 through 1.817–4 are applicable only to taxable years beginning after December 31, 1957, and all references to sections of part I, subchapter L, chapter 1 of the Code are to the Internal Revenue Code of 1954, as amended by the Life Insurance Company Income Tax Act of 1959 (73 Stat. 112).

§ 1.817–2 Treatment of capital gains and losses.

(a) *In general.* For taxable years beginning after December 31, 1958, if the net long-term capital gain (as defined in section 1222(7)) of any life insurance company exceeds its net short-term capital loss (as defined in section 1222(6)), section 802(a)(2) imposes a separate tax equal to 25 percent of such excess. Except as modified by section 817 (rules relating to certain gains and losses), the general rules of the Code relating to gains and losses, such as subchapter O (relating to gain or loss on disposition of property), subchapter P (relating to capital gains and losses), etc., shall apply with respect to life insurance companies.

(b) *Modification of section 1221 and 1231.* (1) In the case of a life insurance company, section 817(a)(1) provides that for purposes of applying section 1231(a) (relating to property used in the trade or business and involuntary conversions), the term "property used in the trade or business" shall be treated as including only—

(i) Property used in carrying on an insurance business, of a character subject to the allowance for depreciation under section 167 (even though fully depreciated), held for more than 6 months, and real property used in carrying on an insurance business, held for more than 6 months, and which is not—

(*a*) Property of a kind which would properly be includible in the inventory of the taxpayer if on hand at the close of the taxable year;

(*b*) Property held by the taxpayer primarily for sale to customers in the ordinary course of business; or

(*c*) A copyright, a literary, musical, or artistic composition, or similar property held by a taxpayer described in section 1221(3).

(ii) The cutting or disposal of timber, or the disposal of coal, to the extent considered arising from a sale or exchange by reason of the provisions of section 631 and the regulations thereunder.

(2) In the case of a life insurance company, section 817(a)(2) provides that for purposes of applying section 1221(2) (relating to the exclusion of certain property from the term capital asset), the reference to property used in trade or business shall be treated as including only property used in carrying on an insurance business.

(3) Section 1231(a), as modified by section 817(a)(1) and subparagraph (1) of this paragraph, shall apply to recognized gains and losses from the following:

(i) The sale, exchange, or involuntary conversion of the following property, if held for more than 6 months—

(*a*) The home office and branch office buildings (including land) owned and occupied by the life insurance company;

(*b*) Furniture and equipment owned by the life insurance company and used in the home office and branch office buildings occupied by the life insurance company; and

(*c*) Automobiles and other depreciable personal property used in connection with the operations conducted in the home office and branch office buildings occupied by the life insurance company.

(ii) The involuntary conversion of capital assets held for more than 6 months.

(iii) The cutting or disposal of timber, or the disposal of coal, to the extent considered arising from a sale or exchange by reason of the provisions of section 631 and the regulations thereunder.

(4) Section 1221(2), as modified by section 817(a)(2) and subparagraph (2) of this paragraph, shall include only the following property:

(i) The home office and branch office buildings (including land) owned and occupied by the life insurance company;

(ii) Furniture and equipment owned by the life insurance company and used in the home office and branch office buildings occupied by the life insurance company; and

(iii) Automobiles and other depreciable personal property used in connection with the operations conducted in the home office and branch office buildings occupied by the life insurance company.

(5) If an asset described in subparagraph (3)(i)(*a*), (*b*), or (*c*) or subparagraph (4) of this paragraph, or any portion thereof, is also an "investment asset" (an asset from which gross investment income, as defined in section 804(b), is derived), such asset, or portion thereof, shall not be treated as an asset used in carrying on an insurance business. Accordingly, the gains or losses from the sale or exchange (or considered

as from the sale or exchange) of depreciable assets attributable to any trade or business, other than the insurance trade or business, carried on by the life insurance company, such as operating a radio station, housing development, or a farm, or renting various pieces of real estate shall be treated as gains or losses from the sale or exchange of a capital asset unless such asset is involuntarily converted (within the meaning of paragraph (e) of § 1.1231–1).

(c) *Illustration of principles.* The provisions of section 817(a) and this section may be illustrated by the following examples:

Example (1). L, a life insurance company, has recognized gains and losses for the taxable year 1959 from the sale of the following items:

	Gains	Losses
Stocks, held for more than 6 months	$100,000	
Bonds, held for more than 6 months		$5,000
Housing development, held for more than 6 months		400,000
Branch office building owned and occupied by L, held for more than 6 months		115,000
Furniture and equipment used in the investment department, held for more than 6 months	30,000	
Radio station, held for more than 6 months	200,000	
Involuntary conversion of apartment building, held for more than 6 months	7,000	

The recognized gains and losses from the sale of the stocks, bonds, housing development, and radio station shall be treated as gains and losses from the sale of capital assets since such items are capital assets within the meaning of section 1221 (as modified by section 817(a)(2)). Accordingly, the provisions of section 1231 shall not apply to the sale of such capital assets. However, the provisions of section 1231 (as modified by section 817(a)(1)) shall apply to the sale of the branch office building and the furniture and equipment, and the apartment building involuntarily converted. Since the aggregate of the recognized losses ($115,000) exceeds the aggregate of the recognized gains ($37,000), the gains and losses are treated as ordinary gains and losses.

Example (2). Y, a life insurance company, owns a twenty-story home office building, having an adjusted basis of $15,000,000, ten floors of which it rents to various tenants, one floor of which is utilized by it in operating its investment department, and the remaining nine floors of which are occupied by it in carrying on its insurance business. If in 1960, Y sells the building for $10,000,000, Y must first apportion its basis between that portion of the building (one-half) used in carrying on an insurance business, and that portion of the building (one-half) classified as an "investment asset", before it can determine the character of the loss attributable to each portion of the building. For such purpose, the one floor utilized by Y in operating its investment department is treated as used in carrying on an insurance business. Assuming that each portion of the building bears an equal (one-half) relation to the basis of the entire building, Y (without regard to section 817(b)) would have a $2,500,000 ordinary loss on that portion used in carrying on an insurance business (assuming that Y had no gains subject to section 1231), and a $2,500,000 capital loss on that portion of the building classified as an investment asset.

§ 1.817–3 Gain on property held on December 31, 1958, and certain substituted property acquired after 1958.

(a) *Limitation of gain recognized on property held on December 31, 1958.* (1) Section 817(b)(1) limits the amount of gain that shall be recognized on the sale or other disposition of property other than insurance and annuity contracts (and contracts supplementary thereto) and property described in section 1221(1) (relating to stock in trade or inventory-type property) if:

(i) The property was held (or treated as held within the meaning of paragraph (c)(1) of this section) by a life insurance company on December 31, 1958;

(ii) The taxpayer has been a life insurance company at all times on and after December 31, 1958, including the date of the sale or other disposition of the property; and

(iii) The fair market value of the property on December 31, 1958, exceeds the adjusted basis for determining gain as of such date.

The gain on the sale or other disposition of such property shall be limited to an amount (but not less than zero) equal to the amount by which the gain (determined without regard to section 817(b)(1)) exceeds the difference between the fair market value of such property on December 31, 1958, and the adjusted basis for determining gain as of such date. Accordingly, the separate 25 percent tax rate imposed by section 802(a)(2) shall apply with respect to the amount of gain so limited and, in the case of a stock life insurance company, the amount of such gain shall be taken into account under section 815(b)(2)(A)(ii) for purposes of determining the amount to be added to the shareholders surplus account (as defined in section 815(b) and § 1.815–3) for the taxable year. Furthermore, the amount of the gain (determined without regard to section 817(b)(1) and this paragraph) which is not taken into account under section 802(a)(2) and paragraph (f) of § 1.802–3 by reason of the application of section 817(b)(1) shall be included in other accounts (as defined in § 1.815–5) by such a company for the taxable year.

(2) Section 817(b)(1) and subparagraph (1) of this paragraph shall not apply for purposes of determining loss with respect to property held on December 31, 1958.

(b) *Illustration of principles.* The application of section 817(b)(1) and paragraph (a) of this section may be illustrated by the following examples:

Example (1). On December 31, 1958, J, a stock life insurance company, owned stock of Z Corporation and on such date the stock had an adjusted basis for determining gain of $5,000 and a fair market value of $6,000. On August 1, 1959, the company sells such stock for $8,000. Assuming J qualifies as a life insurance company for the taxable year 1959, and applying the provisions of section 817(b)(1) and paragraph (a) of this section, the gain recognized (assuming no adjustment to basis for the period since December 31, 1958) on the sale shall be limited to $2,000 (the amount by which the gain realized, $3,000, exceeds the difference, $1,000, between the fair market value, $6,000, and the adjusted basis, $5,000, for determining gain on December 31, 1958). Thus, J shall take into account $2,000 under section 815(b)(2)(A)(ii) for purposes of determining the amount to be added to its shareholders surplus account for the taxable year and shall include $1,000 in other accounts for the taxable year.

Example (2). The facts are the same as in example (1), except that the selling price is $5,800. In such case, no gain shall be recognized even though there is a realized gain of $800. Since such realized gain does not exceed the difference ($1,000) between the fair market value ($6,000) and the adjusted basis ($5,000) for determining gain on December 31, 1958, section 817(b)(1) does not apply. Furthermore, no loss shall be realized or recognized as a result of this transaction. Thus, J shall include $800 in other accounts for the taxable year and shall not take into account any amount under section 815(b)(2)(A)(ii).

Example (3). The facts are the same as in example (1), except that the adjusted basis for determining loss is $5,000 and the selling price is $4,500. In such case, since J has sustained a loss, section 817(b)(1) does not apply.

(c) *Certain substituted property acquired after December 31, 1958.* Section 817(b)(2) provides that if a life insurance company acquires property after December 31, 1958, in exchange for property actually held by the company on December 31, 1958, and the property acquired has a substituted basis within the meaning of section 1016(b) and § 1.1016–10, the following rules shall apply:

(1) For purposes of section 817(b)(1), such acquired property shall be deemed as having been held continuously by the taxpayer since the beginning of the holding period thereof as determined under section 1223;

(2) The fair market value and adjusted basis referred to in section 817(b)(1) shall be that of that property for which the holding period taken into account includes December 31, 1958;

(3) Section 817(b)(1) shall apply only if the property or properties, the holding periods of which are taken into account, were held only by life insurance companies after December 31, 1958, during the holding periods so taken into account;

(4) The difference between the fair market value and adjusted basis referred to in section 817(b)(1) shall be reduced (but not below zero) by the excess of (i) the gain that would have been recognized but for section 817(b) on all prior sales or other dispositions after December 31, 1958, of properties referred to in section 817(b)(2)(C) over (ii) the gain that was recognized on such sales or other dispositions; and

(5) The basis of such acquired property shall be determined as if the gain which would have been recognized but for section 817(b) were recognized gain.

For purposes of section 817(b)(2) and this paragraph, the term "property" does not include insurance and annuity contracts (and contracts supplementary thereto) and property described in section 1221(1) (relating to stock in trade or inventory-type property). Furthermore, the provisions of section 817(b)(1) and paragraph (a)(1) of this section

shall not apply for purposes of determining loss with respect to property described in section 817(b)(2) and this paragraph.

(d) *Illustration of principles.* The application of section 817(b)(2) and paragraph (c) of this section may be illustrated by the following example:

Example. Assume that W, a life insurance company, owns property B on December 31, 1958, at which time its adjusted basis was $1,000 and its fair market value was $1,800. On January 31, 1960, in a transaction to which section 1031 (relating to exchange of property held for productive use or investment) applies, W receives property H having a fair market value of $1,700 plus $300 in cash in exchange for property H. The gain realized on the transaction, without regard to section 817(b) is $1,000 (assuming no adjustments to basis for the period since December 31, 1958). Under the provisions of section 817(b)(1) the gain is limited to $200. The entire $200 shall be recognized since such amount is less than the amount of gain ($300) which would be recognized under section 1031. Applying the provisions of section 817(b)(2) and paragraph (c) of this section, the basis of property H shall be determined as if the entire $300 of cash received is recognized gain. Thus, the basis of property H under section 1031 is $1,000 ($1,000 (the basis of property B) minus $300 (the amount of money received) plus $300 (the recognized gain of $200 plus $100 which would have been recognized but for section 817(b)). If W later sells property H for $2,200 cash, and assuming no further adjustments to its basis of $1,000, the gain realized is $1,200, but due to the application of section 817(b)(2) the amount of gain recognized is $500, computed as follows:

Selling price		$2,200
Less: Adjusted basis as of 12–31–58		1,000
Gain realized		1,200
Fair market value as of 12–31–58	$1,800	
Adjusted basis as of 12–31–58	1,000	
Excess of fair market value over adjusted basis	800	
Less: Excess of gain which would have been recognized on all prior dispositions but for sec. 817(b) over gain recognized on all prior dispositions ($300 minus $200)	100	
		700
Gain recognized		500

§ 1.817–4 Special rules.

(a) *Limitation on capital loss carryovers.* Section 817(c) provides that a net capital loss (as defined in section 1222(10)) for any taxable year beginning before January 1, 1959, shall not be taken into account. For any taxable year beginning after December 31, 1958, the provisions of part II, subchapter P, chapter 1 of the Code (relating to the treatment of capital losses) shall be applicable to life insurance companies for purposes of determining the tax imposed by section 802(a)(2) and § 1.802–2 (relating to the imposition of tax in case of capital gains).

(b) *Gain on transactions occurring prior to January 1, 1959.* For purposes of part I, subchapter L, chapter 1 of the Code, section 817(d) provides that—

(1) There shall be excluded from tax any gain from the sale or exchange of a capital asset, and any gain considered as gain from the sale or exchange of a capital asset, which results from sales or other dispositions of property prior to January 1, 1959; and

(2) Any gain after December 31, 1958, resulting from the sale or other disposition of property prior to January 1, 1959, which, but for this subparagraph, would be taken into account under section 1231, shall not be taken into account under section 1231.

For example, if a life insurance company makes an installment sale of a capital asset prior to January 1, 1959, and payments are received after such date, any capital gain attributable to such sale shall not be taken into account for purposes of section 802(a)(2). Furthermore, any gain referred to in subparagraphs (1) and (2) and the preceding sentence shall not be taken into account in determining the excess of the net short-term capital gain over the net long-term capital loss for purposes of computing taxable investment income under section 804(a)(2) or gain or loss from operations under section 809(b).

(c) *Certain reinsurance transactions in 1958.* For purposes of part I, section 817(e) provides that where a life insurance company reinsures (or sells) all of its insurance contracts of a particular type, such as an entire industrial department, in either a single transaction, or in a series of related transactions, all of which occurred during 1958, and the reinsuring (or purchasing) company or companies assume all liabilities under such contracts, such reinsurance (or sale) shall be treated as the sale of a capital asset. However, such transaction shall be subject to the provisions of section 806(a) and § 1.806–3 (relating to adjustments for certain changes in reserves and assets).

(d) *Certain reinsurance transactions occurring after December 31, 1958.* [Reserved]

§ 1.818 Statutory provisions; life insurance companies; accounting provisions.

SEC. 818 *Accounting provisions*—(a) *Method of accounting.* All computations entering into the determination of the taxes imposed by this part shall be made—

(1) Under an accrual method of accounting, or

(2) To the extent permitted under regulations prescribed by the Secretary or his delegate, under a combination of an accrual method of accounting with any other method permitted by this chapter (other than the cash receipts and disbursements method).

Except as provided in the preceding sentence, all such computations shall be made in a manner consistent with the manner required for purposes of the annual statement approved by the National Association of Insurance Commissioners.

(b) *Amortization of premium and accrual of discount*—(1) *In general.* The appropriate items of income, deductions, and adjustments under this part shall be adjusted to reflect the appropriate amortization of premium and the appropriate accrual of discount attributable to the taxable year on bonds, notes, debentures, or other evidences of indebtedness held by a life insurance company. Such amortization and accrual shall be determined—

(A) In accordance with the method regularly employed by such company, if such method is reasonable, and

(B) In all other cases, in accordance with regulations prescribed by the Secretary or his delegate.

(2) *Special rules*—(A) *Amortization of bond premium.* In the case of any bond (as defined in section 171(d)) acquired after December 31, 1957, the amount of bond premium, and the amortizable bond premium for the taxable year, shall be determined under section 171(b) as if the election set forth in section 171(c) had been made.

(B) *Convertible evidences of indebtedness.* In no case shall the amount of premium on a convertible evidence of indebtedness include any amount attributable to the conversion features of the evidence of indebtedness.

(c) *Life insurance reserves computed on preliminary term basis.* For purposes of this part (other than section 801), at the election of the taxpayer the amount taken into account as life insurance reserves with respect to contracts for which such reserves are computed on a preliminary term basis may be determined on either of the following bases:

(1) *Exact revaluation.* As if the reserves for all such contracts had been computed on a net level premium basis (using the same mortality assumptions and interest rates for both the preliminary term basis and the net level premium basis).

(2) *Approximate revaluation.* The amount computed without regard to this subsection—

(A) Increased by $21 per $1,000 of insurance in force (other than term insurance) under such contracts, less 2.1 percent of reserves under such contracts, and

(B) Increased by $5 per $1,000 of term insurance in force under such contracts which at the time of issuance cover a period of more than 15 years, less 0.5 percent of reserves under such contracts.

If the taxpayer makes an election under either paragraph (1) or (2) for any taxable year, the basis adopted shall be adhered to in making the computations under this part (other than section 801) for the taxable year and all subsequent taxable years unless a change in the basis of computing such reserves is approved by the Secretary or his delegate, except that if, pursuant to an election made for a taxable year beginning in 1958, the basis adopted is the basis provided in paragraph (2), the taxpayer may adopt the basis provided by paragraph (1) for its first taxable year beginning after 1958.

(d) *Short taxable years.* If any return of a corporation made under this part is for a period of less than the entire calendar year (referred to in this subsection as "short period"), then section 443 shall not apply in respect of such period, but—

(1) The taxable investment income and the gain or loss from operations shall be determined, under regulations prescribed by the Secretary or his delegate, on an annual basis by a ratable daily projection of the appropriate figures for the short period.

(2) That portion of the life insurance company taxable income described in paragraphs (1) and (2) of section 802(b) shall be determined on an annual basis by treating the amounts ascertained under paragraph (1) as the taxable investment income and the gain or loss from operations for the taxable year, and

(3) That portion of the life insurance company taxable income described in paragraphs (1) and (2) of section 802(b) for the short period shall be the amount which bears the same ratio to the amount ascertained under paragraph (2) as the number of days in the short period bears to the number of days in the entire calendar year.

(e) *Transitional rule for changes in method of accounting*—(1) *In general.* If the method of accounting required to be used in computing the taxpayer's taxes under this part for the taxable year 1958 is different from the method used in computing its taxes under this part for 1957, then there shall be ascertained the net amount of those adjustments which are determined (as of the close of 1957) to be necessary solely by reason of the change to the method required by subsection (a) in order to prevent amounts from being duplicated or omitted. The amount of the taxpayer's tax for 1957 shall be recomputed (under the law applicable to 1957, modified as provided in paragraph (4)) taking into account an amount equal to one-tenth of the net amount of the adjustments determined under the preceding sentence. The amount of increase or decrease (as the case may be) referred to in paragraph (2) or (3) shall be the amount of the increase or decrease ascertained under the preceding sentence, multiplied by 10.

(2) *Treatment of decrease.* For purposes of subtitle F, if the recomputation under paragraph (1) results in a decrease, the amount thereof shall be a decrease in the tax imposed for 1957; except that for purposes of computing the period of limitation on the making of refunds or the allowance of credits with respect to such overpayment, the amount of such decrease shall be treated as an overpayment of tax for 1959. No interest shall be paid, for any period before March 16, 1960, on any overpayment of the tax imposed for 1957 which is attributable to such decrease.

(3) *Treatment of increase*—(A) *In general.* For purposes of subtitle F (other than sections 6016 and 6655), if the recomputation under paragraph (1) results in an increase, the amount thereof shall be treated as a tax imposed by this subsection for 1959. Such tax shall be payable in 10 equal annual installments, beginning with March 15, 1960.

(B) *Special rules.* For purposes of subparagraph (A)—

(i) No interest shall be paid on any installment described in subparagraph (A) for any period before the time prescribed in such subparagraph for the payment of such installment.

(ii) Section 6152(c) (relating to proration of deficiencies to installments) shall apply.

(iii) In applying section 6502(a)(1) (relating to collection after assessment), the assessment of any installment described in subparagraph (A) shall be treated as made at the time prescribed by such subparagraph for the payment of such installment.

(iv) Except as provided in section 381(c)(22), if for any taxable year the taxpayer is not a life insurance company, the time for payment of any remaining installments described in subparagraph (A) shall be the date (determined without regard to any extension of time) for filing the return for such taxable year.

(4) *Modifications of 1957 tax computation.* In recomputing the taxpayer's tax for 1957 for purposes of paragraph (1)—

(A) Section 804(b) (as in effect for 1957) shall not apply with respect to any amount required to be taken into account by such paragraph, and

(B) The amount of the deduction allowed by section 805 (as in effect for 1957) shall not be reduced by reason of any amount required to be taken into account by such paragraph.

(f) *Denial of double deductions.* Nothing in this part shall permit the same item to be deducted more than once under subpart B and once under subpart C.

[Sec. 818 as added by sec. 2, Life Insurance Company Tax Act 1955 (70 Stat. 46); amended by sec. 2, Life Insurance Company Income Tax Act 1959 (73 Stat. 133)]

§ 1.818–1 Taxable years affected.

Sections 1.818–2 through 1.818–7, except as otherwise provided therein, are applicable only to taxable years beginning after December 31, 1957, and all references to sections of part I, subchapter L, chapter 1 of the Code are to the Internal Revenue Code of 1954, as amended by the Life Insurance Company Income Tax Act of 1959 (73 Stat. 112).

§ 1.818–2 Accounting provisions.

(a) *Method of accounting.* (1) Section 818(a)(1) provides the general rule that all computations entering into the determination of taxes imposed by part I, subchapter L, chapter 1 of the Code, shall be made under an accrual method of accounting. Thus, the over-all method of accounting for life insurance companies shall be the accrual method. Except as otherwise provided in part I, the term "accrual method" shall have the same meaning and application in section 818 as it does under section 446 (relating to general rule for methods of accounting) and the regulations thereunder. For general rules relating to the taxable year for inclusion of income and deduction of expenses under an accrual method of accounting, see sections 451 and 461 and the regulations thereunder.

(2) Section 818(a)(2) provides that, to the extent permitted under this section, a life insurance company's method of accounting may be a combination of the accrual method with any other method of accounting permitted by chapter 1 of the Internal Revenue Code of 1954, other than the cash receipts and disbursements method. Thus, section 818(a)(2) specifically prohibits the use by a life insurance company of the cash receipts and disbursements method either separately or in combination with a permissible method of accounting. The term "method of accounting" includes not only the over-all method of accounting of the taxpayer but also the accounting treatment of any item. For purposes of section 818(a)(2), a life insurance company may elect to compute its taxable income under an over-all method of accounting consisting of the accrual method combined with the special methods of accounting for particular items of income and expense provided under other sections of chapter 1 of the Internal Revenue Code of 1954, other than the cash receipts and disbursements method. These methods of accounting for special items include the accounting treatment provided for depreciation (section 167), research and experimental expenditures (section 174), soil and water conservation expenditures (section 175), organizational expenditures (section 248), etc. In addition, a life insurance company may, where applicable, use the crop method of accounting (as provided in the regulations under sections 61 and 162), and the installment method of accounting for sales of realty and casual sales of personalty (as provided in section 453 (b)). To the extent not inconsistent with the provisions of the Internal Revenue Code of 1954 or the regulations thereunder and the method of accounting adopted by the taxpayer pursuant to this section, all computations entering into the determination of taxes imposed by part I shall be made in a manner consistent with the manner required for purposes of the annual statement approved by the National Association of Insurance Commissioners.

(3)(i) An election to use any of the special methods of accounting referred to in subparagraph (2) of this paragraph which was made pursuant to any provisions of the Internal Revenue Code of 1954 or prior revenue laws for purposes of determining a company's tax liabilities for prior years, shall have the same force and effect in determining the items of gross investment income under section 804(b) and the items of deduction under section 804(c) of the Life Insurance Company Income Tax Act of 1959 (73 Stat. 112) as if such Act had not been enacted.

(ii) For purposes of determining gain or loss from operations under section 809(b), in computing the life insurance company's share of investment yield under section 809(b)(1)(A) and (2)(A), an election with respect to any of the special methods of accounting referred to in subparagraph (2) of this paragraph which was made pursuant to any provision of the Internal Revenue Code of 1954 or prior revenue laws, shall not be affected in any way by the enactment of the Life Insurance Company Income Tax Act of 1959 (73 Stat. 112).

(iii) For purposes of determining gain or loss from operations under section 809(b), in computing the items of gross amount under section 809(c) and the deduction items under section 809(d), an election to use any of the special methods of accounting referred to in subparagraph (2) of this paragraph must be made in accordance with the specific statutory provisions of the sections containing such elections and the regulations thereunder. However, where a particular election may be made only with the consent of the Commissioner (either because the time for making the election without the consent of the Commissioner has expired or because the particular section contained no provision for making an election without consent), and the time prescribed by the applicable regulations for submitting a request for permission to make such an election for the taxable year 1958 has expired, a life insurance company may make such an election for the year 1958 at the time of filing its return for that year (including extensions thereof). For example, a life insurance company may elect any of the methods of depreciation prescribed in section 167 (to the extent permitted under that section and the regulations thereunder) with respect to those assets, or any portion thereof, for which no depreciation was allowable under prior revenue laws, for example, furniture and fixtures used in the underwriting department. Similarly, a life insurance company shall be permitted to make an election under section 461(c) (relating to the accrual of real property taxes) with respect to real property for which no deduction was allowable under prior revenue laws. Any such election shall be made in the manner and form prescribed in the applicable regulations.

(iv) For purposes of subdivision (ii) of this subparagraph, the method used under section 1016(a)(3)(C) (relating to adjustments to basis) in determining the amount of exhaustion, wear and tear, obsolescence, and amortization actually sustained shall not preclude a taxpayer from electing any of the methods prescribed in section 167 in accordance with the provisions of that section and the regulations thereunder for determining the amount of such exhaustion, wear and tear, obsolescence, and amortization for the year 1958. For example, if the amount of depreciation actually sustained, under section 1016(a)(3)(C), on a life insurance company's home office building (other than that portion for which depreciation was allowable under prior revenue laws) is determined on the straight line method, the life insurance company may elect for the year 1958 to use any of the methods prescribed in section 167 for determining its depreciation allowance for 1958. However, such election shall be binding for 1958, and for all subsequent taxable years, unless consent to change such election, if required, is obtained from the Commissioner in accordance with the provisions of section 167 and the regulations thereunder.

(4) (i) For purposes of section 805(b)(3)(B)(i) (relating to the determination of the current earnings rate for any taxable year beginning before January 1, 1958), the determination for any year of the investment yield and the assets shall be made as though the taxpayer had been on the accrual method prescribed in subparagraph (1) of this paragraph for such year, or the accrual method in combination with the other methods of accounting prescribed in subparagraph (2) of this paragraph, if these other methods of accounting are used by the taxpayer in determining the investment yield and assets for the taxable year 1958. However, where the method used for determining the deduction under section 167 for the year 1958 differs from the method used in prior years, the amount of the deduction actually allowed or allowable for such prior years for purposes of section 1016(a)(2) (relating to adjustments to basis) shall be the amount to be taken into account in determining the current earnings rate under section 805(b)(3)(B)(i).

(ii) For purposes of section 812(b)(1)(C) (relating to operations loss carrybacks and carryovers for years prior to 1958), the determination for those years of the gain or loss from operations shall be made as though the taxpayer had been on the accrual method of accounting prescribed in subparagraph (1) of this paragraph for such year, or the accrual method in combination with the other methods of accounting prescribed in subparagraph (2) of this paragraph, if these other methods of accounting are used by the taxpayer in the determination of gain or loss from operations for the taxable year 1958. However, where any adjustment to basis is required under section 1016(a)(3)(C) on account of exhaustion, wear and tear, obsolescence, amortization, and depletion sustained, the amount actually sustained as determined under section 1016(a)(3)(C) for each of the years involved shall be the amount allowed in the determination of gain or loss from operations for purposes of section 812(b)(1)(C).

(b) *Adjustments required if accrual method of accounting was not used in 1957.* The items of gross amount taken into account under section 809(c) and the items of deductions allowed under section 809(d) for the taxable year 1958 shall be determined as though the taxpayer had been on the accrual method of accounting prescribed in paragraph (a) of this section for all prior years. Thus, life insurance companies not on the accrual method for the year 1957 shall accrue, as of December 31, 1957, those items of gross amount which would have been properly taken into account for the year 1957 if the company had been on the accrual method described in section 818(a). Likewise, life insurance companies not on the accrual method for the year 1957 shall accrue, as of December 31, 1957, those items of deductions which would have been properly allowed for the year 1957 if the company had been on the accrual method described in section 818(a). For example, if certain premium amounts were received during the year 1958 but such amounts would have been properly taken into account for the year 1957 if the taxpayer had been on the accrual method for the year 1957, then the taxpayer will not be required to take such premium amounts into account for the year 1958. If, for example, certain claims, benefits, and losses were paid during the year 1958 but such items would have been properly taken into account for the year 1957 if the taxpayer had been on the accrual method for the year 1957, then the taxpayer will not be permitted to deduct such expense items for the year 1958. For a special transitional rule applicable with respect to changes in method of accounting required by section 818(a) and paragraph (a) of this section, see section 818 (e) and § 1.818–6.

(c) *Change of basis in computing reserves.* (1) Section 806(b) provides that if the basis for determining the amount of any item referred to in section 810(c) as of the close of the taxable year differs from the basis for such determination as of the beginning of the taxable year, then for purposes of subpart B, part I, subchapter L, chapter 1 of the Code (relating to the determination of taxable investment income), the amount of such item shall be the amount computed on the old basis as of the close of the taxable year and the amount computed on the new basis as of the beginning of the next taxable year. Similarly, section 810(d)(1) provides rules for determining the amount of the adjustment to be made for purposes of subpart C, part I, subchapter L, chapter 1 of the Code (relating to the determination of gain or loss from operations), if the basis for determining any item referred to in section 810(c) as of the close of any taxable year differs from the basis for such determination as of the close of the preceding taxable year. Under an accrual method of accounting, a change in the basis or method of computing the amount of liability of any item referred to in section 810(c) occurs in the taxable year in which all the events have occurred which determine the change in the basis or method of computing the amount of such liability and, in which, the amount thereof (whether increased or decreased) can be determined with reasonable accuracy.

(2) The application of subparagraph (1) of this paragraph may be illustrated by the following examples:

Example (1). Assume that during the taxable year 1960, M, a life insurance company, determines that the amount of its life insurance reserves held with respect to a particular block of contracts is understated on the present basis being used in valuing such liability and that such liability can be more accurately reflected by changing from the present basis to a particular new basis. Assume that M uses such new basis in computing its reserves under such contracts at the end of the taxable year 1960. Under the provisions of section 818(a) and subparagraph (1) of this paragraph, the change in basis for purposes of sections 806(b) and 810(d) occurs during the taxable year 1960, the year in which all the events have occurred which determine the change in basis and the amount of any increase (or decrease) attributable to such change can be determined with reasonable accuracy. Such change shall be treated as having occurred during the taxable year 1960 whether M determines that its liability under such contracts was understated for the first time during 1960, or that its liability under such contracts has, in fact, been understated for a number of prior years.

Example (2). Assume the facts are the same as in example (1), except that during the taxable year 1960 the insurance department of State X issues a ruling, pursuant to authority conferred by statute, requiring M to use the particular new basis which more accurately reflects its liability with respect to such contracts and that as a result of such ruling, M uses the new basis in computing its reserves under such contracts for the taxable years 1958, 1959, and 1960. Under the provisions of section 818(a) and subparagraph (1) of this paragraph, the change in basis for purposes of sections 806(b) and 810(d) occurs during the taxable year 1960, the year in which all the events have occurred which determine that a change in basis should be made and the amount of any increase (or decrease) attributable to such change can be determined with reasonable accuracy.

§ 1.818–3 Amortization of premium and accrual of discount.

(a) *In general.* Section 818(b) provides that the appropriate items of income, deductions, and adjustments under part I, subchapter L, chapter 1 of the Code, shall be adjusted to reflect the appropriate amortization of premium and the appropriate accrual of discount on bonds, notes, debentures, or other evidences of indebtedness held by a life insurance company. Such adjustments are limited to the amount of appropriate amortization or accrual attributable to the taxable year with respect to such securities which are not in default as to principal or interest and which are amply secured. The question of ample security will be resolved according to the rules laid down from time to time by the National Association of Insurance Commissioners. The adjustment for amortization of premium decreases the gross investment income, the exclusion

and reduction for wholly tax-exempt interest, the exclusion and deduction for partially tax-exempt interest, and the basis or adjusted basis of such securities. The adjustment for accrual of discount increases the gross investment income, the exclusion and reduction for wholly tax-exempt interest, the exclusion and deduction for partially tax-exempt interest, and the basis or adjusted basis of such securities. However, for taxable years beginning after May 31, 1960, only the accrual of discount relating to issue discount will increase the exclusion and reduction for wholly tax-exempt interest. See section 103.

(b) *Acquisitions before January 1, 1958.* (1) In the case of any such security acquired before January 1, 1958, the premium is the excess of its acquisition value over its maturity value and the discount is the excess of its maturity value over its acquisition value. The acquisition value of any such security is its cost (including buying commissions or brokerage but excluding any amounts paid for accrued interest) if purchased for cash, or if not purchased for cash, its then fair market value. The maturity value of any such security is the amount payable thereunder either at the maturity date or an earlier call date. The earlier call date of any such security may be the earliest interest payment date if it is callable or payable at such date, the earliest date at which it is callable at par, or such other call or payment date, prior to maturity, specified in the security as may be selected by the life insurance company. A life insurance company which adjusts amortization of premium or accrual of discount with reference to a particular call or payment date must make the adjustments with reference to the value on such date and may not, after selecting such date, use a different call or payment date, or value, in the calculation of such amortization or discount with respect to such security unless the security was not in fact called or paid on such selected date.

(2) The adjustments for amortization of premium and accrual of discount will be determined—

(i) According to the method regularly employed by the company, if such method is reasonable, or

(ii) According to the method prescribed by this section.

A method of amortization of premium or accrual of discount will be deemed "regularly employed" by a life insurance company if the method was consistently followed in prior taxable years, or if, in the case of a company which has never before made such adjustments, the company initiates in the first taxable year for which the adjustments are made a reasonable method of amortization of premium or accrual of discount and consistently follows such method thereafter. Ordinarily, a company regularly employs a method in accordance with the statute of some State, Territory, or the District of Columbia, in which it operates.

(3) The method of amortization and accrual prescribed by this section is as follows:

(i) The premium (or discount) shall be determined in accordance with this section; and

(ii) The appropriate amortization of premium (or accrual of discount) attributable to the taxable year shall be an amount which bears the same ratio to the premium (or discount) as the number of months in the taxable year during which the security was owned by the life insurance company bears to the number of months between the date of acquisition of the security and its maturity or earlier call date, determined in accordance with this section. For purposes of this section, a fractional part of a month shall be disregarded unless it amounts to more than half a month, in which case it shall be considered a month.

(c) *Acquisitions after December 31, 1957.* (1) In the case of—

(i) Any bond, as defined in section 171(d), acquired after December 31, 1957, the amount of the premium and the amortizable premium for the taxable year, shall be determined under section 171(b) and the regulations thereunder, as if the election set forth in section 171(c) had been made, and

(ii) Any bond, note, debenture, or other evidence of indebtedness not described in subdivision (i) of this subparagraph and acquired after December 31, 1957, the amount of the premium and the amortizable premium for the taxable year, shall be determined under paragraph (b) of this section.

(2) In the case of any bond, note, debenture, or other evidence of indebtedness acquired after December 31, 1957, the amount of the discount and the accrual of discount attributable to the taxable year shall be determined under paragraph (b) of this section.

(d) *Convertible evidences of indebtedness.* Section 818(b)(B) provides that in no case shall the amount of premium on a convertible evidence of indebtedness (including any bond, note, or debenture) include any amount attributable to the conversion features of the evidence of indebtedness. This provision is the same as the one contained in section 171(b), and the rules prescribed in paragraph (c) of § 1.171–2 shall be applicable for purposes of section 818(b)(2)(B). This provision is to be applied without regard to the date upon which the evidence of indebtedness was acquired. Thus, where a convertible evidence of indebtedness was acquired before January 1, 1958, and a portion or all of the premium attributable to the conversion features of the evidence of indebtedness has been amortized for taxable years beginning before January 1, 1958, no adjustment for such amortization will be required by reason of section 818(b)(2)(B). Such amortization will, however, require an adjustment to the basis of the evidence of indebtedness under section 1016(a)(17). For taxable years beginning after December 31, 1957, no further amortization of the premium attributable to the conversion features of such an evidence of indebtedness will be taken into account.

(e) *Adjustments to basis.* Section 101(a)(17) (relating to adjustments to basis) provides that in the case of any evidence of indebtedness referred to in section 818(b) and this section, the basis shall be adjusted to the extent of the adjustments required under section 818(b) (or the corresponding provisions of prior income tax laws) for the taxable year and all prior taxable years. The basis of any evidence of indebtedness shall be reduced by the amount of the adjustment required under section 818(b) (or the corresponding provision of prior income tax laws) on account of amortizable premium and shall be increased by the amount of the adjustment required under section 818(b) on account of accruable discounts.

(f) *Denial of double inclusion.* Any amount which is includible in gross investment income by reason of section 818(b) and paragraph (a) of this section shall not be includible in gross income under section 1232(a) (relating to the taxation of bonds and other evidences of indebtedness). See section 1232(a)(2)(c) and the regulations thereunder.

§ 1.818–4 Election with respect to life insurance reserves computed on preliminary term basis.

(a) *In general.* Section 818(c) permits a life insurance company issuing contracts with respect to which the life insurance reserves are computed on one of the recognized preliminary term bases to elect to revalue such reserves on a net level premium basis for the purpose of determining the amount which may be taken into account as life insurance reserves for purposes of part I, subchapter L, chapter 1 of the Code, other than section 801 (relating to the definition of a life insurance company). If such an election is made, the method to be used in making this revaluation of reserves shall be either the exact revaluation method (as described in section 818(c)(1) and paragraph (b)(1) of this section) or the approximate revaluation method (as described in section 818(c)(2) and paragraph (b)(2) of this section).

(b) *Revaluation of reserves computed on preliminary term basis.* If a life insurance company makes an election under section 818(c) in the manner provided in paragraph (e) of this section, the amount to be taken into account as life insurance reserves with respect to contracts for which such reserves are computed on a preliminary term basis may be determined on either of the following bases:

(1) *Exact revaluation method.* As if the reserves for all such contracts had been computed on a net level premium basis (using the same mortality or morbidity assumptions and interest rates for both the preliminary term basis and the net level premium basis).

(2) *Approximate revaluation method.* The amount computed without regard to section 818(c)—

(i) Increased by $21 per $1,000 of insurance in force (other than term insurance) under such contracts, less 2.1

percent of reserves under such contracts, and

(ii) Increased by $5 per $1,000 of term insurance in force under such contracts which at the time of issuance cover a period of more than 15 years, less 0.5 percent of reserves under such contracts.

(c) *Exception.* If a life insurance company which makes an election under section 818(c)(2) and paragraph (b)(2) of this section has life insurance reserves with respect to both life insurance and noncancellable accident and health contracts for which such reserves are computed on a preliminary term basis, it shall use the approximate revaluation method for all its life insurance reserves other than that portion of such reserves held with respect to its noncancellable accident and health contracts, and shall use the exact revaluation method for all its life insurance reserves held with respect to such noncancellable accident and health contracts.

(d) *Reserves subject to recomputation.* (1) For the first taxable year for which the election under section 818(c) and paragraph (b) of this section applies, a company making such election must revalue all its life insurance reserves held with respect to contracts for which such reserves are computed on a preliminary term basis at the end of such taxable year on the basis elected under section 818(c) and paragraph (b) of this section. However, for purposes of the preceding sentence, an election under section 818(c) shall not apply with respect to such reserves which would not be treated as being computed on the preliminary term basis at the end of such taxable year except for the provisions of section 810(a) or (b). See paragraph (c)(2) of § 1.810-2. For example, if S, a life insurance company which computes its life insurance reserves on a recognized preliminary term basis at the beginning of the taxable year 1958, strengthens a portion of such reserves during the taxable year by actually changing to a net level premium basis in computing such reserves, and then makes the election under section 818(c) and paragraph (b) of this section for 1958, such election shall not apply with respect to the strengthened contracts.

(2) For any taxable year other than the first taxable year for which the election under section 818(c) and paragraph (b) of this section applies, a company making such election must revalue all its life insurance reserves held with respect to contracts for which such reserves are computed on a preliminary term basis at the beginning or end of the taxable year on the basis elected under section 818(c) and paragraph (b) of this section. For example, if M, a life insurance company which made a valid outstanding election under section 818(c) in the manner provided in paragraph (e) of this section for the taxable year 1959, sells a block of contracts subject to such election on September 1, 1960, M would value such contracts on the basis elected under section 818(c) and paragraph (b) of this section on January 1, 1960, for purposes of determining the net decrease or increase in the sum of the items described in section 810(c) for the taxable year under section 810 (a) or (b).

(3) For the effect of an election under section 818(c) and paragraph (b) of this section in determining gain or loss from operations for the taxable year, see paragraph (c)(3) of § 1.810-2 and paragraph (e) of § 1.810-3.

(e) *Time and manner of making election.* The election provided by section 818(c) shall be made in a statement attached to the life insurance company's income tax return for the first taxable year for which the company desires the election to apply. The return and statement must be filed not later than the date prescribed by law (including extensions thereof) for filing the return for such taxable year. However, if the last day prescribed by law (including extensions thereof) for filing a return for the first taxable year for which the company desires the election to apply falls before the ninetieth day after the final regulations under section 818 are published in the FEDERAL REGISTER, the election provided by section 818(c) may be made for such year by filing the statement and an amended return for such taxable year (and all subsequent taxable years for which returns have been filed) on or before such ninetieth day. The statement shall indicate whether the exact or the approximate method of revaluation has been adopted. The statement shall also set forth sufficient information as to mortality and morbidity assumptions; interest rates; the valuation method used; the amount of the reserves and the amount and type of insurance in force under all contracts for which reserves are computed on a preliminary term basis; and such other pertinent data as will enable the Commissioner to determine the correctness of the application of the revaluation method adopted and the accuracy of the computations involved in revaluing the reserves. The election to use either the exact revaluation method or the approximate revaluation method shall, except for the purposes of section 801, be adhered to in making the computations under part I for the taxable year for which such election is made and for all subsequent taxable years.

(f) *Scope of election.* An election made under section 818(c) and paragraph (b) of this section to use either the exact or the approximate method of revaluing the company's life insurance reserves shall be binding for the taxable year for which made, and, except as provided in paragraph (g) of this section, shall be binding for all succeeding taxable years, unless consent to revoke the election is obtained from the Commissioner. However, for taxable years beginning prior to the issuance of the final regulations under section 818, a taxpayer may revoke such election without obtaining consent from the Commissioner by filing, on or before the ninetieth day after the date of publication of such final regulations in the FEDERAL REGISTER, a statement that the company desires to revoke the election under section 818(c). An amended return reflecting such revocation must accompany the statement for all taxable years for which returns have been filed with respect to such election.

(g) *Special rule for 1958.* If an election is made for a taxable year beginning in 1958 to use the approximate revaluation method described in section 818(c)(2) and paragraph (b)(2) of this section, the company may, for its first taxable year beginning after 1958, elect to change to the exact revaluation method described in section 818(c)(1) and paragraph (b)(1) of this section without obtaining the consent of the Commissioner. In such case, the election to change shall be made in a statement attached to the company's income tax return for such taxable year and filed not later than the date prescribed by law (including extensions thereof) for filing the return for such year. The statement shall indicate that the company has elected to change from the approximate to the exact revaluation method for such taxable year and shall include such information and data referred to in paragraph (e) of this section as will enable the Commissioner to determine the correctness and accuracy of the computations involved.

§ 1.818-5 Short taxable years.

(a) *In general.* Section 818(d) provides that if any return of a corporation made under part I, subchapter L, chapter 1 of the Code is for a period of less than the entire calendar year, then section 443 (relating to returns for a period of less than 12 months) shall not apply. This section further provides certain rules to be used in determining the life insurance company taxable income for a period of less than the entire calendar year.

(b) *Returns for periods of less than the entire calendar year.* A return for a short period, that is, for a taxable year consisting of a period of less than the entire calendar year, shall be made only under the following circumstances:

(1) If a company which qualifies as a life insurance company is not in existence for the entire taxable year, a return is required for the short period during which the taxpayer was in existence. For example, a life insurance company organized on August 1, is required to file a return for the short period from August 1 to December 31, and returns for each calendar year thereafter. Similarly, if a company which qualifies as a life insurance company completely dissolves during the taxable year it is required to file a return for the short period from January 1 to the date it goes out of existence. All items entering into the computation of taxable investment income and gain or loss from operations for the short period shall be determined on a consistent basis and in the manner provided in paragraph (c) of this section.

(2) A return must be filed for a short period resulting from the termination by the district director of a taxpayer's taxable year for jeopardy. See section 6851 and the regulations thereunder.

A company which was an insurance company for the preceding taxable year (but not a life insurance company as defined in section 801(a) and paragraph (b) of

§ 1.801–3) and which for the current taxable year qualifies as a life insurance company shall not file a return for the short period from the time during the taxable year that it first qualifies as a life insurance company to the end of the taxable year. Similarly, an insurance company which was a life insurance company for the preceding taxable year but which for the current taxable year does not qualify as a life insurance company shall not file a return for the short period from the beginning of the taxable year to the time during the taxable year that it no longer qualifies as a life insurance company.

(c) *Computation of life insurance company taxable income for short period.* (1) If a return is made for a short period, section 818(d)(1) provides that the taxable investment income and the gain or loss from operations shall be determined on an annual basis by a ratable daily projection of the appropriate figures for the short period. The appropriate figures for the short period shall be determined on an annual basis by multiplying such figures by a fraction, the numerator of which is the number of days in the calendar year in which the short period occurs and the denominator of which is the number of days in the short period.

(2)(i) In computing taxable investment income for a short period, the investment yield, the policy and other contract liability requirements, the policyholders' share of each and every item of investment yield, and the company's share of any item of investment yield shall be determined on an annual basis.

(ii) For purposes of determining the investment yield on an annual basis, each item of gross investment income under section 804(b) and each item of deduction under section 804(c) shall be annualized in the manner provided in subparagraph (1) of this paragraph. In any case in which a limitation is placed on the amount of a deduction provided under section 804(c), the limitation shall apply to the item of deduction computed on an annual basis.

(iii) The policy and other contract liability requirements shall be determined on an annual basis in the following manner:

(*a*) The interest paid (as defined in section 805(e) and § 1.805–8) for the short period shall be annualized in the manner prescribed in subparagraph (1) of this paragraph.

(*b*) The current earnings rate for the taxable year in which the short period occurs shall be determined by dividing the taxpayer's investment yield, as determined on an annual basis under subdivision (ii) of this subparagraph, by the mean of the taxpayer's assets at the beginning and end of the short period. For purposes of section 805, any reference to the current earnings rate for the taxable year in which the short period occurs means the current earnings rate as determined under this subdivision.

(*c*) The adjusted life insurance reserves shall be determined as provided in section 805(c), and the pension plan reserves shall be determined as provided in section 805(d).

(iv) The policyholders' share of each and every item of investment yield (as defined in section 804(a)) shall be that percentage obtained by dividing the policy and other contract liability requirements, determined under subdivision (iii) of this subparagraph, by the investment yield, determined under subdivision (ii) of this subparagraph.

(v) The taxable investment income for the short period shall be an amount (not less than zero) equal to the life insurance company's share of each and every item of investment yield, as determined under subdivision (ii) of this subparagraph, reduced by the items described in section 804(a)(2)(A) and (B). In determining these reductions under section 804(a)(2)(A) the amount of the respective items shall be the amount that is determined on an annual basis under subdivision (ii) of this subparagraph. The small business deduction, under section 804(a)(2)(B) shall be an amount (not to exceed $25,000) equal to 10 percent of the investment yield, determined under subdivision (ii) of this subparagraph, for the short period.

(vi) Except as provided herein, the determination of taxable investment income under subpart B, part I, subchapter L, chapter 1 of the Code shall be made in accordance with all the provisions of that subpart.

(3)(i) In computing gain or loss from operations for a short period, the share of each and every item of investment yield set aside for policyholders, the life insurance company's share of each and every item of investment yield, the items of gross amount, and the items of deduction shall, except as modified by this subparagraph, be determined on an annual basis in the manner provided in subparagraph (1) of this paragraph. In any case in which a limitation is placed on the amount of a deduction provided under section 809, the limitation shall apply to the item of deduction computed on an annualized basis.

(ii) For purposes of sections 809 and 810, the investment yield shall be determined in the manner provided in subparagraph (2)(ii) of this paragraph. The share of any item of investment yield set aside for policyholders shall be that percentage obtained by dividing the required interest as determined under section 809(a)(2), by the investment yield, as determined in this subparagraph, except that if the required interest exceeds the investment yield, then the share of any item of investment yield set aside for policyholders shall be 100 percent.

(iii) The items of gross amount and the items of deduction, other than the operations loss deduction under section 809(d)(4), shall be determined on an annual basis. See subdivision (iv) of this subparagraph for the manner in which the net decrease or net increase in reserves under section 810 shall be annualized.

(iv) For purposes of determining either a net decrease in reserves under section 810(a) or a net increase in reserves under section 810(b), the sum of the items described in section 810(c) as of the end of the short period shall be reduced by the amount of the investment yield not included in gain or loss from operations for the short period by reason of section 809(a)(1). The amount of investment yield excluded under section 809(a)(1) has been determined upon an annualized basis while the sum of the items described in section 810(c) at the end of the short period has been determined on an actual basis. In order to place these on the same basis, the amount of investment yield not included in gain or loss from operation by reason of section 809(a)(1), determined under subdivision (ii) shall, for purposes of section 810(a) and section 810(b), be reduced to an amount which bears the same ratio to the full amount as the number of days in the short period bears to the number of days in the entire calendar year. The net decrease or the net increase of the items referred to in section 810(c) for the short period shall then be determined, as provided in section 810(a) and section 810(b), respectively, and the result annualized.

(4) The portion of the life insurance company taxable income described in section 802(b) (1) and (2) (relating to taxable investment income and gain or loss from operations) shall be determined on an annual basis by treating the amounts ascertained under subparagraph (2) of this paragraph as the taxable investment income, and the amount ascertained under subparagraph (3) of this paragraph as the gain or loss from operations, for the taxable year.

(5) The portion of the life insurance company taxable income described in section 802(b) (1) and (2) for the short period shall be the amount which bears the same ratio to the amount ascertained under section 818(d)(2) and subparagraph (4) of this paragraph as the number of days in the short period bears to the number of days in the entire year.

(d) *Special rules.* (1) For purposes of determining the average earnings rate (as defined in section 805(b)(3)) for subsequent taxable years, the current earnings rate for the taxable year in which the short period occurs shall be the rate determined under paragraph (c)(2) of this section.

(2) For purposes of determining an operations loss deduction under section 812, the loss from operations for the short period shall be the loss from operations determined under paragraph (c)(5) of this section.

§ 1.818–6 Transitional rule for change in method of accounting.

(a) *In general.* Section 818(e) prescribes the rules to be followed in recomputing the taxes of a life insurance company for the taxable year 1957 in cases where the method of accounting required to be used in computing the company's taxes for 1958 under section 818(a) and paragraph (a) of § 1.818–2 is different from the method used in 1957.

(b) *Recomputation of 1957 taxes.* (1) For purposes of recomputing its taxes for 1957, a life insurance company must ascertain the net amount of those adjustments which are determined (as of the close of 1957) to be necessary solely by reason of the change to the method of accounting required by sec-

tion 818(a) and paragraph (a) of § 1.818–2 in order to prevent amounts from being duplicated or omitted. Thus, for example, life insurance companies not on the accrual method of accounting for the year 1957 shall accrue, as of December 31, 1957, those items of gross investment income under section 803(b) and those items of deduction under section 803(c), as in effect for 1957, which would have been properly accruable for the year 1957 if the company had been on the accrual method of accounting.

(2) In the case of a change in the over-all method of accounting, the term "net amount of those adjustments" means the consolidation of adjustments (whether the amounts thereof represent increases or decreases in items of income or deductions) arising with respect to balances in the various accounts on December 31, 1957. In the case of a change in the treatment of a single material item, the amount of the adjustment shall be determined with reference only to the net dollar balances in that particular account.

(3) (i) The amount of the taxpayer's tax for 1957 shall be recomputed (under the law applicable to 1957, modified as provided in section 818(e)(4) and paragraph (e) of this section) by taking into account an amount equal to one-tenth of the net amount of the adjustments determined under subparagraph (1) of this paragraph. The increase or decrease in tax attributable to the adjustments for such year is the difference between the tax for such year computed with the allocation of one-tenth of the net amount of the adjustments to such taxable year over the tax computed without the allocation of any part of the adjustments to such year.

(ii) The amount of increase or decrease (as the case may be) referred to in section 818(e) (2) or (3) and paragraphs (c) or (d) of this section, shall be the amount of the increase or decrease in tax ascertained in the manner described in subdivision (i) of this subparagraph, multiplied by 10.

(c) *Treatment of decrease.* Section 818(e)(2) provides that for purposes of subtitle F of the Code, if the recomputation under paragraph (b)(3)(ii) of this section results in a decrease, the amount of such decrease shall be treated as a decrease in the tax imposed for 1957; except that for purposes of computing the period of limitation on the making of refunds or the allowance of credits with respect to such overpayments, the amount of such decrease shall be treated as an overpayment of tax for 1959. No interest shall be paid, for any period before March 16, 1960, on any overpayment of the tax imposed for 1957 which is attributable to such decrease.

(d) *Treatment of increase*—(1) *In general.* Section 818(e)(3)(A) provides that for purposes of subtitle F of the Code, other than section 6016 (relating to declarations of estimated income tax by corporations) and section 6655 (relating to failure by corporations to pay estimated income tax), if the recomputation under paragraph (b)(3)(ii) of this section results in an increase, the amount of such increase shall be treated as a tax imposed for 1959. Such tax shall be payable in 10 equal annual installments, beginning with March 15, 1960.

(2) *Special rules.* Section 818(e)(3)(B) provides that for purposes of section 818(e)(3)(A) and subparagraph (1) of this paragraph—

(i) No interest shall be paid on any installment described in section 818(e)(3)(A) and subparagraph (1) of this paragraph before the time prescribed therein for the payment of such installment.

(ii) Section 6152(c) (relating to proration of deficiencies to installments) and the regulations thereunder shall apply. However, section 6152(a) (relating to the election to make installment payments) and the regulations thereunder shall not apply.

(iii) In applying section 6502(a)(1) (relating to collection after assessment) and the regulations thereunder, the assessment of any installment described in section 818(e)(3)(A) and subparagraph (1) of this paragraph shall be treated as made at the time prescribed therein for the payment of such installment.

(iv) If for any taxable year the taxpayer is not a life insurance company, the amount of the increase in tax (as determined under paragraph (b)(3)(ii) of this section), to the extent not taken into account for prior taxable years, shall be payable on the date the return for such taxable year is due (determined without regard to any extensions of time for filing such return), unless such amount is required to be taken into account by the acquiring corporation under section 381(c)(22) and the regulations thereunder.

(e) *Modifications of 1957 tax computation.* Section 818(e)(4) provides that in recomputing the taxpayer's tax for 1957 for purposes of section 818(e)(1) and paragraph (b) of this section—

(1) Section 804(b), as in effect for 1957 (relating to the maximum reserve and other policy liability deduction), shall not apply with respect to any amount required to be taken into account by reason of section 818(e)(1) and paragraph (b) of this section; and

(2) The amount of the deduction allowed by section 805, as in effect for 1957 (relating to the special interest deduction), shall not be reduced by reason of any amount required to be taken into account under section 818(e)(1) and paragraph (b) of this section.

(f) *Illustration of principles.* The application of section 818(e) and this section may be illustrated by the following examples:

Example (1). For the taxable year 1957, the life insurance taxable income of M, a life insurance company, is $200,000 computed on the cash receipts and disbursements method of accounting. The net amount of the adjustments required under section 818(e)(1) by reason of the change to the accrual method of accounting for 1958, increases M's life insurance taxable income for 1957 by $50,000. The increase in tax attributable to the change in method of accounting required by section 818(a) is $26,000, computed as follows:

(1) Life insurance taxable income before adjustments	$200,000
(2) Adjustments required by sec. 818(e)(1) (1/10 × $50,000)	5,000
(3) Life insurance taxable income after adjustments (item (1) plus item (2))	205,000
(4) Tax liability after adjustments (52% × $205,000, minus $5,500)	101,100
(5) Tax liability before adjustments (52% × $200,000, minus $5,500)	98,500
(6) Excess of item (4) over item (5)	2,600
(7) Increase in tax for purposes of sec. 818(e)(3) (item (6) multiplied by 10)	26,000

Under the provisions of section 818(e)(3), one-tenth of the increase in tax for 1957 attributable to the change in method of accounting required by section 818(a), $2,600 (1/10 × $26,000), was due and payable on March 15, 1960, and the balance, $23,400 (9/10 × $26,000), is due and payable in equal installments on March 15th of the nine succeeding taxable years. However, if for the taxable year 1965, M is no longer a life insurance company, and section 381(c)(22) does not apply, the balance of the installments not paid in prior taxable years, $10,400 (4/10 × $26,000), shall be due and payable on March 15, 1966.

Example (2). Assume the facts are the same as in example (1), except that the net amount of the adjustments required by section 818(e)(1) decreases M's life insurance taxable income for 1957 by $25,000. The decrease in tax attributable to the change in method of accounting required by section 818(a) is $13,000, computed as follows:

(1) Life insurance taxable income before adjustments	$200,000
(2) Adjustments required by sec. 818(e)(1) (1/10 × $25,000)	2,500
(3) Life insurance taxable income after adjustments (item (1) minus item (2))	197,500
(4) Tax liability after adjustments (52% × $197,500, minus $5,500)	97,200
(5) Tax liability before adjustments (52% × $200,000, minus $5,500)	98,500
(6) Excess of item (5) over item (4)	1,300
(7) Decrease in tax for purposes of sec. 818(e)(2) (item (6) multiplied by 10)	13,000

Under the provisions of section 818(e)(2), the entire $13,000 decrease in tax for 1957 attributable to the change in method of accounting required by section 818(a) shall be treated as an overpayment of tax for the taxable year 1959.

§ 1.818–7 Denial of double deductions.

Section 818(f) provides that the same item may not be deducted more than once under subpart B, part I, subchapter L, chapter 1 of the Code (relating to the determination of taxable investment income) and more than once under subpart C, part I, subchapter L, chapter 1 of the Code (relating to the determination of gain or loss from operations).

§ 1.819 Statutory provisions; life insurance companies; foreign life insurance companies.

SEC. 819. Foreign life insurance companies—(a) *Carrying on United States insurance business.* A foreign life insurance company carrying on a life insurance business within the United States, if with respect to its United States business it would qualify as a life insurance company under

section 801, shall be taxable on the United States business of such company in the same manner as a domestic life insurance company.

(b) *Adjustment where surplus held in United States is less than specified minimum*—(1) *In general.* In the case of any company described in subsection (a), if the minimum figure determined under paragraph (2) exceeds the surplus held in the United States, then—

(A) The amount of the policy and other contract liability requirements (determined under section 805 without regard to this subsection), and

(B) The amount of the required interest (determined under section 809(a)(2) without regard to this subsection),

shall each be reduced by an amount determined by multiplying such excess by the current earnings rate (as defined in section 805(b)(2)).

(2) *Definitions.* For purposes of paragraph (1)—

(A) The minimum figure is the amount determined by multiplying the taxpayer's total insurance liabilities on United States business by—

(i) In the case of a taxable year beginning before January 1, 1959, 9 percent, and

(ii) In the case of a taxable year beginning after December 31, 1958, a percentage for such year to be determined and proclaimed by the Secretary or his delegate.

The percentage determined and proclaimed by the Secretary or his delegate under clause (ii) shall be based on such data with respect to domestic life insurance companies for the preceding taxable year as the Secretary or his delegate considers representative. Such percentage shall be computed on the basis of a ratio the numerator of which is the excess of the assets over the total insurance liabilities, and the denominator of which is the total insurance liabilities.

(B) The surplus held in the United States is the excess of the assets held in the United States over the total insurance liabilities on United States business.

For purposes of this paragraph and subsection (c), the term "total insurance liabilities" means the sum of the total reserves (as defined in section 801(c)) plus (to the extent not included in total reserves) the items referred to in paragraphs (3), (4), and (5) of section 810(c).

(c) *Distributions to shareholders*—(1) *In general.* In applying sections 802(b)(3) and 815 for purposes of subsection (a), the amount of the distributions to shareholders shall be determined by multiplying the total amount of the distributions to shareholders (within the meaning of section 815) of the foreign life insurance company by whichever of the following percentages is selected by the taxpayer for the taxable year:

(A) The percentage which the minimum figure for the taxable year (determined under subsection (b)(2)(A)) is of the excess of the assets of the company over the total insurance liabilities; or

(B) The percentage which the total insurance liabilities on United States business for the taxable year is of the company's total insurance liabilities.

(2) *Distributions pursuant to certain mutualizations.* In applying section 815(e) for purposes of subsection (a)—

(A) The paid-in capital and paid-in surplus referred to in section 815(e)(1)(A) of a foreign life insurance company is the portion of such capital and surplus determined by multiplying such capital and surplus by the percentage selected for the taxable year under paragraph (1); and

(B) The excess referred to in section 815(e)(2)(A)(i) (without the adjustment provided by section 815(e)(2)(B)) is whichever of the following is the greater:

(i) The minimum figure for 1958 determined under subsection (b)(2)(A), or

(ii) The surplus described in subsection (b)(2)(B) (determined as of December 31, 1958).

(d) *No United States insurance business.* Foreign life insurance companies not carrying on an insurance business within the United States shall not be taxable under this part but shall be taxable as other foreign corporations.

[Sec. 819 as added by sec. 2, Life Insurance Company Tax Act 1959 (73 Stat. 136)]

§ 1.819–1 Taxable years affected.

Section 1.819–2 is applicable only to taxable years beginning after December 31, 1957, and all references to sections of part I, subchapter L, chapter 1 of the Code are to the Internal Revenue Code of 1954, as amended by the Life Insurance Company Income Tax Act of 1959 (73 Stat. 112).

§ 1.819–2 Foreign life insurance companies.

(a) *Carrying on United States insurance business.* Section 819(a) provides that a foreign life insurance company carrying on a life insurance business within the United States, if with respect to its United States business it would qualify as a life insurance company under section 801, shall be taxable on its United States business under section 802 in the same manner as a domestic life insurance company. Thus, the life insurance company taxable income of such a foreign life insurance company shall not be determined in the manner provided by part I, subchapter N, chapter 1 of the Code (relating to determination of sources of income), but shall be determined in the manner provided by part I, subchapter L, chapter 1 of the Code (relating to life insurance companies). See section 842. Accordingly, in determining its life insurance company taxable income from its United States business, such a foreign life insurance company shall take into account the appropriate items of income irrespective of whether such items of income are from sources within or without the United States. A foreign life insurance company shall take into account the appropriate items of expenses, losses, and other deductions properly allocable to such items of income from its United States business. To the extent not inconsistent with the provisions of this paragraph, section 818(a), and section 819(b), all computations entering into the determination of taxes imposed by part I shall be made in a manner consistent with the manner required for purposes of the annual statement approved by the National Association of Insurance Commissioners.

(b) *Adjustment where surplus held in the United States is less than specified minimum*—(1) *In general.* Section 819(b)(1) provides that if the minimum figure for the taxable year determined under section 819(b)(2) and subparagraph (2)(i) of this paragraph exceeds the surplus held in the United States as of the end of the taxable year (as defined in section 819(b)(2)(B) and subparagraph (2)(ii) of this paragraph) by a foreign life insurance company carrying on a life insurance business within the United States and taxable under section 802, then—

(i) The amount of the policy and other contract liability requirements (determined under section 805 and § 1.805–4 without regard to this subparagraph), and

(ii) The amount of the required interest (determined under section 809(a)(2) and paragraph (d) of § 1.809–2 without regard to this subparagraph),

shall each be reduced by an amount determined by multiplying such excess by the current earnings rate (as defined in section 805(b)(2) and paragraph (a)(2) of § 1.805–5) of such company. Such current earnings rate shall be determined by reference to the assets held by the company in the United States.

(2) *Definitions.* For purposes of section 819(b)(1) and subparagraph (1) of this paragraph:

(i) The term "minimum figure", in the case of a taxable year beginning after December 31, 1957, but before January 1, 1959, means the amount obtained by multiplying the company's total insurance liabilities on United States business by 9 percent. In the case of any taxable year beginning after December 31, 1958, such term means the amount obtained by multiplying the company's total insurance liabilities on United States business by the percentage determined and proclaimed by the Secretary as being applicable for such year;

(ii) The term "surplus held in the United States" means the excess of the assets held in the United States (as of the end of the taxable year) over the total insurance liabilities on United States business (as of the end of the taxable year);

(iii) The term "total insurance liabilities" means the sum of the total reserves (as defined in section 801(c) and paragraph (a) of § 1.801–5) as of the end of the taxable year plus (to the extent not included in total reserves) the items referred to in section 810(c)(3), (4), and (5) and paragraph (b)(3), (4), and (5) of § 1.810–2 as of the end of the taxable year; and

(iv) The term "assets" shall have the same meaning as that contained in section 805(b)(4) and paragraph (a)(4) of § 1.805–5.

(3) *Illustration of principles.* The provisions of section 819(b) and this paragraph may be illustrated by the following example:

Example. For the taxable year 1958, P, a foreign life insurance company carrying on a life insurance business within the United States and taxable under section 802, has total insurance liabilities on United States business (as of the end of the taxable year) of $940,000, assets held in the United States of $1,000,000 (as of the end of the taxable year), policy and other contract liability requirements in the amount of $30,000, required interest in the amount of $20,000, and a current earnings rate of 4 percent. In order to determine whether section 819(b) applies for the taxable year 1958, P must first compute its minimum figure, for if the minimum figure is less than the surplus held in the United States (as of the end of the taxable year), no section 819(b) adjustments

need be made. Since the minimum figure, $84,600 ($940,000, the total insurance liabilities on United States business multiplied by 9 percent, the percentage applicable for 1958), exceeds the surplus held in the United States, $60,000 (the excess of the assets held in the United States, $1,000,000, over the total insurance liabilities on United States business, $940,000), by $24,600, section 819 (b) applies for the taxable year 1958. Thus, the amount of the policy and other contract liability requirements, $30,000, and the amount of the required interest, $20,000, shall each be reduced by $984 ($24,600, the amount of such excess, multiplied by 4 percent, the current earnings rate).

(c) *Distributions to shareholders*—(1) *In general.* In the case of a foreign life insurance company carrying on a life insurance business within the United States and taxable under section 802, section 819(c)(1) provides alternative methods for determining the amount of distributions to shareholders for purposes of section 815 (relating to distributions to shareholders) and section 802 (b)(3) (relating to life insurance company taxable income). Such a foreign life insurance company may elect (in the manner provided by subparagraph (4) of this paragraph) for each taxable year, whichever of the alternative methods provided by section 819(c)(1) and this subparagraph it desires, and the method elected for any one taxable year shall be effective only with respect to the taxable year for which the election is made. Such alternative methods are:

(i) The amount of the distributions to shareholders shall be the amount determined by multiplying the total amount of distributions to shareholders by the percentage which the minimum figure for the taxable year is of the excess of the assets of the company over the total insurance liabilities; or

(ii) The amount of the distributions for shareholders shall be the amount determined by multiplying the total amount of distributions for shareholders by the percentage which the total insurance liabilities on United States business for the taxable year is of the total insurance liabilities of the company.

(2) *Definitions.* For purposes of section 819(c)(1) and subparagraph (1) of this paragraph:

(i) The term "total amount of the distributions to shareholders" means all distributions (within the meaning of section 815 and § 1.815–2) by a foreign life insurance company to all of its shareholders whether or not in the United States;

(ii) The term "minimum figure for the taxable year" means the amount determined under section 819(b)(2)(A) and paragraph (b)(2) of this section;

(iii) The term "assets of the company" means all of the assets (as defined in section 805(b)(4) and paragraph (e) of § 1.805–2) of the foreign life insurance company whether or not in the United States (as of the end of the taxable year); and

(iv) The term "total insurance liabilities of the company" means the total insurance liabilities (as defined in section 819(b)(2) and paragraph (b)(2) of this section) on all of its business whether or not in the United States (as of the end of the taxable year).

(3) *Illustration of principles.* The provisions of section 819(c)(1) and subparagraphs (1) and (2) of this paragraph may be illustrated by the following examples:

Example (1). For the taxable year 1958, T, a foreign life insurance company carrying on a life insurance business within the United States and taxable under section 802, has a minimum figure of $40,000, total amount of distributions to all shareholders (within the meaning of section 815) of $5,000, assets (as of the end of the year) of $500,000, total insurance liabilities (as of the end of the year) of $450,000, and total insurance liabilities on United States business (as of the end of the year) of $180,000. Based upon these facts, if T elects the method provided in section 819(c)(1)(A) and subparagraph (1)(i) of this paragraph, the amount of T's distributions to shareholders for the taxable year 1958 is $4,000, that is, $5,000 (the total amount of distributions to shareholders) multiplied by 80 percent (the percentage which the minimum figure for the taxable year, $40,000, is of $50,000, the excess of the assets of the company ($500,000) over the total insurance liabilities ($450,000)).

Example (2). The facts are the same as in example (1), except that for the taxable year 1958, T elects the method provided in section 819(c)(1)(B) and subparagraph (1)(ii) of this paragraph. Based upon these facts, the amount of T's distributions to shareholders for the taxable year 1958 is $2,000, that is, $5,000 (the total amount of distributions to shareholders) multiplied by 40 percent (the percentage which the total insurance liabilities on United States business ($180,000) is of the total insurance liabilities of the company ($450,000)).

(4) *Manner and effect of election.* (i) The election provided by section 819(c)(1) shall be made in a statement attached to the foreign life insurance company's income tax return for any taxable year for which the company desires the election to apply. The return and statement must be filed not later than the date prescribed by law (including extensions thereof) for filing the return for such taxable year. The statement shall indicate the method elected, the name and address of the taxpayer, and shall be signed by the taxpayer (or his duly authorized representative).

(ii) An election made under section 819(c)(1) and this paragraph shall be effective only with respect to the taxable year for which the election is made. Thus, the company must make a new election for each taxable year for which it desires the election to apply. Once such election has been made for any taxable year it may not be revoked. However, for taxable years beginning prior to the issuance of the final regulations under section 820, a taxpayer may revoke such election without obtaining consent from the Commissioner by filing, on or before the ninetieth day after the publication of such final regulations in the FEDERAL REGISTER, a statement that the company desires to revoke the election under section 820(c)(1). An amended return reflecting such revocation and the selection of the other percentage must accompany the statement for all taxable years for which returns have been filed with respect to such election.

(5) *Application of section 815.* Once the amount of distributions to shareholders is determined under the provisions of section 819(c)(1) and this paragraph, the rules of section 815 (relating to distributions to shareholders) shall apply to the shareholders surplus account and the policyholders surplus account of a foreign stock life insurance company in the same manner as they would apply to a domestic stock life insurance company.

(d) *Distributions pursuant to certain mutualizations.* Section 819(c)(2) provides that for purposes of applying section 815(e) and paragraph (e) of § 1.815-6 (relating to a special rule for certain mutualizations) in the case of a foreign life insurance company subject to tax under section 802—

(1) The paid-in capital and paid-in surplus referred to in section 815(e)(1)(A) of a foreign life insurance company is the portion of such capital and surplus determined by multiplying such amounts by the percentage selected for the taxable year under section 819(c)(1) and paragraph (c)(1) of this section; and

(2) The excess referred to in section 815(e)(2)(A)(i) (without the adjustment provided by section 815(e)(2)(B)), is whichever of the following is the greater:

(i) The minimum figure for 1958 determined under section 819(b)(2)(A); or

(ii) The surplus held in the United States (as defined in section 819(b)(2)(B)) determined as of December 31, 1958.

(e) *No United States insurance business.* Foreign life insurance companies not carrying on an insurance business within the United States shall not be taxable under part I, subchapter L, chapter 1 of the Code, but shall be taxable as other foreign corporations. See section 881 and the regulations thereunder.

§ 1.820 Statutory provisions; life insurance companies optional treatment of policies reinsured under modified coinsurance contracts.

SEC. 820. *Optional treatment of policies reinsured under modified coinsurance contracts*—(a) *In general* (1) *Treatment as reinsured under conventional coinsurance contract.* Under regulations prescribed by the Secretary or his delegate, an insurance or annuity policy reinsured under a modified coinsurance contract (as defined in subsection (b)) shall be treated, for purposes of this part (other than for purposes of section 801), as if such policy were reinsured under a conventional coinsurance contract.

(2) *Consent of reinsured and reinsurer.* Paragraph (1) shall apply to an insurance or annuity policy reinsured under a modified coinsurance contract only if the reinsured and reinsurer consent, in such manner as the Secretary or his delegate shall prescribe by regulations—

(A) To the application of paragraph (1) to all insurance and annuity policies reinsured under such modified coinsurance contract, and

(B) To the application of the rules provided by subsection (c) and the rules prescribed under such subsection.

Such consent, once given, may not be rescinded except with the approval of the Secretary or his delegate.

(b) *Definition of modified coinsurance contract.* For purposes of this section, the term "modified coinsurance contract" means

an indemnity reinsurance contract under the terms of which—

(1) A life insurance company (hereinafter referred to as "the reinsurer") agrees to indemnify another life insurance company (hereinafter referred to as "the reinsured") against a risk assumed by the reinsured under the insurance or annuity policy reinsured,

(2) The reinsured retains ownership of the assets in relation to the reserve on the policy reinsured,

(3) All or part of the gross investment income derived from such assets is paid by the reinsured to the reinsurer as a part of the consideration for the reinsurance of such policy, and

(4) The reinsurer is obligated for expenses incurred, and for Federal income taxes imposed, in respect of such gross investment income.

(c) *Special rules.* Under regulations prescribed by the Secretary or his delegate, in applying subsection (a)(1) with respect to any insurance or annuity policy the following rules shall (to the extent not improper under the terms of the modified coinsurance contract under which such policy is reinsured) be applied in respect of the amount of such policy reinsured:

(1) *Premiums and gross investment income.* The premiums (to the extent allocable to the participation of the reinsurer therein) received for the policy reinsured shall be treated as received by the reinsurer and not by the reinsured. The gross investment income (to the extent allocable to the participation of the reinsurer therein) derived from the assets in relation to the reserve on the policy reinsured shall be treated as gross investment income of the reinsurer and not of the reinsured. The gross investment income so treated shall be considered as derived proportionately from each of the various sources of gross investment income of the reinsured.

(2) *Capital gains and losses.* The gains and losses from sales and exchanges of capital assets, and gains and losses considered as gains and losses from sales and exchanges of capital assets, of the reinsured shall (to the extent of the participation therein by the reinsurer under the terms of the modified coinsurance contract) be treated as gains and losses from sales and exchanges of capital assets of the reinsurer and not of the reinsured.

(3) *Reserves and assets.* The reserve on the policy reinsured shall be treated as a part of the reserves of the reinsurer and not of the reinsured, and the assets in relation to such reserve shall be treated as owned by the reinsurer and not by the reinsured.

(4) *Expenses.* The expenses (to the extent reimbursable by the reinsurer) incurred with respect to the policy reinsured and with respect to the assets referred to in paragraph (3) shall be treated as incurred by the reinsurer and not by the reinsured.

(5) *Dividends to policyholders.* The dividends to policyholders paid in respect of the policy reinsured shall be treated as paid by the reinsurer and not by the reinsured. For purposes of the preceding sentence, the amount of dividends to policyholders treated as paid by the reinsurer shall be the amount paid, in respect of the policy reinsured, by the reinsurer to the reinsured as reimbursement for dividends to policyholders paid by the reinsured. This paragraph shall apply also in respect of an insurance or annuity policy reinsured under a conventional coinsurance contract.

(6) *Reimbursement for 1957 Federal income tax.* Any amount paid in 1958 or any subsequent year by the reinsurer to the reinsured as reimbursement for Federal income taxes imposed for a taxable year beginning in 1957 or any preceding taxable year shall not be taken into account by the reinsured as an item under section 809(c) or by the reinsurer as a deduction under section 809(d).

(7) *Rules prescribed by the Secretary.* Such other rules as may be prescribed by the Secretary or his delegate.

In applying the rules provided by paragraphs (1), (2), (3), (4), (5), and (6) and the rules prescribed under paragraph (7), an item shall be taken into account as income only once under subpart B and only once under subpart C by both the reinsured and the reinsurer, and an item shall be allowed as a deduction only once under subpart B and only once under subpart C to both the reinsured and the reinsurer.

[Sec. 820 as added by sec. 2, Life Insurance Company Income Tax Act 1959 (73 Stat. 137)]

§ 1.820–1 Taxable years affected.

Sections 1.820–2 and 1.820–3 are applicable only to taxable years beginning after December 31, 1957, and all references to part I, subchapter L, chapter 1 of the Code are to the Internal Revenue Code of 1954, as amended by the Life Insurance Company Income Tax Act of 1959 (73 Stat. 112).

§ 1.820–2 Optional treatment of policies reinsured under modified coinsurance contracts.

(a) *In general.* Section 820(a) provides that an insurance or annuity policy that is reinsured under a modified coinsurance contract (as defined in section 820(b) and paragraph (d) of this section) shall, for purposes of part I, subchapter L, chapter 1 of the Code (other than for purposes of section 801), be treated as if such policy were reinsured under a conventional coinsurance contract, if the reinsured company and the reinsuring company (hereinafter referred to as the "reinsured" and the "reinsurer") each consent to such treatment. This optional treatment applies with respect to any insurance or annuity policy reinsured under a modified coinsurance contract only in the event that the reinsured and the reinsurer consent to such treatment for all such policies reinsured under such contract and also consent to the application of the rules prescribed in and under section 820(c) and § 1.820–3 (relating to special rules).

(b) *Time and manner of giving consent.* (1) The consent of the reinsured and reinsurer to the application of section 820(a)(1) and paragraph (a) of this section to all insurance or annuity policies reinsured under a modified coinsurance contract and to the application of the rules prescribed in and under section 820(c) and § 1.820–3 shall be given in a written statement attached to the life insurance company income tax returns of both the reinsured and reinsurer for the first taxable year to which such consent is to apply. The return and statement shall be filed not later than the time prescribed by law (including extensions thereof) for filing the return for such taxable year. However, if the last day prescribed by law (including extensions thereof) for filing a return for the first taxable year for which such consent is to apply falls before the ninetieth day after the final regulations under section 820 are published in the FEDERAL REGISTER, such consent may be made for such year by filing the statement and an amended return for such taxable year (and all subsequent taxable years for which returns have been filed) on or before such ninetieth day. The statement shall be executed by both the reinsured and reinsurer and shall be signed on their behalf by a person authorized to sign returns under section 6062 and the regulations thereunder.

(2) In addition to the statement of consent, the following shall also be filed with the returns of the reinsured and reinsurer:

(i) A copy of the original modified coinsurance contract between the reinsured and reinsurer as in effect for the first taxable year for which consent to the application of section 820 is given;

(ii) A separate schedule for the items referred to in paragraphs (1) through (5) of section 820(c) and paragraph (a) of § 1.820–3 (to the extent not reflected in the permanent books of account of the taxpayer) which relate to all policies reinsured under such modified coinsurance contract showing, in detail, the extent to which such items are to be taken into account for the taxable year by the reinsured and reinsurer under the terms of such contract and the provisions of that section; and

(iii) Such other data as is necessary to enable the Commissioner to determine the correctness of the application of the rules prescribed in and under section 820 and to ascertain the accuracy of the computations involved.

The contract referred to in subdivision (i) of this subparagraph need only be submitted with the returns of the reinsured and reinsurer for the first taxable year for which consent to the application of section 820 is given. Furthermore, the reinsured and reinsurer shall maintain as part of their permanent books of account any subsequent amendments to such contract. The information and data referred to in subdivisions (ii) and (iii) of this subparagraph shall be submitted annually and shall be attached to the returns of the reinsured and reinsurer for each taxable year for which the consent to the application of section 820 remains in effect.

(c) *Scope of consent.* The consent referred to in section 820(a)(2) and paragraphs (a) and (b) of this section shall be binding upon the reinsured and reinsurer for the taxable year for which given, and for all succeeding taxable years, unless permission to rescind such consent is obtained from the Commissioner. However, for taxable years beginning prior to the issuance of the final regulations under section 820, such consent may be rescinded without obtaining permission from the Commissioner by filing, on or before the ninetieth day after the date of publication of such final regulations in the FEDERAL REGISTER, a statement that the reinsured and the reinsurer desire to rescind the consent under section 820. Such statement shall be executed by both the reinsured and the reinsurer and shall be signed on their behalf by a person authorized to sign returns under section 6062 and the regulations thereunder. An amended return of both the reinsured and reinsurer re-

flecting such rescission must accompany the statement for all taxable years for which returns have been filed with respect to such consent.

(d) *Modified coinsurance contract defined.* For purposes of section 820, the term "modified coinsurance contract" means an indemnity reinsurance contract in which—

(1) One life insurance company (the reinsurer) agrees to indemnify another life insurance company (the reinsured) against the risk, or part thereof, assumed by the reinsured company under the insurance or annuity policy reinsured under the contract of reinsurance,

(2) The reinsured company retains ownership of the assets in relation to the reserve on the policy reinsured,

(3) All or part of the gross investment income derived from such assets is paid by the reinsured company to the reinsuring company as a part of the consideration for the reinsurance of such policy, and

(4) The reinsurer company is obligated for expenses incurred, and for Federal income taxes imposed, in respect of such gross investment income.

§ 1.820–3 Special rules.

(a) *In general.* For purposes of section 820(a)(1), section 820(c) provides special rules (to the extent not improper under the terms of the modified coinsurance contract under which such policy is reinsured) to be applied in respect of the amount of such policy reinsured. Both the reinsured and the reinsurer must consent to these special rules, in the manner provided in paragraph (b) of § 1.820–2, in order to obtain the optional treatment provided by section 820(a)(1). Such special rules and the adjustments required thereunder are—

(1) Premiums (to the extent allocable to the participation of the reinsurer therein) received for the policy reinsured shall be treated as received by the reinsurer and not by the reinsured. Experience refunds, where the amount of such adjustments are based upon a predetermined experience rating formula contained in the modified coinsurance contract, allowed by the reinsurer to the reinsured, shall be treated as reductions in premium income of the reinsurer under section 809(c)(1) and as other amounts received by the reinsured under section 809(c)(1).

(2)(i) Gross investment income (to the extent allocable to the participation of the reinsurer therein) derived from the assets in relation to the reserve on the policy reinsured shall be treated as gross investment income of the reinsurer and not of the reinsured. The gross investment income so treated shall be considered as derived proportionately from each of the various sources of gross investment income of the reinsured. For this purpose, the percentage used in determining the reinsurer's share of each and every item of gross investment income (including tax-exempt interest, partially tax-exempt interest, and dividends received) shall be determined by dividing the amount of gross investment income allocable to the reinsurer under the modified coinsurance contract by the total gross investment income of the reinsured. The percentage thus obtained is then applied to each and every item of gross investment income of the reinsured. The percentage used in determining the reinsured's share of each and every item of gross investment income (including tax-exempt interest, partially tax-exempt interest, and dividends received) shall be the percentage obtained by subtracting the percentage obtained under the preceding sentence from 100 percent.

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

Example. For the taxable year 1958, R, a life insurance company, reinsures a block of its policies with S, a life insurance company, under a modified coinsurance contract. Assume that R and S have consented to the application of section 820 and that the amount of gross investment income allocable to S (under the terms of the modified coinsurance contract) is $100,000. Assume further that R has gross invest-income of $500,000 for the taxable year 1958, including $5,000 of wholly tax-exempt interest, $300,000 of interest on notes, loans, etc., $35,000 of rental income, $60,000 of royalty income, and $100,000 of dividends received on stock of domestic corporations. Since the gross investment income of R to be treated as gross investment income of S is 20 percent of R's gross investment income ($100,000÷$500,000), R would make up the following schedule for purposes of determining the portion of each individual item of gross investment income to be taken into account by R and S:

	Col. 1 Gross investment income	Col. 2 (20%×Col. 1) S's share of gross investment income	Col. 3 (Col. 1–Col. 2) R's share of gross investment income
Interest wholly tax-exempt	$5,000	$1,000	$4,000
Interest on notes, loans, etc	300,000	60,000	240,000
Rents	35,000	7,000	28,000
Royalties	60,000	12,000	48,000
Dividends on stock of domestic corporations	100,000	20,000	80,000
Total	500,000	100,000	400,000

(3)(i) Gains and losses from sales and exchanges of capital assets, and gains and losses considered as gains and losses from sales and exchanges of capital assets, of the reinsured company shall (to the extent of the participation therein by the reinsurer under the terms of the modified coinsurance contract) be treated as gains and losses from sales and exchanges of capital assets of the reinsurer and not of the reinsured. The character of the gains and losses so treated shall be the same for the reinsurer as it would be in the hands of the reinsured. The gains and losses so treated shall be considered as derived proportionately from each sale and exchange of a capital asset, and each gain and loss considered as a gain and loss from the sale and exchange of a capital asset, of the reinsured.

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

Example. For the taxable year 1959, L, a life insurance company, reinsures a block of its policies with N, a life insurance company, under a modified coinsurance contract. Assume that L and N have consented to the application of section 820 and that under the terms of such contract 20 percent of the gains and losses from the sales and exchanges of capital assets (and any gains and losses considered to be from sales and exchanges of capital assets under applicable law) of L are allocable to N. Assume further that for the taxable year 1959, L has a long-term capital gain of $5,000 from the sale of stock X, a short-term capital gain of $8,000 from the sale of stock Y, and a long-term capital loss of $4,000 from the sale of stock Z. Since 20 percent of such gains and losses of L are allocable to N, L would make up the following schedule for purposes of determining the portion of each of such gains and losses to be taken into account by L and N:

	Col. 1 Capital gain or loss	Col. 2 (20% × Col. 1) N's share of capital gain or loss	Col. 3 (Col. 1 – Col. 2) L's share of capital gain or loss
Long-term capital gain	$5,000	$1,000	$4,000
Short-term capital gain	8,000	1,600	6,400
Long-term capital loss	4,000	800	3,200

(4) The reserve on the policy reinsured (to the extent allocable to the participation of the reinsurer therein) shall be treated as a part of the reserves of the reinsurer and not of the reinsured. Such reserve shall not be limited to the items taken into account under section 810(c).

(5) The assets in relation to the reserve referred to in section 820(c)(3) and in subparagraph (4) of this paragraph shall be treated as owned by the reinsurer and not by the reinsured.

(6)(i) The expenses (to the extent reimbursable by the reinsurer) incurred with respect to the policy reinsured which relate to the determination of gain or loss from operations under section 809(b) shall be treated as incurred by the reinsurer and not by the reinsured. Furthermore, any provision limiting the amount which shall be allowed as a deduction shall be applied after such adjustment has been made.

(ii) The expenses (to the extent reimbursable by the reinsurer) incurred with respect to the policy reinsured and with respect to the assets referred to in section 820(c)(3) and subparagraph (5) of this paragraph which relate to the determination of investment yield under section 804(c) shall be treated as incurred by the reinsurer and not by the reinsured. Furthermore, any provision limiting the amount which shall be allowed as a deduction shall be applied after such adjustment has been made. The expenses so treated shall be considered as incurred proportionately from each of the various sources of expenses incurred by the reinsured. For this purpose, the percentage used in determining the reinsurer's share of each and every item of such expenses shall be determined by dividing the amount of such expenses allocable to the reinsurer under the modified coinsurance contract

by the total amount of such expenses. The percentage thus obtained is then applied to each and every item of such expenses. The percentage used in determining the reinsured's share of each and every item of such expenses shall be the percentage obtained by subtracting the percentage obtained under the preceding sentence from 100 percent.

(iii) The provisions of subdivision (ii) of this subparagraph may be illustrated by the following example:

Example. Assume the facts are the same as in the example contained in subparagraph (2)(ii) of this paragraph, except that R incurred expenses ($8,000 of which are reimbursable by S) relating to the determination of investment yield of $40,000, including investment expenses of $30,000, depreciation of $8,000, and real estate expenses of $2,000. Based upon these facts, R would make up the following schedule for purposes of determining the portion of each individual item of expense to be taken into account by R and S:

	Col. 1 Total	Col. 2 (20%+Col. 1) S's share of expenses	Col. 3 (Col. 1−Col. 2) R's share of expenses
Investment expenses	$30,000	$6,000	$32,000
Depreciation	8,000	1,600	6,400
Real estate expenses	2,000	400	1,600
Expenses relating to determination of investment yield	40,000	8,000	32,000

(7) Dividends to policyholders (as defined in section 811(a) and paragraph (a) of § 1.811–2) paid in respect of the policy reinsured shall be treated as paid by the reinsurer and not by the reinsured. For purposes of the preceding sentence, the amount of dividends to policyholders treated as paid by the reinsurer shall be the amount paid, in respect of the policy reinsured, by the reinsurer to the reinsured as reimbursement for dividends to policyholders paid by the reinsured. This subparagraph shall apply also in respect of an insurance or annuity policy reinsured under a conventional reinsurance contract.

(8) Any amounts paid in 1958 or any subsequent year by the reinsurer to the reinsured as reimbursement for Federal income taxes imposed for a taxable year beginning in 1957 or any preceding taxable year shall not be taken into account by the reinsured as an item of gross amount under section 809(c) or taken into account by the reinsurer as an item of deduction under section 809(d).

(b) *Denial of double deduction.* In applying the special rules provided by section 820(c) and paragraph (a) of this section, an item shall be taken into account as income only once under subpart B, part I, subchapter L, chapter 1 of the Code, and only once under subpart C, part I, subchapter L, chapter 1 of the Code, by both the reinsured and the reinsurer, and an item shall be allowed as a deduction only once under such subpart B and only once under such subpart C to both the reinsured and the reinsurer.

[F.R. Doc. 61–510; Filed, Jan. 19, 1961; 8:46 a.m.]

[26 CFR Part 1]

INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Real Estate Investment Trusts and Their Shareholders

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, in duplicate, to the Commissioner of Internal Revenue, Attention: T:P, Washington 25, D.C., within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner within the 30-day period. In such 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. 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] DANA LATHAM,
Commissioner of Internal Revenue.

The Income Tax Regulations (26 CFR Part 1) are hereby amended to prescribe regulations under part II, subchapter M, chapter 1 of the Internal Revenue Code of 1954, as added by section 10 of the Act of September 14, 1960 (Public Law 86–779, 74 Stat. 1003), and to reflect amendments to sections 11, 34, 116, 243, 318, 443, 852, 855, and 1504 of the Code made by such Act.

PARAGRAPH 1. There is inserted immediately after § 1.855–1 the following new sections:

REAL ESTATE INVESTMENT TRUSTS

REAL ESTATE INVESTMENT TRUSTS

§ 1.856 Statutory provisions; definition of real estate investment trust.

SEC. 856. *Definition of real estate investment trust*—(a) *In general.* For purposes of this subtitle, the term "real estate investment trust" means an unincorporated trust or an unincorporated association—

(1) Which is managed by one or more trustees;

(2) The beneficial ownership of which is evidenced by transferable shares, or by transferable certificates of beneficial interest;

(3) Which (but for the provisions of this part) would be taxable as a domestic corporation;

(4) Which does not hold any property primarily for sale to customers in the ordinary course of its trade or business;

(5) The beneficial ownership of which is held by 100 or more persons;

(6) Which would not be a personal holding company (as defined in section 542) if all of its gross income constituted personal holding company income (as defined in section 543); and

(7) Which meets the requirements of subsection (c).

(b) *Determination of status.* The conditions described in paragraphs (1) to (4), inclusive, of subsection (a) must be met during the entire taxable year, and the condition described in paragraph (5) must exist during at least 335 days of a taxable year of 12 months, or during a proportionate part of a taxable year of less than 12 months.

(c) *Limitations.* A trust or association shall not be considered a real estate investment trust for any taxable year unless—

(1) It files with its return for the taxable year an election to be a real estate investment trust or has made such election for a previous taxable year which began after December 31, 1960;

(2) At least 90 percent of its gross income is derived from—

(A) Dividends;

(B) Interest;

(C) Rents from real property;

(D) Gain from the sale or other disposition of stock, securities, and real property (including interests in real property and interests in mortgages on real property); and

(E) Abatements and refunds of taxes on real property;

(3) At least 75 percent of its gross income is derived from—

(A) Rents from real property;

(B) Interest on obligations secured by mortgages on real property or on interests in real property;

(C) Gain from the sale or other disposition of real property (including interests in real property and interests in mortgages on real property);

(D) Dividends or other distributions on, and gain from the sale or other disposition of, transferable shares (or transferable certificates of beneficial interest) in other real

estate investment trusts which meet the requirements of this part; and

(E) Abatements and refunds of taxes on real property;

(4) Less than 30 percent of its gross income is derived from the sale or other disposition of—

(A) Stock or securities held for less than 6 months; and

(B) Real property (including interests in real property) not compulsorily or involuntarily converted within the meaning of section 1033, held for less than 4 years; and

(5) At the close of each quarter of the taxable year—

(A) At least 75 percent of the value of its total assets is represented by real estate assets, cash and cash items (including receivables), and Government securities; and

(B) Not more than 25 percent of the value of its total assets is represented by securities (other than those includible under subparagraph (A)) for purposes of this calculation limited in respect of any one issuer to an amount not greater in value than 5 percent of the value of the total assets of the trust and to not more than 10 percent of the outstanding voting securities of such issuer.

A real estate investment trust which meets the requirements of this paragraph at the close of any quarter shall not lose its status as a real estate investment trust because of a discrepancy during a subsequent quarter between the value of its various investments and such requirements unless such discrepancy exists immediately after the acquisition of any security or other property and is wholly or partly the result of such acquisition. A real estate investment trust which does not meet such requirements at the close of any quarter by reason of a discrepancy existing immediately after the acquisition of any security or other property which is wholly or partly the result of such acquisition during such quarter shall not lose its status for such quarter as a real estate investment trust if such discrepancy is eliminated within 30 days after the close of such quarter and in such cases it shall be considered to have met such requirements at the close of such quarter for purposes of applying the preceding sentence.

(6) For purposes of this part—

(A) The term "value" means, with respect to securities for which market quotations are readily available, the market value of such securities; and with respect to other securities and assets, fair value as determined in good faith by the trustees, except that in the case of securities of real estate investment trusts such fair value shall not exceed market value or asset value, whichever is higher.

(B) The term "real estate assets" means real property (including interests in real property and interests in mortgages on real property) and shares (or transferable certificates of beneficial interest) in other real estate investment trusts which meet the requirements of this part.

(C) The term "interests in real property" includes fee ownership and co-ownership of land or improvements thereon and leaseholds of land or improvements thereon, but does not include mineral, oil, or gas royalty interests.

(D) All other terms shall have the same meaning as when used in the Investment Company Act of 1940, as amended.

(d) *Rents from real property defined.* For purposes of paragraphs (2) and (3) of subsection (c), the term "rents from real property" includes rents from interests in real property but does not include—

(1) Any amount received or accrued, directly or indirectly, with respect to any real property, if the determination of such amount depends in whole or in part on the income or profits derived by any person from such property (except that any amount so received or accrued shall not be excluded from the term "rents from real property" solely by reason of being based on a fixed percentage or percentages of receipts or sales);

(2) Any amount received or accrued directly or indirectly from any person if the real estate investment trust owns, directly or indirectly—

(A) In the case of any person which is a corporation, stock of such person possessing 10 percent or more of the total combined voting power of all classes of stock entitled to vote, or 10 percent or more of the total number of shares of all classes of stock of such person; or

(B) In the case of any person which is not a corporation, an interest of 10 percent or more in the assets or net profits of such person; and

(3) Any amount received or accrued, directly or indirectly, with respect to any real property, if the real estate investment trust furnishes or renders services to the tenants of such property, or manages or operates such property, other than through an independent contractor from whom the trust itself does not derive or receive any income. For purposes of this paragraph, the term "independent contractor" means—

(A) A person who does not own, directly or indirectly, more than 35 percent of the shares, or certificates of beneficial interest, in the real estate investment trust, or

(B) A person, if a corporation, not more than 35 percent of the total combined voting power of whose stock (or 35 percent of the total shares of all classes of whose stock), or, if not a corporation, not more than 35 percent of the interest in whose assets or net profits is owned, directly or indirectly, by one or more persons owning 35 percent or more of the shares or certificates of beneficial interest in the trust.

For purposes of paragraphs (2) and (3), the rules prescribed by section 318(a) for determining the ownership of stock shall apply in determining the ownership of stock, assets, or net profits of any person; except that "10 percent" shall be substituted for "50 percent" in subparagraph (C) of section 318(a)(2).

[Sec. 856 as added by sec. 10(a), Act of Sept. 14, 1960 (Pub. Law 86-779, 74 Stat. 1004 through 1006)]

§ 1.856-1 Definition of real estate investment trust.

(a) *In general.* The term "real estate investment trust" means an unincorporated trust or unincorporated association which (1) meets the status conditions in section 856(a) and paragraph (b) of this section, and (2) satisfies the gross income and asset diversification requirements under the limitations of section 856(c) and § 1.856-2.

(b) *Qualifying conditions.* To qualify as a "real estate investment trust", an unincorporated organization must be one—

(1) Which is managed by one or more trustees,

(2) The beneficial ownership of which is evidenced by transferable shares or by transferable certificates of beneficial ownership,

(3) Which would be taxable as a domestic corporation but for the provisions of part II, subchapter M, chapter 1 of the Code,

(4) Which does not hold any property primarily for sale to customers in the ordinary course of its trade or business,

(5) The beneficial ownership of which is held by 100 or more persons, and

(6) Which would not be a personal holding company (as defined in section 542) if all of its gross income constituted personal holding company income (as defined in section 543).

(c) *Determination of status.* The conditions described in subparagraphs (1) through (4), of paragraph (b) of this section must be met during the entire taxable year and the condition described in subparagraph (5) of paragraph (b) of this section must exist during at least 335 days of a taxable year of 12 months or during a proportionate part of a taxable year of less than 12 months. The days during which the latter condition must exist need not be consecutive. In determining the minimum number of days during which the condition described in paragraph (b)(5) of this section is required to exist in a taxable year of less than 12 months, fractional days shall be disregarded. For example, in a taxable year of 310 days, the actual number of days prescribed would be $284\frac{38}{73}$ days ($\frac{310}{365}$ of 335). The fractional day is disregarded so that the required condition in such taxable year need exist for only 284 days.

(d) *Rules applicable to status requirements.* For purposes of determining whether an unincorporated organization meets the conditions and requirements in section 856(a), the following rules shall apply.

(1) *Trustee.* The term "trustee" means a person who holds legal title to the property of the real estate investment trust, has absolute and exclusive control over the management of the trust and the conduct of its affairs, free from any power of control on the part of its shareholders other than the right to elect trustees, and has absolute and exclusive control over the management of the trust property (except as limited by section 856(d)(3) and § 1.856-4) and the disposition thereof. The existence of a mere fiduciary relationship does not, in itself, make one a trustee for purposes of section 856(a)(1). An organization which under State law is considered a limited partnership cannot qualify as a real estate investment trust under part II of subchapter M, because a partner thereof is not considered to be a trustee for purposes of section 856(a)(1). Furthermore, a trustee of a real estate investment trust may not be an officer or employee of, or have any direct or indirect proprietary interest in, any independent contractor which furnishes or renders services to the tenants of the trust property or manages or operates such property. See section 856(d)(3) and § 1.856-4 for definition of independent contractor.

(2) *Beneficial ownership.* Beneficial ownership shall be evidenced by transferable shares, or by transferable certificates of beneficial interest, and (subject to the provisions of paragraph (c) of this section) must be held by 100 or more persons. For purposes of the regulations under part II of subchapter M, the terms "stockholder", "stockholders", "shareholder", and "shareholders" include holders of certificates of beneficial interest in a real estate investment trust, and the terms "stock", "shares", and

"shares of stock" include certificates of beneficial interest.

(3) *Unincorporated organization taxable as a domestic corporation.* The determination of whether an unincorporated organization would be taxable as a domestic corporation, in the absence of the provisions of part II of subchapter M, shall be made in accordance with the provisions of section 7701 (a) (3) and (4) and the regulations thereunder and for such purposes an otherwise qualified real estate investment trust is deemed to satisfy the "objective to carry on business" requirement of paragraph (a) of § 301.7701–2 of this chapter (Regulations on Procedure and Administration).

(4) *Property held for sale to customers.* A real estate investment trust may not hold any property primarily for sale to customers in the ordinary course of its trade or business. Whether property is held for sale to customers in the ordinary course of the trade or business of a real estate investment trust depends upon the facts and circumstances in each case.

(5) *Personal holding company.* An unincorporated organization, even though it may otherwise meet the requirements of part II of subchapter M, will not be a real estate investment trust if, by considering all of its gross income as personal holding company income under section 543, it would be a personal holding company as defined in section 542. Thus, if at any time during the last half of the trust's taxable year more than 50 percent in value of its outstanding stock is owned (directly or indirectly under the provisions of section 544) by or for not more than 5 individuals, the stock ownership requirement in section 542(a)(2) will be met and the trust would be a personal holding company. See § 1.857–6, relating to record requirements for purposes of determining whether the trust is a personal holding company.

(e) *Other rules applicable.* To the extent that other provisions of chapter 1 of the Code are not inconsistent with those under part II of subchapter M thereof and the regulations thereunder, such provisions will apply with respect to both the real estate investment trust and its shareholders in the same manner that they would apply to any other unincorporated trust which would be taxable as a domestic corporation. For example:

(1) Taxable income of a real estate investment trust is computed in the same manner as that of a domestic corporation;

(2) Section 301, relating to distributions of property, applies to distributions by a real estate investment trust in the same manner as it would apply to a domestic corporation;

(3) Sections 302, 303, 304, and 331 are applicable in determining whether distributions by a real estate investment trust are to be treated as in exchange for stock;

(4) Section 305 applies to distributions by a real estate investment trust of its own stock;

(5) Section 311 applies to distributions by a real estate investment trust;

(6) Except as provided in section 857(d), earnings and profits of a real estate investment trust are computed in the same manner as in the case of a domestic corporation;

(7) Section 316, relating to the definition of a dividend, applies to distributions by a real estate investment trust; and

(8) Section 341, relating to collapsible corporations, applies to gain on the sale or exchange of, or a distribution which is in exchange for, stock in a real estate investment trust in the same manner that it would apply to a domestic corporation.

§ 1.856–2 Limitations.

(a) *Effective date.* The provisions of part II, subchapter M, chapter 1 of the Code and the regulations thereunder apply only to taxable years of a real estate investment trust beginning after December 31, 1960.

(b) *Election.* Under the provisions of section 856(c)(1), a trust, even though it satisfies the other requirements of part II of subchapter M for the taxable year, will not be considered a "real estate investment trust" for such year, within the meaning of such part II, unless it elects to be a real estate investment trust for such taxable year, or has made such an election for a previous taxable year which began after December 31, 1960. The election shall be made by the trust by computing taxable income as a real estate investment trust in its return for the first taxable year for which the election is applicable. No other method of making such election is permitted. An election once made is irrevocable for such taxable year and all succeeding taxable years.

(c) *Gross income requirements.* (1) Section 856(c)(2), (3), and (4) further provides that a trust shall not be considered a "real estate investment trust" for a taxable year unless for such year:

(i) At least 90 percent of its gross income is derived from—

(*a*) Dividends;

(*b*) Interest;

(*c*) Rents from real property;

(*d*) Gain from the sale or other disposition of stock, securities, and real property; and

(*e*) Abatements and refunds of taxes on real property;

(ii) At least 75 percent of its gross income is derived from—

(*a*) Rents from real property;

(*b*) Interest on obligations secured by mortgages on real property;

(*c*) Gain from the sale or other disposition of real property;

(*d*) Dividends or other distributions on, and gain from the sale or other disposition of, transferable shares in another qualified real estate investment trust which is so qualified for its taxable year to which the dividends or other distributions relate or during which the gain was realized; and

(*e*) Abatements and refunds of taxes on real property; and

(iii) Less than 30 percent of its gross income is derived from the sale or other disposition of—

(*a*) Stock or securities held for less than 6 months; and

(*b*) Real property, not compulsorily or involuntarily converted within the meaning of section 1033, held for less than 4 years.

All three of the gross income requirements in section 856(c) and this subparagraph must be met for the taxable year. Thus, at least 75 percent of gross income must be derived from the sources described in section 856(c)(3) and another 15 percent of gross income must likewise be derived from such sources or from the sources described in section 856(c)(2), or from a combination of such sources. A maximum of 10 percent of gross income is not restricted as to source.

(2) For purposes of determining whether the gross income of a real estate investment trust satisfies the percentage requirements in section 856(c) and subparagraph (1) of this paragraph, the following rules shall apply.

(i) *Dividends.* The 90-percent requirement permits the inclusion of dividends generally, while the 75-percent requirement includes dividends only to the extent that they represent dividends or other distributions on transferable shares in other qualified real estate investment trusts.

(ii) *Interest.* Under the requirements in section 856(c) (2) and (3), the percentages of gross income shall include interest only to the extent of the amount which constitutes lawful interest for the loan or forbearance of money. Thus, for example, usurious or illegal interest, or fees imposed upon borrowers which are in fact a charge for services in addition to the charge for the use of borrowed money, although otherwise includible in gross income, shall not be included in the percentages of gross income under the requirements in section 856(c) (2) and (3). Furthermore, to the extent limited by this subdivision, the 90-percent requirement permits the inclusion of interest generally, while the 75-percent requirement includes interest to the extent that it relates to obligations secured by mortgages on real property. Where a mortgage covers both real and personal property an apportionment of the interest income must be made for purposes of the 75-percent requirement.

(iii) *Rents from real property.* See § 1.856–4 for the definition of rents from real property.

(iv) *Gain from sale or other disposition of property.* Gain from the sale or other disposition of the property described in section 856(c) (2)(D) and (3)(C) shall be included in gross income for the purpose of determining whether the percentage requirements of such paragraphs are met only to the extent of the net gain therefrom. The 90-percent requirement permits the inclusion of net gain from the sale or other disposition of stock, securities, and real property, while the 75-percent requirement limits the includible amount to the net gain from the sale or other disposition of only real property and transferable shares in other qualified real estate investment trusts.

(v) *Gross income from sale or other disposition of property.* A loss from the sale or other disposition of the property described in section 856(c)(4) is not netted with gain from the sale or other disposition of such property in determining the numerator for the computation of the 30-percent limitation of that section although the loss is reflected in gross income for purposes of the denominator in such computation. A determination of the period for which such property has been held shall be governed by the provisions of section 1223 and the regulations thereunder.

(d) *Diversification of investment requirements*—(1) *75-percent test.* Section 856(c)(5)(A) requires that at the close of each quarter of the taxable year at least 75 percent of the value of the total assets of the trust be represented by one or more of the following:

(i) Real estate assets;

(ii) Government securities; and

(iii) Cash and cash items (including receivables).

For purposes of this subparagraph the term "receivables" means only those receivables which arise in the ordinary course of the trust's operation and does not include receivables purchased from another person. Subject to the limitations in section 856(c)(5)(B) and subparagraph (2) of this paragraph, the character of the remaining 25 percent (or less) of the value of the total assets is not restricted.

(2) *Limitations on certain securities.* Under section 856(c)(5)(B), not more than 25 percent of the value of the total assets of the trust may be represented by securities other than those described in section 856(c)(5)(A). The ownership of securities under the 25-percent limitation in section 856(c)(5)(B) is further limited in respect of any one issuer to an amount not greater in value than 5 percent of the value of the total assets of the trust and to not more than 10 percent of the outstanding voting securities of such issuer. Thus, if the real estate investment trust meets the 75-percent asset diversification requirement in section 856(c)(5)(A), it will also meet the first test under section 856(c)(5)(B) since it will, of necessity, have not more than 25 percent of its total assets represented by securities other than those described in section 856(c)(5)(A). However, the trust must also meet two additional tests under section 856(c)(5)(B), i.e. it cannot own the securities of any one issuer in an amount (i) greater in value than 5 percent of the value of the trust's total assets, or (ii) representing more than 10 percent of the outstanding voting securities of such issuer.

(3) *Determination of investment status.* In order to determine the effect, if any, which an acquisition of any security or other property may have with respect to the status of a trust as a real estate investment trust, section 856(c)(5) requires a revaluation of the trust's assets at the end of the quarter in which such acquisition was made. A real estate investment trust shall keep sufficient records as to investments so as to be able to show that it has complied with the provisions of section 856(c)(5) during the taxable year. Such records shall be kept at all times available for inspection by any internal revenue officer or employee and shall be retained so long as the contents thereof may become material in the administration of any internal revenue law.

(4) *Illustrations.* The application of section 856(c)(5) and this paragraph may be illustrated by the following examples:

Example (1). Real Estate Investment Trust M, at the close of the first quarter of its taxable year, has its assets invested as follows:

	Percent
Cash	6
Government securities	7
Real estate assets	63
Securities of various corporations (not exceeding, with respect to any one issuer, 5 percent of the value of the total assets of the trust nor 10 percent of the outstanding voting securities of such issuer)	24
Total	100

Trust M meets the requirements of section 856(c)(5) for that quarter of its taxable year.

Example (2). Real Estate Investment Trust P, at the close of the first quarter of its taxable year, has its assets invested as follows:

	Percent
Cash	6
Government securities	7
Real estate assets	63
Securities of Corporation Z	20
Securities of Corporation X	4
Total	100

Trust P meets the requirement of section 856(c)(5)(A) since at least 75 percent of the value of the total assets is represented by cash, Government securities, and real estate assets. However, Trust P does not meet the diversification requirements of section 856(c)(5)(B) because its investment in the voting securities of Corporation Z exceeds 5 percent of the value of the trust's total assets.

Example (3). Real Estate Investment Trust G, at the close of the first quarter of its taxable year, has its assets invested as follows:

	Percent
Cash	4
Government securities	9
Real estate assets	70
Securities of Corporation S	5
Securities of Corporation L	4
Securities of Corporation U	4
Securities of Corporation M (which equals 25 percent of Corporation M's outstanding voting securities)	4
Total	100

Trust G meets the 75-percent requirement of section 856(c)(5)(A), but does not meet the requirements of section 856(c)(5)(B) because its investment in the voting securities of Corporation M exceeds 10 percent of Corporation M's outstanding voting securities.

Example (4). Real Estate Investment Trust R, at the close of the first quarter of its taxable year (i.e. calendar year), is a qualified real estate investment trust and has its assets invested as follows:

Cash	$5,000
Government securities	4,000
Receivables	4,000
Real estate assets	68,000
Securities of Corporation P	4,000
Securities of Corporation O	$5,000
Securities of Corporation U	5,000
Securities of Corporation T	5,000
Total assets	100,000

During the second calendar quarter the stock in Corporation P increases in value to $50,000. If Real Estate Investment Trust R has made no acquisition of stock or other property during such second quarter it will not lose its status as a real estate investment trust merely by reason of the appreciation in the value of P's stock. If, during the third quarter, Trust R acquires stock of Corporation S worth $2,000, such acquisition will necessitate a revaluation of all of the assets of Trust R as follows:

Cash	$3,000
Government securities	4,000
Receivables	4,000
Real estate assets	68,000
Securities in Corporation P	50,000
Securities in Corporation O	5,000
Securities in Corporation U	5,000
Securities in Corporation T	5,000
Securities in Corporation S	2,000
Total assets	146,000

Because of the discrepancy between the value of its various investments and the requirements of section 856(c)(5), resulting from the acquisition of the stock in Corporation S and the appreciation in value of the stock in Corporation P, Trust R, at the end of the third quarter, loses its status as a real estate investment trust. However, if Trust R eliminates the discrepancy within 30 days after the close of such quarter, the trust will be considered to have met the requirements of section 856(c)(5) at the close of the third quarter.

§ 1.856–3 Definitions.

For purposes of the regulations under part II, subchapter M, chapter 1 of the Code, the following definitions shall apply.

(a) *Value.* The term "value" means, with respect to securities for which market quotations are readily available, the market value of such securities; and with respect to other securities and assets, fair value as determined in good faith by the trustees of the real estate investment trust. In the case of securities of other qualified real estate investment trusts, fair value shall not exceed market value or asset value, whichever is higher.

(b) *Real estate assets.* The term "real estate assets" means real property and shares in other qualified real estate investment trusts.

(c) *Interests in real property.* The term "interests in real property" includes fee ownership and co-ownership of land or improvements thereon and leaseholds of land or improvements thereon but does not include mineral, oil, or gas royalty interests.

(d) *Real property.* The term "real property" means land or improvements thereon, such as buildings or other inherently permanent structures thereon (including items which are structural components of such buildings or structures). In addition, the term "real property" includes interests in real property and interests in mortgages on real property. The term "mortgages on real property" includes mortgages on leaseholds of land or improvements thereon. Local law definitions will not be controlling for purposes of determining the

meaning of the term "real property" as used in section 856 and the regulations thereunder. The term includes, for example, the wiring in a building, plumbing systems, central heating or central air conditioning machinery, pipes, or ducts, or other items which are structural components of a building or other permanent structure. The term does not include assets accessory to the operation of a business, such as machinery, printing press, transportation or office equipment, refrigerators, individual air conditioning units, grocery counters, furnishings of a motel, hotel or office building, etc., even though such assets may be termed fixtures under local law.

(e) *Securities.* The term "securities" does not include "interests in real property" or "real estate assets" as those terms are defined in section 856 and this section.

(f) *Qualified real estate investment trusts.* The term "qualified real estate investment trust" means a real estate investment trust within the meaning of part II of subchapter M which is taxable under such part as a real estate investment trust. For purposes of the 75-percent requirement in section 856(c)(5)(A), the trust whose stock has been included by another trust as "real estate assets" must be a "qualified real estate investment trust" for its taxable year in which falls the close of the quarter of the trust's taxable year for which the computation is made. For example, Real Estate Investment Trust Z for its taxable year ending December 31, 1963, holds as "real estate assets" stock in Real Estate Investment Trust Y, which is also on a calendar year. In computing the 75-percent requirement in section 856(c)(5)(A) as of the close of the first quarter of its taxable year, Trust Z may include the stock of Trust Y only if Trust Y is a qualified real estate investment trust on March 31, 1963. Moreover, if Trust Y ceases to be a qualified real estate investment trust at any time during that taxable year, Trust Z may not include the stock of Trust Y as "real estate assets" in computing the 75-percent requirement as of the close of any quarter of such taxable year as long as the disqualification continues.

(g) *Partnership interest.* In the case of a real estate investment trust which is a partner in a partnership, as defined in section 7701(a)(2) and the regulations thereunder, the trust will be deemed to own its proportionate share of each of the assets of the partnership and will be deemed to be entitled to the income of the partnership attributable to such share. For purposes of section 856, the interest of a partner in the partnership's assets shall be determined in accordance with his capital interest in the partnership. The character of the various assets in the hands of the partnership and items of gross income of the partnership shall retain the same character in the hands of the partners for all purposes of section 856. Thus, for example, if the trust owns a 30-percent capital interest in a partnership which owns a piece of rental property the trust will be treated as owning 30 percent of such property and as being entitled to 30 percent of the rent derived from the property by the partnership. Similarly, if the partnership holds any property primarily for sale to customers in the ordinary course of its trade or business, the trust will be treated as holding its proportionate share of such property primarily for such purpose. Also, for example, where a partnership sells real property or a trust sells its interest in a partnership which owns real property, any gross income realized from such sale, to the extent that it is attributable to the real property, shall be deemed gross income from the sale or disposition of real property held for either the period that the partnership has held the real property or the period that the trust was a member of the partnership, whichever is the shorter.

§ 1.856–4 Rents from real property.

(a) *In general.* Subject to the limitations of section 856(d) and paragraph (b) of this section, the term "rents from real property" means, generally, the gross amounts received for the use of, or the right to use, real property of the real estate investment trust. Where an amount of rent is received with respect to property consisting of both real and other property, such as a furnished apartment building, an apportionment of the rent is required. Only that part of the rent which is attributable to "real property" shall be included for purposes of the gross income requirements in section 856(c)(2) and (3) and paragraph (c) of § 1.856–2.

(b) *Amounts not includible as rent.* Section 856(d) contains restrictions and limitations under which certain amounts, although received or accrued for the use of, or the right to use, real property of the trust, will not be includible as "rents from real property" for purposes of the gross income requirements in section 856(c)(2) and (3) and paragraph (c) of § 1.856–2. Thus, section 856(d) specifically excludes the following:

(1) *Where amount of rent depends on income or profits of any person.* Any amount received or accrued, directly or indirectly, with respect to any real property if the determination of such amount depends in whole or in part on the income or profits derived by any person from such property. However, any amount so accrued or received shall not be excluded from the term "rents from real property" *solely* by reason of being based on a fixed percentage or percentages of receipts or sales (whether or not receipts or sales are adjusted for returned merchandise, or Federal, State or local sales taxes). Thus, for example, "rents from real property" would include rents where the lease provides for differing percentages of receipts or sales from different departments or from separate floors of a retail store so long as each percentage is fixed at the time of entering into the lease. However, where a trust leases real property to a tenant under terms other than solely on a fixed sum rental (i.e., for example, a percentage of the tenant's gross receipts), and the tenant subleases all or a part of such property under an agreement which provides for a rental based in whole or in part on the income or profits of the sublessee, the entire amount of the rent received by the trust from the prime tenant with respect to such property is disqualified as "rents from real property". Furthermore, where a fixed rental is agreed to and the agreement also calls for a percentage of the lessee's net profit in excess of a specific amount (usually determined before deducting the fixed rental and sometimes called "overage rents"), neither the fixed rental nor the additional amount will qualify as "rents from real property".

(2) *Ownership of person from whom trust receives rent.* Any amount received, directly or indirectly, from any person in which the real estate investment trust owns at any time during its taxable year, the specified percentage or number of shares of stock (or interest in the assets or net profits) of such person. Any amount received from such person will not qualify as "rents from real property" if such person is a corporation and the trust owns 10 percent or more of the total combined voting power of all classes of its stock entitled to vote or 10 percent or more of the total number of shares of all classes of its outstanding stock, or if such person is not a corporation and the trust owns a 10 percent or more interest in its assets or net profits. For example, a trust leases an office building to a tenant for which it receives rent of $100,000 for the taxable year 1962. The lessee of the building subleases space to various subtenants for which it receives gross rent of $500,000 for the year 1962. One of the subtenants is a corporation in which the trust owns 15 percent of the total combined voting power of all classes of stock entitled to vote. The rent paid by this subtenant for the taxable year is $50,000. Therefore, $10,000 ($50,000/$500,000 × $100,000) of the rent paid to the trust does not qualify as "rents from real property". Where the real estate investment trust receives, directly or indirectly, any amount of rent from any person in which it owns any proprietary interest, the trust shall attach to, or submit with, its return for the taxable year a schedule setting forth—

(i) The name and address of such person and the amount received as rent from such person; and

(ii) If such person is a corporation, the highest percentage of the total combined voting power of all classes of its stock entitled to vote, and the highest percentage of the total number of shares of all classes of its outstanding stock, owned by the trust at any time during the trust's taxable year; or

(iii) If such person is not a corporation, the highest percentage of the trust's interest in the assets or net profits of such person, owned by the trust at any time during its taxable year.

(3) *Trust furnishing services or managing property*—(i) *In general.* Any amount received or accrued, directly or indirectly, with respect to any real property if the real estate investment trust furnishes or renders services to the tenants of such property, or manages or operates such property, other than through an independent contractor from whom the trust itself does not derive or receive any income. Thus, for

example, the trust may not receive any dividends or rent from the independent contractor. Furthermore, an independent contractor must not be an employee of the trust, i.e., the manner in which he carries out his duties as independent contractor must not be subject to the control of the trust. If any services are performed for tenants, such services must be performed by, and the charges therefor (whether such charges are separately paid or included in the amount paid as rent) must be included in the income of, an independent contractor. If any management services are performed for the trust by an independent contractor, the independent contractor must be adequately compensated therefor. Thus, the real estate investment trust must not derive any income which is attributable to the services performed for the tenants or the trust by an independent contractor. However, the trustees are not required to delegate or contract out their fiduciary duty to manage the trust itself, as distinguished from servicing and operating the trust properties. For example, the trustees may establish rental terms, choose tenants, enter into and renew leases, deal with taxes, interest, and insurance, relating to the trust's property, and make capital expenditures as defined in section 263 with respect to the trust's property. On the other hand, neither the trust nor its employees may, but an independent contractor may, render or provide hotel, motel, warehousing, parking lot, maid, janitor, elevator, telephone switchboard, guard, or similar services. In addition, maintenance and repairs of the trust property, the costs of which would be deductible under section 162, must be controlled and paid for by an independent contractor. The furnishing of utilities by the trust, such as electricity, water, or heat, is not considered as rendering services to tenants, or as management or operation of the trust property, provided that an independent contractor maintains and repairs the facility through which the utility is furnished. Thus, for example, if a heating plant is located in the building it must be maintained and operated by an independent contractor. The requirement that the trust not receive any income from the independent contractor requires that the relationship beween the two be an arm's-length relationship. In furtherance of this objective, the term "independent contractor" is specifically defined in subdivision (ii) of this subparagraph.

(ii) *Independent contractor defined.* The term "independent contractor" means—

(*a*) A person who does not own, directly or indirectly, at any time during the trust's taxable year more than 35 percent of the shares in the real estate investment trust, or

(*b*) A person—

(*1*) If a corporation, not more than 35 percent of the total combined voting power of whose stock (or 35 percent of the total shares of all classes of whose stock), or

(*2*) If not a corporation, not more than 35 percent of the interest in whose assets or net profits

is owned, directly or indirectly, at any time during the trust's taxable year by one or more persons owning at any time during such taxable year 35 percent or more of the shares in the trust.

(iii) *Information required.* The real estate investment trust shall attach to, or submit with, its return for the taxable year a statement setting forth the name and address of each independent contractor; and

(*a*) The highest percentage of the outstanding shares in the trust owned at any time during its taxable year by such independent contractor and by any person owning at any time during such taxable year any shares of stock or interest in the independent contractor.

(*b*) If the independent contractor is a corporation such statement shall set forth the highest percentage of the total combined voting power of its stock and the highest percentage of the total number of shares of all classes of its stock owned at any time during its taxable year by any person owning shares in the trust at any time during such taxable year.

(*c*) If the independent contractor is not a corporation such statement shall set forth the highest percentage of any interest in its assets or net profits owned at any time during its taxable year by any person owning shares in the trust at any time during such taxable year.

(4) *Attribution rules.* Paragraphs (2) and (3) of section 856(d) relate to direct or indirect ownership of stock, assets, or net profits by the persons described therein. For purposes of determining such direct or indirect ownership, the rules prescribed by section 318 (a) (for determining the ownership of stock) shall apply except that "10 percent" shall be substituted for "50 percent" in subparagraph (C) of section 318(a)(2).

§ 1.857 Statutory provisions; taxation of real estate investment trusts and their beneficiaries.

SEC. 857. *Taxation of real estate investment trusts and their beneficiaries*—(a) *Requirements applicable to real estate investment trusts.* The provisions of this part (other than subsection (d) of this section) shall not apply to a real estate investment trust for a taxable year unless—

(1) The deduction for dividends paid during the taxable year (as defined in section 561, but without regard to capital gains dividends) equals or exceeds 90 percent of its real estate investment trust taxable income for the taxable year (determined without regard to subsection (b)(2)(C)), and

(2) The real estate investment trust complies for such year with regulations prescribed by the Secretary or his delegate for the purpose of ascertaining the actual ownership of the outstanding shares, or certificates of beneficial interest, of such trust.

(b) *Method of taxation of real estate investment trusts and holders of shares or certificates of beneficial interest*—(1) *Imposition of normal tax and surtax on real estate investment trusts.* There is hereby imposed for each taxable year on the real estate investment trust taxable income of every real estate investment trust a normal tax and surtax computed as provided in section 11, as though the real estate investment trust taxable income were the taxable income referred to in section 11. For purposes of computing the normal tax under section 11, the taxable income and the dividends paid deduction of such real estate investment trust for the taxable year (computed without regard to capital gains dividends) shall be reduced by the deduction provided by section 242 (relating to partially tax-exempt interest).

(2) *Real estate investment trust taxable income.* For purposes of this part, the term "real estate investment trust taxable income" means the taxable income of the real estate investment trust, adjusted as follows:

(A) There shall be excluded the excess, if any, of the net long-term capital gain over the net short-term capital loss.

(B) The deductions for corporations provided in part VIII (except section 248) of subchapter B (section 241 and following, relating to the deduction for dividends received, etc.) shall not be allowed.

(C) The deduction for dividends paid (as defined in section 561) shall be allowed, but shall be computed without regard to capital gains dividends.

(D) The taxable income shall be computed without regard to section 443(b) (relating to computation of tax on change of annual accounting period).

(E) The net operating loss deduction provided in section 172 shall not be allowed.

(3) *Capital gains*—

(A) *Imposition of tax.* There is hereby imposed for each taxable year in the case of every real estate investment trust a tax of 25 percent of the excess, if any, of the net long-term capital gain over the sum of—

(i) The net short-term capital loss; and

(ii) The deduction for dividends paid (as defined in section 561) determined with reference to capital gains dividends only.

(B) *Treatment of capital gain dividends by shareholders.* A capital gain dividend shall be treated by the shareholders or holders of beneficial interests as a gain from the sale or exchange of a capital asset held for more than 6 months.

(C) *Definition of capital gain dividend.* For purposes of this part, a capital gain dividend is any dividend, or part thereof, which is designated by the real estate investment trust as a capital gain dividend in a written notice mailed to its shareholders or holders of beneficial interests at any time before the expiration of 30 days after the close of its taxable year. If the aggregate amount so designated with respect to a taxable year of the trust (including capital gain dividends paid after the close of the taxable year described in section 858) is greater than the excess of the net long-term capital gain over the net short-term capital loss of the taxable year, the portion of each distribution which shall be a capital gain dividend shall be only that proportion of the amount so designated which such excess of the net long-term capital gain over the net short-term capital loss bears to the aggregate amount so designated.

(4) *Loss on sale or exchange of stock held less than 31 days.* If—

(A) Under subparagraph (B) of paragraph (3) a shareholder of, or a holder of a beneficial interest in, a real estate investment trust is required, with respect to any share or beneficial interest, to treat any amount as a long-term capital gain, and

(B) Such share or interest is held by the taxpayer for less than 31 days,

then any loss on the sale or exchange of such share or interest shall, to the extent of the amount described in subparagraph (A) of this paragraph, be treated as loss from the sale or exchange of a capital asset held for more than 6 months. For purposes of this paragraph, the rules of section 246(c)(3)

shall apply in determining whether any share of stock or beneficial interest has been held for less than 31 days; except that "30 days" shall be substituted for the number of days specified in subparagraph (B) of section 246(c)(3).

(c) *Restrictions applicable to dividends received from real estate investment trusts.* For purposes of section 34(a) (relating to credit for dividends received by individuals), section 116 (relating to an exclusion for dividends received by individuals), and section 243 (relating to deductions for dividends received by corporations), a dividend received from a real estate investment trust which meets the requirements of this part shall not be considered as a dividend.

(d) *Earnings and profits.* The earnings and profits of a real estate investment trust for any taxable year (but not its accumulated earnings and profits) shall not be reduced by any amount which is not allowable as a deduction in computing its taxable income for such taxable year. For purposes of this subsection, the term "real estate investment trust" includes a domestic unincorporated trust or association which is a real estate investment trust determined without regard to the requirements of subsection (a).

[Sec. 857 as added by sec. 10(a), Act of Sept. 14, 1960 (Pub. Law 86-779, 74 Stat. 1003)]

§ 1.857-1 Taxation of real estate investment trusts.

(a) *Requirements applicable thereto.* Section 857(a) denies the application of the provisions of part II, subchapter M, chapter 1 of the Code (other than section 857(d), relating to earnings and profits) to a real estate investment trust for a taxable year unless—

(1) The deduction for dividends paid for such taxable year as defined in section 561 (computed without regard to capital gains dividends) is equal to at least 90 percent of its real estate investment trust taxable income for such taxable year (determined without regard to the provisions of section 857(b)(2)(C) and paragraph (c) of § 1.857-3); and

The trust complies for such taxable year with the provisions of § 1.857-6 (relating to records required to be maintained by a real estate investment trust).

See section 858 and § 1.858-1, relating to dividends paid after the close of the taxable year.

(b) *Failure to qualify.* If a real estate investment trust does not meet the requirements of section 857(a) and paragraph (a) of this section for the taxable year, it will, even though it may otherwise be classified as a real estate investment trust, be taxed in such year as an ordinary corporation and not as a real estate investment trust. In such case, none of the provisions of part II of subchapter M (other than section 857(d)) will be applicable to it. For the rules relating to the applicability of section 857(d), see § 1.857-5.

§ 1.857-2 Method of taxation of real estate investment trusts.

(a) *Imposition of normal tax and surtax.* Section 857(b)(1) imposes a normal tax and surtax, computed at the rates and in the manner prescribed in section 11, on the "real estate investment trust taxable income", as defined in section 857(b)(2) and § 1.857-3, for each taxable year of a real estate investment trust. The tax is imposed as if the real estate investment trust taxable income were the taxable income referred to in section 11. In computing the normal tax under section 11, the real estate investment trust taxable income and the dividends paid deduction (computed without regard to capital gains dividends) shall both be reduced by the deductions for partially tax-exempt interest provided by section 242.

(b) *Taxation of capital gains.* Section 857(b)(3)(A) imposes a tax of 25 percent for each taxable year on the excess, if any, of the net long-term capital gain of a qualified real estate investment trust over the sum of its net short-term capital loss and its deduction for dividends paid (as defined in section 561) determined with reference to capital gains dividends only. For the definition of capital gains dividend paid by a real estate investment trust, see section 857(b)(3)(C) and paragraph (e) of § 1.857-4. See section 858 and § 1.858-1 for rules relating to dividends paid after the close of the taxable year.

§ 1.857-3 Real estate investment trust taxable income.

Section 857(b)(2) requires certain adjustments to be made to convert taxable income of the real estate investment trust to "real estate investment trust taxable income" as follows:

(a) The excess, if any, of the net long-term capital gain over the net short-term capital loss shall be excluded;

(b) The special deductions provided in part VIII of subchapter B (except the deduction under section 248) shall not be allowed. Those not allowed are the deduction for partially tax-exempt interest provided by section 242, the deductions for dividends received provided by sections 243, 244, and 245, and the deduction for certain dividends paid provided by section 247. However, the deduction provided by section 248 (relating to organizational expenditures), otherwise allowable in computing taxable income, shall likewise be allowed in computing "real estate investment trust taxable income". See section 857(b)(1) and paragraph (a) of § 1.857-2 for treatment of the deduction for partially tax-exempt interest (provided by section 242) for purposes of computing the normal tax under section 11;

(c) The deduction for dividends paid (as defined in section 561) shall be allowed, but shall be computed without regard to capital gains dividends (as defined in section 857(b)(3)(C) and paragraph (e) of § 1.857-4);

(d) The taxable income shall be computed without regard to section 443(b). Thus, the taxable income for a period of less than 12 months shall not be placed on an annual basis even though such short taxable year results from a change of accounting period; and

(e) The net operating loss deduction provided in section 172 shall not be allowed.

§ 1.857-4 Method of taxation of shareholders of real estate investment trusts.

(a) *Ordinary income.* Except as otherwise provided in paragraph (b) of this section (relating to capital gains), a shareholder receiving dividends from a real estate investment trust shall include such dividends in gross income for the taxable year in which they are received. See section 858(b) and paragraph (c) of § 1.858-1 for treatment by shareholders of dividends paid by a real estate investment trust after the close of its taxable year in the case of an election under section 858(a).

(b) *Capital gains.* Under section 857(b)(3)(B), shareholders of a real estate investment trust who receive capital gains dividends (as defined in paragraph (e) of this section), in respect of the capital gains of an investment trust for a taxable year for which it is taxable under part II of subchapter M as a real estate investment trust, shall treat such capital gains dividends as gains from the sale or exchange of capital assets held for more than six months and realized in the taxable year of the shareholder in which the dividend was received.

(c) *Special treatment of loss on the sale or exchange of real estate investment trust stock held less than 31 days*—(1) *In general.* Under section 857(b)(4), if any person with respect to a share of real estate investment trust stock held for a period of less than 31 days, is required by section 857(b)(3)(B) to include in gross income as a gain from the sale or exchange of a capital asset held for more than six months the amount of a capital gains dividend, then such person shall, to the extent of such amount, treat any loss on the sale or exchange of such share as a loss from the sale or exchange of a capital asset held for more than six months.

(2) *Determination of holding period.* The rules contained in section 246(c)(3) (relating to the determination of holding periods for purposes of the deduction for dividends received) shall be applied in determining whether, for purposes of section 857(b)(4)(B) and this paragraph, a share of real estate investment trust stock has been held for a period of less than 31 days. In applying those rules, however, "30 days" shall be substituted for the number of days specified in subparagraph (B) of such section.

(3) *Illustration.* The application of section 857(b)(4) and this paragraph may be illustrated by the following example:

Example. On December 15, 1961, A purchased share of stock in the S Real Estate Investment Trust for $20. The S trust declared a capital gains dividend of $2 per share to shareholders of record on December 31, 1961. A, therefore, received a capital gain dividend of $2 which, pursuant to section 857(b)(3)(B), he must treat as a gain from the sale or exchange of a capital asset held for more than six months. On January 5, 1962, A sold his share of stock in the S trust for $17.50, which sale resulted in a loss of $2.50. Under section 857(b)(4) and this paragraph, A must treat $2 of such loss (an amount equal to the capital gain dividend received with respect to such share of stock) as a loss from the sale or exchange of a capital asset held for more than six months.

(d) *Dividend received credit, exclusion, and deduction not allowed.* Any dividend received from a real estate in-

vestment trust which, for the taxable year to which the dividend relates, is a qualified real estate investment trust, shall not be eligible for the dividend received credit under section 34(a), the dividend received exclusion under section 116, or the dividend received deduction under section 243.

(e) *Definition of capital gain dividend.* A capital gain dividend, as defined in section 857(b)(3)(C), is any dividend or part thereof which is designated by a real estate investment trust as a capital gain dividend in a written notice mailed to its shareholders not later than 30 days after the close of its taxable year. If the aggregate amount so designated with respect to the taxable year (including capital gain dividends paid after the close of the taxable year pursuant to an election under section 858) is greater than the excess of the net long-term capital gain over the net short-term capital loss of the taxable year, the portion of each distribution which shall be a capital gain dividend shall be only that proportion of the amount so designated which such excess of the net long-term capital gain over the net short-term capital loss bears to the aggregate of the amount so designated. For example, a real estate investment trust making its return on the calendar year basis advised its shareholders by written notice mailed December 30, 1961, that of a distribution of $500,000 made December 15, 1961, $200,000 constituted a capital gain dividend, amounting to $2 per share. It was later discovered that an error had been made in determining the excess of the net long-term capital gain over the net short-term capital loss of the taxable year and that such excess was $100,000 instead of $200,000. In such case, each shareholder would have received a capital gain dividend of $1 per share instead of $2 per share.

§ 1.857–5 Earnings and profits of a real estate investment trust.

(a) Any real estate investment trust, whether or not such trust meets the requirements of section 857(a) and paragraph (a) of § 1.857–1 for any taxable year beginning after December 31, 1960, shall apply paragraph (b) of this section in computing its earnings and profits for such taxable year.

(b) In the determination of the earnings and profits of a real estate investment trust, section 857(d) provides that such earnings and profits for any taxable year (but not the accumulated earnings and profits) shall not be reduced by any amount which is not allowable as a deduction in computing its taxable income for the taxable year. Thus, if a trust would have had earnings and profits of $500,000 for the taxable year except for the fact that it had a net capital loss of $100,000, which amount was not deductible in determining its taxable income, its earnings and profits for that year if it is a real estate investment trust would be $500,000. If the real estate investment trust had no accumulated earnings and profits at the beginning of the taxable year, in determining its accumulated earnings and profits as of the beginning of the following taxable year, the earnings and profits for the taxable year to be considered in such computation would amount to $400,000 assuming that there had been no distribution from such earnings and profits. If distributions had been made in the taxable year in the amount of the earnings and profits then available for distribution, $500,000, the trust would have as of the beginning of the following taxable year neither accumulated earnings and profits nor a deficit in accumulated earnings and profits, and would begin such year with its paid-in capital reduced by $100,000, an amount equal to the excess of the $500,000 distributed over the $400,000 accumulated earnings and profits which would otherwise have been carried into the following taxable year.

§ 1.857–6 Records to be kept by a real estate investment trust.

(a) *In general.* Under section 857(a)(2) a real estate investment trust is required to keep such records as will disclose the actual ownership of its outstanding stock . Thus, every real estate investment trust shall maintain in the internal revenue district in which it is required to file its income tax return permanent records showing the information relative to the actual owners of its stock contained in the written statements required by this section to be demanded from its shareholders. Such records shall be kept at all times available for inspection by any internal revenue officer or employee, and shall be retained so long as the contents thereof may become material in the administration of any internal revenue law.

(b) *Actual owner of stock.* The actual owner of stock of a real estate investment trust is the person who is required to include in gross income in his return the dividends received on the stock. Generally, such person is the shareholder of record of the real estate investment trust. However, where the shareholder of record is not the actual owner of the stock, the stockholding record of the real estate investment trust may not disclose the actual ownership of such stock. Accordingly, the real estate investment trust shall demand written statements from shareholders of record disclosing the actual owners of stock as required in paragraph (d) of this section.

(c) *Stock ownership for personal holding company determination.* For the purpose of determining under section 856(a)(6) whether a trust, claiming to be a real estate investment trust, is a personal holding company, the permanent records of the trust shall show the maximum number of shares of the trust (including the number and face value of securities convertible into stock of the trust) to be considered as actually or constructively owned by each of the actual owners of any of its stock at any time during the last half of the trust's taxable year, as provided in section 544.

(d) *Statements to be demanded from shareholders.* The information required by paragraphs (b) and (c) of this section shall be set forth in written statements which shall be demanded from shareholders of record as follows:

(1) In the case of a trust having 2,000 or more shareholders of record of its stock on any dividend record date, from each record holder of 5 percent or more of its stock; or

(2) In the case of a trust having less than 2,000 and more than 200 shareholders of record of its stock on any dividend record date, from each record holder of 1 percent or more of its stock; or

(3) In the case of a trust having 200 or less shareholders of record of its stock on any dividend record date, from each record holder of one-half of 1 percent or more of its stock.

(e) *Demands for statements.* Statements setting forth the information required by paragraphs (b) and (c) of this section to be demanded from shareholders of record in accordance with paragraph (d) of this section shall be demanded not later than 30 days after the close of the real estate investment trust's taxable year. When making demand for such written statements, the trust shall inform each such shareholder of his duty to submit as part of his income tax return the statements which are required by § 1.857–7, if he fails or refuses to comply with such demand. A list of the persons failing or refusing to comply in whole or in part with the trust's demand for statements under this section shall be maintained as a part of the trust's records required by this section. A trust which fails to keep such records to show the actual ownership of its outstanding stock as required by this section shall be taxable as an ordinary corporation and not as a real estate investment trust.

§ 1.857–7 Information required in returns of shareholders.

Any person who fails or refuses to comply with the demand of a real estate investment trust for the written statements required under § 1.857–6, shall submit as part of his income tax return for his taxable year which ends with, or includes, the last day of the trust's taxable year, a statement setting forth the following information.

(a) In the case of a person who is not the actual owner of stock of a real estate investment trust, the name and address of each actual owner, and the number of shares owned by each actual owner at any time during such person's taxable year.

(b) In the case of an actual owner of stock of a real estate investment trust—

(i) The number of shares actually owned by him at any and all times during his taxable year;

(ii) The dates of acquisition of any such shares during such period and the names and addresses of the persons from whom they were acquired;

(iii) The dates of disposition of any such shares during such period and the names and addresses of the transferees thereof;

(iv) The names and addresses of the members of his family (as defined in section 544(a)(2)); the names and addresses of his partners in any partner-

ship; and the maximum number of shares actually owned by each in any trust, claiming to be a real estate investment trust, at any time during the last half of the taxable year of such trust;

(v) The maximum number of shares (including the number and face value of securities convertible into stock of the trust) in any trust claiming to be a real estate investment trust to be considered as constructively owned by such person at any time during the last half of the trust's taxable year as provided in section 544;

(vi) The names and addresses of any corporation, partnership, association, or trust in which such person had a beneficial interest to the extent of at least 10 percent at any time during the period for which such return is made and the number of shares of any trust claiming to be a real estate investment trust; and

(vii) The amount and date of receipt of each dividend received during such person's taxable year from every trust claiming to be a real estate investment trust.

§ 1.857–8 Information returns.

Nothing in §§ 1.857–6 and 1.857–7 shall be construed to relieve a real estate investment trust or its shareholders from the duty of filing information returns required by regulations prescribed under the provisions of subchapter A, chapter 61 of the Code.

§ 1.858 Statutory provisions; dividends paid by real estate investment trust after close of taxable year.

SEC. 858. *Dividends paid by real estate investment trust after close of taxable year*—(a) *General rule.* For purposes of this part, if a real estate investment trust—

(1) Declares a dividend before the time prescribed by law for the filing of its return for a taxable year (including the period of any extension of time granted for filing such return), and

(2) Distributes the amount of such dividend to shareholders or holders of beneficial interests in the 12-month period following the close of such taxable year and not later than the date of the first regular dividend payment made after such declaration,

the amount so declared and distributed shall, to the extent the trust elects in such return in accordance with regulations prescribed by the Secretary or his delegate, be considered as having been paid during such taxable year, except as provided in subsections (b) and (c).

(b) *Receipt by shareholder.* Amounts to which subsection (a) applies shall be treated as received by the shareholder or holder of a beneficial interest in the taxable year in which the distribution is made.

(c) *Notice to shareholders.* In the case of amounts to which subsection (a) applies, any notice to shareholders or holders of beneficial interests required under this part with respect to such amounts shall be made not later than 30 days after the close of the taxable year in which the distribution is made.

[Sec. 858 as added by sec. 10(a), Act of Sept. 14, 1960 (Pub. Law 86–779, 74 Stat. 1008)]

§ 1.858–1 Dividends paid by real estate investment trust after close of taxable year.

(a) *General rule.* In—

(1) Determining under section 857(a) and paragraph (a) of § 1.857–1 whether the deduction for dividends paid during the taxable year (without regard to capital gains dividends) by a real estate investment trust equals or exceeds 90 percent of its real estate investment trust taxable income (determined without regard to the provisions of section 857(b)(2)(C)),

(2) Computing its real estate investment trust taxable income (under section 857(b)(2) and § 1.857–3), and

(3) Determining the amount of capital gains dividends (as defined in section 857(b)(3) and paragraph (e) of § 1.857–4) paid during the taxable year,

any dividend (or portion thereof) declared by the real estate investment trust either before or after the close of the taxable year but in any event before the time prescribed by law for the filing of its return for the taxable year (including the period of any extension of time granted for filing such return) shall, to the extent the trust so elects in such return, be treated as having been paid during such taxable year. This rule is applicable only if the entire amount of such dividend is actually distributed to the shareholders in the 12-month period following the close of such taxable year and not later than the date of the first regular dividend payment made after such declaration.

(b) *Election*—(1) *Method of making election.* The election must be made in the return filed by the trust for the taxable year. The election shall be made by the real estate investment trust by treating the dividend (or portion thereof) to which such election applies as a dividend paid during the taxable year of the trust in computing its real estate investment trust taxable income, or if the dividend (or portion thereof) to which such election applies is to be designated by the trust as a capital gains dividend, in computing the amount of capital gains dividends paid during such taxable year. The election provided in section 858(a) may be made only to the extent that the earnings and profits of the taxable year (computed with the application of section 857(d) and § 1.857–5) exceed the total amount of distributions out of such earnings and profits actually made during the taxable year (not including distributions with respect to which an election has been made for a prior year under section 858(a)). The dividend or portion thereof, with respect to which the real estate investment trust has made a valid election under section 858(a), shall be considered as paid out of the earnings and profits of the taxable year for which such election is made, and not out of the earnings and profits of the taxable year in which the distribution is actually made.

(2) *Irrevocability of the election.* After the expiration of the time for filing the return for the taxable year for which an election is made under section 858(a), such election shall be irrevocable with respect to the dividend or portion thereof to which it applies.

(c) *Receipt by shareholders.* Under section 858(b), the dividend or portion thereof, with respect to which a valid election has been made, will be includible in the gross income of the shareholders of the real estate investment trust for the taxable year in which the dividend is received by them.

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

Example (1). The X Trust, a real estate investment trust, had taxable income (and earnings and profits) for the calendar year 1961 of $100,000. During that year the trust distributed to shareholders taxable dividends aggregating $88,000. On March 10, 1962, the trust declared a dividend of $37,000 payable to shareholders on March 20, 1962. Such dividend consisted of the first regular quarterly dividend for 1962 of $25,000 plus an additional $12,000 representing that part of the taxable income for 1961 which was not distributed in 1961. On March 15, 1962, the X Trust filed its Federal income tax return and elected therein to treat $12,000 of the total dividend of $37,000 to be paid to shareholders on March 20, 1962, as having been paid during the taxable year 1961. Assuming that the X Trust actually distributed the entire amount of the dividend of $37,000 on March 20, 1962, an amount equal to $12,000 thereof will be treated for the purposes of section 857(a) as having been paid during the taxable year 1961. Upon distribution of such dividend the trust becomes a qualified real estate investment trust for the taxable year 1961. Such amount ($12,000) will be considered by the X Trust as a distribution out of the earnings and profits for the taxable year 1961, and will be treated by the shareholders as a taxable dividend for the taxable year in which such distribution is received by them. However, assuming that the X Trust is not a qualified real estate investment trust for the calendar year 1962, nevertheless, the $12,000 portion of the dividend (paid on March 20, 1962) which the trust elected to relate to the calendar year 1961, will not qualify as a dividend for purposes of section 34, 116, or 243.

Example (2). The Y Trust, a real estate investment trust, had taxable income (and earnings and profits) for the calendar year 1964 of $100,000, and for 1965 taxable income (and earnings and profits) of $125,000. On January 1, 1964, the trust had a deficit in its earnings and profits accumulated since February 28, 1913, of $115,000. During the year 1964 the trust distributed to shareholders taxable dividends aggregating $85,000. On March 5, 1965, the trust declared a dividend of $65,000 payable to shareholders on March 31, 1965. On March 15, 1965, the Y Trust filed its Federal income tax return in which it included $40,000 of the total dividend of $65,000 payable to shareholders on March 31, 1965, as a dividend paid by it during the taxable year 1964. On March 31, 1965, the Y Trust distributed the entire amount of the dividend of $65,000 declared on March 5, 1965. The election under section 858(a) is valid only to the extent of $15,000, the amount of the undistributed earnings and profits for 1964 ($100,000 earnings and profits less $85,000 distributed during 1964). The remainder ($50,000) of the $65,000 dividend paid on March 31, 1965, could not be the subject of an election, and such amount will be regarded as a distribution by the Y Trust out of earnings and profits for the taxable year 1965. Assuming that the only other distribution by the Y Trust during 1965 was a distribution of $75,000 paid as a dividend on October 31, 1965, the total amount of the distribution of $65,000 paid on March 31, 1965, is to be treated by the shareholders as taxable dividends for the taxable year in which such dividend is received. The Y Trust will treat the amount of $15,000 as a distribution of the earnings or profits of the trust for the taxable year 1964, and the re-

maining $50,000 as a distribution of the earnings or profits for the year 1965. The distribution of $75,000 on October 31, 1965, is, of course, a taxable dividend out of the earnings and profits for the year 1965.

(e) *Notice to shareholders.* Section 858(c) provides that, in the case of dividends with respect to which a real estate investment trust has made an election under section 858(a), any notice to shareholders required under part II of subchapter M, with respect to such amounts, shall be made not later than 30 days after the close of the taxable year in which the distribution is made. Thus, the notice requirement of section 857(b)(3)(C) and paragraph (e) of § 1.857–4 with respect to capital gains dividends may be satisfied with respect to amounts to which section 858(a) and this section apply if the notice relating to such amounts is mailed to the shareholders not later than 30 days after the close of the taxable year in which the distribution is made. If the notice under section 858(c) relates to an election with respect to any capital gains dividends, such capital gains dividends shall be aggregated by the real estate investment trust with the designated capital gains dividends actually paid during the taxable year to which the election applies (not including such dividends with respect to which an election has been made for a prior year under section 858) for the purpose of determining whether the aggregate of the designated capital gains dividends with respect to such taxable year of the trust is greater than the excess of the net long-term capital gain over the net short-term capital loss of the trust. See section 857(b)(3)(C) and paragraph (e) of § 1.857–4.

PAR. 2. The principal heading for the regulations under subchapter M, chapter 1 of the Code is stricken and the following new heading is inserted in lieu thereof: "Regulated Investment Companies and Real Estate Investment Trusts".

REGULATED INVESTMENT COMPANIES

PAR. 3. Paragraph (a) of § 1.851–2 is amended by revising the first and second sentences. This amended provision reads as follows:

§ 1.851–2 Limitations.

(a) *Election to be a regulated investment company.* Under the provisions of section 851(b)(1), a corporation, even though it satisfies the other requirements of part I, subchapter M, chapter 1 of the Code for the taxable year, will not be considered a regulated investment company for such year, within the meaning of such part I, unless it elects to be a regulated investment company for such taxable year, or has made such an election for a previous taxable year which began after December 31, 1941. The election shall be made by the taxpayer by computing taxable income as a regulated investment company in its return for the first taxable year for which the election is applicable. No other method of making such election is permitted. An election once made is irrevocable for such taxable year and all succeeding taxable years.

PAR. 4. Section 1.851–4 is amended by revising the first sentence. This amended provision reads as follows:

§ 1.851–4 Determination of status.

With respect to the effect which certain discrepancies between the value of its various investments and the requirements of section 851(b)(4) and paragraph (c) of § 1.851–2, or the effect that the elimination of such discrepancies will have on the status of a company as a regulated investment company for purposes of part I, subchapter M, chapter 1 of the Code, see section 851(d). A company claiming to be a regulated investment company shall keep sufficient records as to investments so as to be able to show that it has complied with the provisions of section 851 during the taxable year. Such records shall be kept at all times available for inspection by any internal revenue officer or employee and shall be retained so long as the contents thereof may become material in the administration of any internal revenue law.

PAR. 5. Section 1.852 is amended by revising subsection (a) and by revising subsection (b)(3)(C) of section 852 and by revising the historical note. These amended provisions read as follows:

§ 1.852 Statutory provisions; taxation of regulated investment companies and their shareholders.

SEC. 852 *Taxation of regulated investment companies and their shareholders*—(a) *Requirements applicable to regulated investment companies.* The provisions of this part (other than subsection (c) of this section) shall not be applicable to a regulated investment company for a taxable year unless—

(1) The deduction for dividends paid during the taxable year (as defined in section 561, but without regard to capital gains dividends) equals or exceeds 90 percent of its investment company taxable income for the taxable year (determined without regard to subsection (b)(2)(D)), and

(2) The investment company complies for such year with regulations prescribed by the Secretary or his delegate for the purpose of ascertaining the actual ownership of its outstanding stock.

(b) *Method of taxation of companies and shareholders.* * * *

(3) *Capital gains.* * * *

(C) *Definition of capital gain dividend.* For purposes of this part, a capital gain dividend is any dividend, or part thereof, which is designated by the company as a capital gain dividend in a written notice mailed to its shareholders not later than 30 days after the close of its taxable year. If the aggregate amount so designated with respect to a taxable year of the company (including capital gains dividends paid after the close of the taxable year described in section 855) is greater than the excess of the net long-term capital gain over the net short-term capital loss of the taxable year, the portion of each distribution which shall be a capital gain dividend shall be only that proportion of the amount so designated which such excess of the net long-term capital gain over the net short-term capital loss bears to the aggregate amount so designated.

* * * * *

[Sec. 852 as amended by sec. 2, Act of July 11, 1956 (Pub. Law 700, 84th Cong., 70 Stat. 530); sec. 101, Technical Amendments Act 1958 (72 Stat. 1674); sec. 10(b), Act of Sept. 14, 1960 (Pub. Law 86–779, 74 Stat. 1009)]

PAR. 6. Section 1.852–1 is amended by revising first sentence in subparagraph (1) and revising subparagraph (2) in paragraph (a), and the second sentence in paragraph (b). These amended provisions read as follows:

§ 1.852–1 Taxation of regulated investment companies.

(a) *Requirements applicable thereto*—(1) *In general.* Section 852(a) denies the application of the provisions of part I, subchapter M, chapter 1 of the Code (other than section 852(c), relating to earnings and profits), to a regulated investment company for a taxable year beginning after February 28, 1958, unless—

(i) The deduction for dividends paid for such taxable year as defined in section 561 (computed without regard to capital gain dividends) is equal to at least 90 percent of its investment company taxable income for such taxable year (determined without regard to the provisions of section 852(b)(2)(D) and paragraph (d) of § 1.852–3); and

(ii) The company complies for such taxable year with the provisions of § 1.852–6 (relating to records required to be maintained by a regulated investment company).

See section 853(b)(1)(B) and paragraph (a) of § 1.853–2 for amounts to be added to the dividends paid deduction, and section 855 and § 1.855–1, relating to dividends paid after the close of the taxable year.

(2) *Special rule for taxable years of regulated investment companies beginning before March 1, 1958.* The provisions of part I of subchapter M (including section 852(c)) are not applicable to a regulated investment company for a taxable year beginning before March 1, 1958, unless such company meets the requirements of section 852(a) and subparagraph (1) (i) and (ii) of this paragraph.

(b) *Failure to qualify.* If a regulated investment company does not meet the requirements of section 852(a) and paragraph (a)(1) (i) and (ii) of this section for the taxable year, it will, even though it may otherwise be classified as a regulated investment company, be taxed in such year as an ordinary corporation and not as a regulated investment company. In such case, none of the provisions of part I of subchapter M (other than section 852(c) in the case of taxable years beginning after February 28, 1958) will be applicable to it. For the rules relating to the applicability of section 852(c), see § 1.852–5.

PAR. 7. Paragraph (b) of § 1.852–2 is amended by—revising subparagraph (1) and subdivision (i) of subparagraph (2). These amended provisions read as follows:

§ 1.852–2 Method of taxation of regulated investment companies.

* * * * *

(b) *Taxation of capital gains*—(1) *In general.* Section 852(b)(3)(A) imposes a tax of 25 percent for each taxable year on the excess, if any, of the net long-term capital gain of a regulated investment company (subject to tax un-

der part 1, subchapter M, chapter 1 of the Code) over the sum of its net short-term capital loss and its deduction for dividends paid (as defined in section 561) determined with reference to capital gain dividends only. For the definition of capital gain dividend paid by a regulated investment company, see section 852(b)(3)(C) and paragraph (c) of § 1.852–4. See section 855 and § 1.855–1, relating to dividends paid after the close of the taxable year.

(2) *Undistributed capital gains*—(i) *In general.* A regulated investment company (subject to tax under part I of subchapter M) may, for taxable years beginning after December 31, 1956, designate under section 852(b)(3)(D) an amount of undistributed capital gains to each shareholder of the company. For the definition of the term "undistributed capital gains" and for the treatment of such amounts by a shareholder, see paragraph (b)(2) of § 1.852–4. For the rules relating to the method of making such designation, the returns to be filed, and the payment of the tax in such cases, see paragraph (a) of § 1.852–9.

PAR. 8 Paragraph (b) of § 1.852–4 is amended by revising subparagraph (1), and subdivision (i) of subparagraph (2). These amended provisions read as follows:

§ 1.852–4 Method of taxation of shareholders of regulated investment companies.

* * * * *

(b) *Capital gains*—(1) *In general.* Under section 852(b)(3)(B), shareholders of a regulated investment company who receive capital gain dividends (as defined in paragraph (c) of this section), in respect of the capital gains of an investment company for a taxable year for which it is taxable under part I, subchapter M, chapter 1 of the Code, as a regulated investment company, shall treat such capital gain dividends as gains from the sale or exchange of capital assets held for more than 6 months and realized in the taxable year of the shareholder in which the dividend was received.

(2) *Undistributed capital gains.* (i) A person who is a shareholder of a regulated investment company at the close of a taxable year of such company for which it is taxable under part I of subchapter M shall include in his gross income as a gain from the sale or exchange of a capital asset held for more than 6 months any amount of undistributed capital gains. The term "undistributed capital gains" means the amount designated as undistributed capital gains in accordance with paragraph (a) of § 1.852–9, but such amount shall not exceed the shareholder's proportionate part of the amount subject to tax under section 852(b)(3)(A). Such amount shall be included in gross income for the taxable year of the shareholder in which falls the last day of the taxable year of the regulated investment company in respect of which the undistributed capital gains were designated. For certain administrative provisions relating to undistributed capital gains, see § 1.852–9.

PAR. 9. Section 1.855 is amended by—revising section 855(c), and adding a historical note. These amended and added provisions read as follows:

§ 1.855 Statutory provisions; dividends paid by regulated investment company after close of taxable year.

SEC. 855. *Dividends paid by regulated investment company after close of taxable year.* * * *

(c) *Notice to shareholders.* In the case of amounts to which subsection (a) is applicable, any notice to shareholders required under this part with respect to such amounts shall be made not later than 30 days after the close of the taxable year in which the distribution is made.

* * * * *

[Sec. 855 as amended by sec. 10(b), Act of Sept. 14, 1960 (Pub. Law 86–779, 74 Stat. 1009)]

PAR. 10. Section 1.11 is amended by—revising section 11(d)(3), and the historical note. These amended provisions read as follows:

§ 1.11 Statutory provisions; tax imposed.

SEC. 11. *Tax imposed.* * * *

(d) *Exceptions. Subsection* (a) shall not apply to a corporation subject to a tax imposed by—

* * * * *

(3) Subchapter M (sec. 851 and following, relating to regulated investment companies and real estate investment trusts), or

* * * * *

[Sec. 11 as amended by sec. 2, Tax Rate Extension Act 1955 (69 Stat. 14); sec. 2, Tax Rate Extension Act 1956 (70 Stat. 66); sec. 2, Tax Rate Extension Act 1957 (71 Stat. 9); sec. 2, Tax Rate Extension Act 1958 (72 Stat. 259); sec. 2, Tax Rate Extension Act 1959 (73 Stat. 157); sec. 201, Public Debt and Tax Rate Extension Act 1960 (74 Stat. 290); sec. 10(d), Act of Sept. 14, 1960 (Pub. Law 86–779, 74 Stat. 1009)]

PAR. 11. Section 1.34 is amended by—revising paragraphs (1) and (2)(B) and adding paragraph (3) in section 34(c), and revising the historical note. These amended and added provisions read as follows:

§ 1.34 Statutory provisions; dividends received by individuals.

SEC. 34. *Dividends received by individuals.* * * *

(c) *No credit allowed for dividends from certain corporations.* Subsection (a) shall not apply to any dividend from—

(1) A corporation organized under the China Trade Act, 1922 (see sec. 941);

(2) A corporation which, for the taxable year of the corporation in which the distribution is made, or for the next preceding taxable year of the corporation, is—

(A) A corporation exempt from tax under section 501 (relating to certain charitable, etc., organizations) or section 521 (relating to farmers' cooperative associations); or

(B) A corporation to which section 931 (relating to income from sources within possessions of the United States) applies; or

(3) A real estate investment trust which, for the taxable year of the trust in which the dividend is paid, qualifies under part II of subchapter M (sec. 856 and following).

* * * * *

[Sec. 34 as amended by sec. 3(a), Life Insurance Company Income Tax Act 1959 (73 Stat. 139); sec. 10(e), Act of Sept. 14, 1960 (Pub. Law 86–779, 74 Stat. 1009)]

PAR. 12. Paragraph (b) of § 1.34–3 is amended by adding the following new subparagraph (4) at the end thereof:

§ 1.34–3 Dividends to which the credit and exclusion apply.

* * * * *

(b) *Dividends from certain corporations.* * * *

(4) See section 857(c) and paragraph (d) of § 1.857–4 for special rules which deny a credit under section 34 and exclusion under section 116 in the case of dividends received from a real estate investment trust with respect to a taxable year for which such trust is taxable under part II, subchapter M, chapter 1 of the Code.

PAR. 13. Section 1.116 is amended by revising paragraphs (1) and (2)(B) and adding paragraph (3) in section 116, and revising the historical note. These amended and added provisions read as follows:

§ 1.116 Statutory provisions; partial exclusion of dividends received by individuals.

SEC. 116. *Partial exclusion of dividends received by individuals.* * * *

(b) *Certain dividends excluded.* Subsection (a) shall not apply to any dividend from—

(1) A corporation organized under the China Trade Act, 1922 (see sec. 941);

(2) A corporation which, for the taxable year of the corporation in which the distribution is made, or for the next preceding taxable year of the corporation, is—

(A) A corporation exempt from tax under section 501 relating to certain charitable, etc., organizations) or section 521 (relating to farmers' cooperative associations); or

(B) A corporation to which section 931 (relating to income from sources within possessions of the United States) applies; or

(3) A real estate investment trust which, for the taxable year of the trust in which the dividend is paid, qualifies under part II of subchapter M (sec. 856 and following).

* * * * *

[Sec. 116 as amended by sec. 3(a), Life Insurance Company Income Tax Act 1959 (73 Stat. 139); sec. 10(f), Act of Sept. 14, 1960 (Pub. Law 86–779, 74 Stat. 1009)]

PAR. 14. Section 1.243 is amended by adding paragraph (3) in section 243(c), and revising the historical note. These added and amended provisions read as follows:

§ 1.243 Statutory provisions; dividends received by corporations.

SEC. 243. *Dividends received by corporations.* * * *

(c) *Special rules for certain distributions.* For purposes of subsections (a) and (b)—

* * * * *

(3) Any dividend received from a real estate investment trust which, for the taxable year of the trust in which the dividend is paid, qualifies under part II of subchapter M (sec. 856 and following) shall not be treated as a dividend.

[Sec. 243 as amended by sec. 57(b), Technical Amendments Act 1958 (72 Stat. 1645); sec. 10(g), Act of Sept. 14, 1960 (Pub. Law 86–779, 74 Stat. 1009)]

PAR. 15. Section 1.243–2 is amended by adding paragraph (c). This added provision reads as follows:

§ 1.243–2 Special rules for certain distributions.

* * * * *

(c) *Dividends received from real estate investment trusts.* See section 857(c) and paragraph (d) of § 1.857–4 for special rules which deny a deduction under section 243 in the case of dividends received from a real estate investment trust with respect to a taxable year for which such trust is taxable under part II, subchapter M, chapter 1 of the Code.

PAR. 16. Section 1.246–1 is amended by revising paragraph (c), and adding paragraph (d). These amended and added provisions read as follows:

§ 1.246–1 Deductions not allowed for dividends from certain corporations.

The deductions provided in sections 243 (relating to dividends received by corporations), 244 (relating to dividends received on certain preferred stock), and 245 (relating to dividends received from certain foreign corporations), are not allowable with respect to any dividend received from:

* * * * *

(c) A corporation to which section 931 (relating to income from sources within possessions of the United States) applies for the taxable year of the corporation in which the distribution is made or for its next preceding taxable year; or

(d) A real estate investment trust which, for its taxable year in which the distribution is made, is taxable under part II, subchapter M, chapter 1 of the Code. See section 243(c)(3), paragraph (c) of § 1.243–2, section 857(c), and paragraph (d) of § 1.857–4.

PAR. 17. Section 1.318 is amended by revising paragraphs (4) and (5) and adding paragraph (6) in section 318(b), and adding a historical note. These amended and added provisions read as follows:

§ 1.318 Statutory provisions; constructive ownership of stock.

SEC. 318 *Constructive ownership of stocks.*

* * * * *

(b) *Cross references.* For provisions to which the rules contained in subsection (a) apply, see—

(1) Section 302 (relating to redemption of stock);

(2) Section 304 (relating to redemption by related corporations);

(3) Section 306(b)(1)(A) (relating to disposition of section 306 stock);

(4) Section 334(b)(3)(C) (relating to basis of property received in certain liquidations of subsidiaries);

(5) Section 382(a)(3) (relating to special limitations on net operating loss carryovers); and

(6) Section 856(d) (relating to definition of rents from real property in the case of real estate investment trusts).

[Sec. 318 as amended by sec. 10(h), Act of Sept. 14, 1960 (Pub. Law 86–779, 74 Stat. 1009)]

PAR. 18. Section 1.318–1 is amended by revising subparagraphs (4) and (5) and adding subparagraph (6) in paragraph (a), and revising subparagraphs (2)(ii) and (3) and adding subparagraph (4) in paragraph (b). These amended and added provisions read as follows:

§ 1.318–1 Constructive ownership of stock; introduction.

(a) For the purposes of certain provisions of subchapter C, chapter 1 of the Code, section 318(a) provides that stock owned by a taxpayer includes stock constructively owned by such taxpayer under the rules set forth in such section. An individual is considered to own the stock owned, directly or indirectly, by or for his spouse (other than a spouse who is legally separated from the individual under a decree of divorce or separate maintenance), and by or for his children, grandchildren, and parents. Under section 318(a)(2), constructive ownership rules are established for partnerships and partners, estates and beneficiaries, trusts and beneficiaries, and corporations and stockholders. If any person has an option to acquire stock, such stock is considered as owned by such person. The term "option" includes an option to acquire such an option and each of a series of such options. The rules of section 318(a) are applicable to the following sections:

(1) Section 302 (relating to redemption of stock);

(2) Section 304 (relating to redemption by related corporations);

(3) Section 306(b)(1)(A) (relating to disposition of section 306 stock);

(4) Section 334(b)(3)(C) (relating to basis of property received in certain liquidations of subsidiaries);

(5) Section 382(a)(3) (relating to special limitations on net operating loss carryovers); and

(6) Section 856(d) (relating to definition of rents from real property in the case of real estate investment trusts).

Stock constructively owned by a person by reason of the application of paragraph (1), (2), or (3) of section 318(a) is, for purposes of applying paragraph (1), (2), or (3) treated as actually owned by such person, except as provided in section 318(a)(4)(B) and § 1.318–4.

(b) In applying section 318(a) to determine the stock ownership of any person for any one purpose—

(1) A corporation shall not be considered to own its own stock by reason of section 318(a)(2)(C)(ii),

(2) In any case in which an amount of stock owned by any person may be included in the computation more than one time—

(i) Such stock shall be used in such computation only once, and

(ii) Such stock shall be used in such computation in the manner in which it will impute to the person concerned the largest total stock ownership,

(3) In determining the 50-percent requirement of section 318(a)(2)(C) all of the stock owned actually and constructively by the person concerned shall be aggregated, and

(4) Under section 856(d) (relating to rents received by a real estate investment trust) "10 percent" shall be substituted for "50 percent" in subparagraph (C) of section 318(a)(2) in determining actual and constructive ownership of stock, assets, or net profits.

PAR. 19. Section 1.443 is amended by adding paragraph (5) under section 443 (d), and a historical note. These added provisions read as follows:

§ 1.443 Statutory provisions; returns for a period of less than 12 months.

SEC. 443. *Returns for a period of less than 12 months.* * * *

(d) *Cross references.* For inapplicability of subsection (b) in computing—

* * * * *

(5) The taxable income of a real estate investment trust, see section 857(b)(2)(d).

[Sec. 443 as amended by sec. 10(i), Act of Sept. 14, 1960 (Pub. Law 86–779, 74 Stat. 1009)]

PAR. 20. Paragraph (d) of § 1.443–1 is amended by revising subparagraphs (3) and (4) and adding subparagraph (5). These amended and added provisions read as follows:

§ 1.443–1 Returns for periods of less than 12 months.

* * * * *

(d) *Cross references.* For inapplicability of section 443(b) and paragraph (b) of this section in computing—

(1) Accumulated earnings tax, see section 536 and the regulations thereunder;

(2) Personal holding company tax, see section 546 and the regulations thereunder;

(3) Undistributed foreign personal holding company income, see section 557 and the regulations thereunder;

(4) The taxable income of a regulated investment company, see section 852(b)(2)(E) and the regulations thereunder; and

(5) The taxable income of a real estate investment trust, see section 857(b)(2)(D) and the regulations thereunder.

PAR. 21. Section 1.1504 is amended by revising paragraph (6) in section 1504(b), and the historical note. These amended provisions read as follows:

§ 1.1504 Statutory provisions; definitions.

SEC. 1504. *Definitions.* * * *

(b) *Definition of "includible corporation".* As used in this chapter, the term "includible corporation" means any corporation except—

* * * * *

(6) Regulated investment companies and real estate investment trusts subject to tax under subchapter M of chapter 1.

* * * * *

[Sec. 1504 as amended by sec. 5, Act of March 13, 1956 (Pub. Law 429, 84th Cong., 70 Stat. 49); sec. 64(d)(3), Technical Amendments Act 1958 (72 Stat. 1657); sec. 3(f)(1), Life Insurance Company Income Tax Act 1959 (73 Stat. 140); sec. 2(c), Act of Sept. 23, 1959 (Pub. Law 86–376, 73 Stat. 699); sec. 10(j), Act of Sept. 14, 1960 (Pub. Law 86–779, 74 Stat. 1009)]

PAR. 22. Paragraph (b) of § 1.1502–2 is amended by revising subdivision (vi) in, and the last sentence of, subparagraph (1). These amended provisions read as follows:

§ 1.1502–2 Definitions.

* * * * *

(b) *Affiliated group.* (1) The term "affiliated group" is defined in section 1504 and includes the common parent corporation and every other corporation for the period during which such corporation is a member of the affiliated group

within the meaning of such section. It does not include any corporation which is not an "includible corporation" as defined by section 1504(b). An includible corporation is defined by such section to mean any corporation, except—

(i) A corporation exempt under section 501 from the taxes imposed by subtitle A;

(ii) An insurance company subject to taxation under section 802 or 821 (except as provided in section 1504(c));

(iii) A foreign corporation (except as provided in section 1504(d));

(iv) A corporation entitled to the benefits of section 931 by reason of receiving a large percentage of its income from sources within possessions of the United States;

(v) A corporation organized under the China Trade Act of 1922;

(vi) A regulated investment company or a real estate investment trust subject to tax under subchapter M, chapter 1 of the Code;

(vii) An unincorporated business enterprise subject to tax as a corporation under section 1361; and

(viii) For periods before September 24, 1959, an electing small business corporation as defined in section 1371(b).

The consolidated income tax return must include every includible corporation which, under the provisions of section 1504, is a member of the affiliated group. No corporation which is connected by stock ownership with an affiliated group of includible corporations through a nonincludible corporation may be included in the consolidated return of such group. In no case may a consolidated return be filed by subsidiary corporations as an affiliated group unless the common parent corporation through which the subsidiaries are connected is a member of the group. For instance, there will not be recognized as an affiliated group two domestic industrial corporations, the common parent corporation of which is a regulated investment company subject to tax under part I, subchapter M, chapter 1 of the Code.

PAR. 23. Paragraph (a) of § 1.61–9 is amended by revising the third sentence. This amended provision reads as follows:

§ 1.61–9 Dividends.

(a) *In general.* Except as otherwise specifically provided, dividends are included in gross income under sections 61 and 301. For the principal rules with respect to dividends includible in gross income, see section 316 and the regulations thereunder. As to distributions made or deemed to be made by regulated investment companies, see sections 851 through 855, and the regulations thereunder. As to distributions made by real estate investment trusts, see sections 856 through 858, and the regulations thereunder. See section 116 for the exclusion from gross income of $50 of dividends received by an individual, except those from certain corporations. Furthermore, dividends may give rise to a credit against tax under section 34, relating to dividends received by individuals, and under section 37, relating to retirement income.

PAR. 24. Paragraph (a) of § 1.561–1 is amended by revising the first sentence. This amended provision reads as follows:

§ 1.561–1 Deduction for dividends paid.

(a) The deduction for dividends paid is applicable in determining accumulated taxable income under section 535, undistributed personal holding company income under section 545, undistributed foreign personal holding company income under section 556, investment company taxable income under section 852, and real estate investment trust taxable income under section 857. The deduction for dividends paid includes—

(1) The dividends paid during the taxable year;

(2) The consent dividends for the taxable year, determined as provided in section 565; and

(3) In the case of a personal holding company, the dividend carryover computed as provided in section 564.

[F.R. Doc. 61–530; Filed, Jan. 19, 1961; 8:48 a.m.]

[26 CFR Part 1]

INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Distributions Pursuant to Bank Holding Company Act of 1956

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, in duplicate, to the Commissioner of Internal Revenue, Attention: T:P, Washington 25, D.C., within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner within the 30-day period. In such 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. 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] DANA LATHAM,
Commissioner of Internal Revenue.

The following regulations relating to distributions by qualified bank holding corporations are hereby prescribed under sections 1101, 1102, and 1103 of the Internal Revenue Code of 1954, as added by section 10(a) of the Bank Holding Company Act of 1956 (70 Stat. 133, 139):

DISTRIBUTIONS PURSUANT TO BANK HOLDING COMPANY ACT OF 1956

DISTRIBUTIONS PURSUANT TO BANK HOLDING COMPANY ACT OF 1956

§ 1.1101 Statutory provisions; distributions pursuant to Bank Holding Company Act of 1956.

SEC. 1101. *Distributions pursuant to Bank Holding Company Act of 1956*—(a) *Distributions of certain non-banking property*—(1) *Distributions of prohibited property.* If—

(A) A qualified bank holding corporation distributes prohibited property (other than stock received in an exchange to which subsection (c)(2) applies)—

(i) To a shareholder (with respect to its stock held by such shareholder), without the surrender by such shareholder of stock in such corporation; or

(ii) To a shareholder, in exchange for its preferred stock; or

(iii) To a security holder, in exchange for its securities; and

(B) The Board has, before the distribution, certified that the distribution of such prohibited property is necessary or appropriate to effectuate section 4 of the Bank Holding Company Act of 1956,

then no gain to the shareholder or security holder from the receipt of such property shall be recognized.

(2) *Distributions of stock and securities received in an exchange to which subsection (c)(2) applies.* If—

(A) A qualified bank holding corporation distributes—

(i) Common stock received in an exchange to which subsection (c)(2) applies to a shareholder (with respect to its stock held by such shareholder), without the surrender by such shareholder of stock in such corporation; or

(ii) Common stock received in an exchange to which subsection (c)(2) applies to a shareholder, in exchange for its common stock; or

(iii) Preferred stock or common stock received in an exchange to which subsection (c)(2) applies to a shareholder, in exchange for its preferred stock; or

(iv) Securities or preferred or common stock received in an exchange to which subsection (c)(2) applies to a security holder, in exchange for its securities; and

(B) Any preferred stock received has substantially the same terms as the preferred stock exchanged, and any securities received have substantially the same terms as the securities exchanged.

then, except as provided in subsection (f), no gain to the shareholder or security holder from the receipt of such stock or such securities or such stock and securities shall be recognized.

(3) *Non pro rata distributions.* Paragraphs (1) and (2) shall apply to a distribution whether or not the distribution is pro rata with respect to all of the shareholders of the distributing qualified bank holding corporation.

(4) *Exception.* This subsection shall not apply to any distribution by a corporation which has made any distribution pursuant to subsection (b).

(5) *Distributions involving gift or compensation.* In the case of a distribution to which paragraph (1) or (2) applies, but which—

(A) Results in a gift, see section 2501, and following, or

(B) Has the effect of the payment of compensation, see section 61(a)(1).

(b) *Corporation ceasing to be a bank holding company—(1) Distributions of property which cause a corporation to be a bank holding company.* If—

(A) A qualified bank holding corporation distributes property (other than stock received in an exchange to which subsection (c)(3) applies)—

(i) To a shareholder (with respect to its stock held by such shareholder), without the surrender by such shareholder of stock in such corporation; or

(ii) To a shareholder, in exchange for its preferred stock; or

(iii) To a security holder, in exchange for its securities; and

(B) The Board has, before the distribution, certified that—

(i) Such property is all or part of the property by reason of which such corporation controls (within the meaning of section 2 (a) of the Bank Holding Company Act of 1956) a bank or bank holding company, or such property is part of the property by reason of which such corporation did control a bank or a bank holding company before any property of the same kind was distributed under this subsection or exchanged under subsection (c)(3); and

(ii) The distribution is necessary or appropriate to effectuate the policies of such Act,

then no gain to the shareholder or security holder from the receipt of such property shall be recognized.

(2) *Distributions of stock and securities received in an exchange to which subsection (c)(3) applies.* If—

(A) A qualified bank holding corporation distributes—

(i) Common stock received in an exchange to which subsection (c)(3) applies to a shareholder (with respect to its stock held by such shareholder), without the surrender by such shareholder of stock in such corporation; or

(ii) Common stock received in an exchange to which subsection (c)(3) applies to a shareholder, in exchange for its common stock; or

(iii) Preferred stock or common stock received in an exchange to which subsection (c)(3) applies to a shareholder, in exchange for its preferred stock; or

(iv) Securities or preferred or common stock received in an exchange to which subsection (c)(3) applies to a security holder, in exchange for its securities; and

(B) Any preferred stock received has substantially the same terms as the preferred stock exchanged, and any securities received have substantially the same terms as the securities exchanged,

then, except as provided in subsection (f), no gain to the shareholder or security holder from the receipt of such stock or such securities or such stock and securities shall be recognized.

(3) *Non pro rata distributions.* Paragraphs (1) and (2) shall apply to a distribution whether or not the distribution is pro rata with respect to all of the shareholders of the distributing qualified bank holding corporation.

(4) *Exception.* This subsection shall not apply to any distribution by a corporation which has made any distribution pursuant to subsection (a).

(5) *Distributions involving gift or compensation.* In the case of a distribution to which paragraph (1) or (2) applies, but which—

(A) Results in a gift, see section 2501, and following, or

(B) Has the effect of the payment of compensation, see section 61(a)(1).

(c) *Property acquired after May 15, 1955—(1) In general.* Except as provided in paragraphs (2) and (3), subsection (a) or (b) shall not apply to—

(A) Any property acquired by the distributing corporation after May 15, 1955, unless (i) gain to such corporation with respect to the receipt of such property was not recognized by reason of subsection (a) or (b), or (ii) such property was received by it in exchange for all of its stock in an exchange to which paragraph (2) or (3) applies, or (iii) such property was acquired by the distributing corporation in a transaction in which gain was not recognized under section 305(a) or section 332, or under section 354 with respect to a reorganization described in section 368(a)(1) (E) or (F), or

(B) Any property which was acquired by the distributing corporation in a distribution with respect to stock acquired by such corporation after May 15, 1955, unless such stock was acquired by such corporation (i) in a distribution (with respect to stock held by it on May 15, 1955, or with respect to stock in respect of which all previous applications of this clause are satisfied) with respect to which gain to it was not recognized by reason of subsection (a) or (b), or (ii) in exchange for all of its stock in an exchange to which paragraph (2) or (3) applies, or (iii) in a transaction in which gain was not recognized under section 305(a) or section 332, or under section 354 with respect to a reorganization described in section 368(a)(1) (E) or (F), or

(C) Any property acquired by the distributing corporation in a transaction in which gain was not recognized under section 332, unless such property was acquired from a corporation which, if it had been a qualified bank holding corporation, could have distributed such property under subsection (a)(1) or (b)(1).

(2) *Exchanges involving prohibited property.* If—

(A) Any qualified bank holding corporation exchanges (i) property, which, under subsection(a)(1), such corporation could distribute directly to its shareholders or security holders without the recognition of gain to such shareholders or security holders, and other property (except property described in subsection (b)(1)(B)(i), for (ii) all of the stock of a second corporation created and availed of solely for the purpose of receiving such property;

(B) Immediately after the exchange, the qualified bank holding corporation distributes all of such stock in a manner prescribed in subsection (a)(2)(A); and

(C) Before such exchange, the Board has certified (with respect to the property exchanged which consists of property which, under subsection (a)(1), such corporation could distribute directly to its shareholders or security holders without the recognition of gain) that the exchange and distribution are necessary or appropriate to effectuate section 4 of the Bank Holding Company Act of 1956,

then paragraph (1) shall not apply with respect to such distribution.

(3) *Exchanges involving interests in banks.* If—

(A) Any qualified bank holding corporation exchanges (i) property which, under subsection (b)(1), such corporation could distribute directly to its shareholders or security holders without the recognition of gain to such shareholders or security holders, and other property (except prohibited property), for (ii) all of the stock of a second corporation created and availed of solely for the purpose of receiving such property;

(B) Immediately after the exchange, the qualified bank holding corporation distributes all of such stock in a manner prescribed in subsection (b)(2)(A); and

(C) Before such exchange, the Board has certified (with respect to the property exchanged which consists of property which, under subsection (b)(1), such corporation could distribute directly to its shareholders or security holders without the recognition of gain) that—

(i) Such property is all or part of the property by reason of which such corporation controls (within the meaning of section 2(a) of the Bank Holding Company Act of 1956) a bank or bank holding company, or such property is part of the property by reason of which such corporation did control a bank or a bank holding company before any property of the same kind was distributed under subsection (b)(1) or exchanged under this paragraph; and

(ii) The exchange and distribution are necessary or appropriate to effectuate the policies of such Act,

then paragraph (1) shall not apply with respect to such distribution.

(d) *Distributions to avoid Federal income tax—(1) Prohibited property.* Subsection (a) shall not apply to a distribution if, in connection with such distribution, the distributing corporation retains, or transfers after May 15, 1955, to any corporation, property (other than prohibited property) as part of a plan one of the principal purposes of which is the distribution of the earnings and profits of any corporation.

(2) *Banking property.* Subsection (b) shall not apply to a distribution if, in connection with such distribution, the distributing corporation retains, or transfers after May 15, 1955, to any corporation, property (other than property described in subsection (b)(1)(B)(i)) as part of a plan one of the principal purposes of which is the distribution of the earnings and profits of any corporation.

(3) *Certain contributions to capital.* In the case of a distribution a portion of which is attributable to a transfer which is a contribution to the capital of a corporation, made after May 15, 1955, and prior to the date of the enactment of this part, if subsection (a) or (b) would apply to such distribution but for the fact that, under paragraph (1) or (2) (as the case may be) of this subsection, such contribution to capital is part of a plan one of the principal purposes of which is to distribute the earnings and profits of any corporation, then, notwithstanding paragraph (1) or (2), subsection (a) or (b) (as the case may be) shall apply to that portion of such distribution not attributable to such contribution to capital, and shall not apply to that portion of such distribution attributable to such contribution to capital.

(e) *Final certification—(1) For subsection (a).* Subsection (a) shall not apply with respect to any distribution by a corporation unless the Board certifies that, before the expiration of the period permitted under section 4(a) of the Bank Holding Company Act of 1956 (including any extensions thereof granted to such corporation under section 4(a)), the corporation has disposed of all the property the disposition of which is necessary or appropriate to effectuate section 4 of such Act (or would have been so necessary or appropriate if the

corporation had continued to be a bank holding company).

(2) *For subsection* (b)—(A) Subsection (b) shall not apply with respect to any distribution by any corporation unless the Board certifies that, before the expiration of the period specified in subparagraph (B), the corporation has ceased to be a bank holding company.

(B) The period referred to in subparagraph (A) is the period which expires 2 years after the date of the enactment of this part or 2 years after the date on which the corporation becomes a bank holding company, whichever date is later. The Board is authorized, on application by any corporation, to extend such period from time to time with respect to such corporation for not more than one year at a time if, in its judgment, such an extension would not be detrimental to the public interest; except that such period may not in any case be extended beyond the date 5 years after the date of the enactment of this part or 5 years after the date on which the corporation becomes a bank holding company, whichever date is later.

(f) *Certain exchanges of securities.* In the case of an exchange described in subsection (a)(2)(A)(iv) or subsection (b)(2)(A)(iv), subsection (a) or subsection (b) (as the case may be) shall apply only to the extent that the principal amount of the securities received does not exceed the principal amount of the securities exchanged.

[Sec. 1101 as added by sec. 10(a), Bank Holding Company Act 1956 (70 Stat. 139)]

§ 1.1101–1 In general.

The Bank Holding Company Act of 1956 (12 U.S.C. ch. 17) requires, in certain cases, the separation of interests in nonbanking businesses held by a bank holding company, as defined in section 2(a) of the Act (12 U.S.C. 1841(a)), from its interests in banking and closely related businesses. In order to facilitate such separation, part VIII (section 1101 and following), subchapter O, chapter 1 of the Code, provides, to a limited extent, for the nonrecognition of gain on the receipt, by shareholders or security holders of a qualified bank holding corporation, of property distributed pursuant to a certification by the Board of Governors of the Federal Reserve System that such distribution is necessary or appropriate to effectuate the policies of the Act. The provisions of such part VIII of subchapter O supersede other provisions of chapter 1 of the Code only to the extent that such provisions of part VIII specifically apply to a transaction and, where they are not applicable, do not prevent the application of any other provisions of law under which nonrecognition of gain may occur. For example, a bank holding company may retain, under section 4(c)(5) of the Act (12 U.S.C. 1843(c)(5)), up to five percent of the voting stock of another company. In such a case, a distribution of all the stock of such other company pursuant to a certification by the Board would result in nonrecognition of gain under section 1101 as to only 95 percent of such distribution. However, assuming the distribution is one that qualifies for nonrecognition of gain under section 355, relating to distribution of stock and securities of a controlled corporation, as well as under section 1101, nonrecognition of gain may be obtained under section 355 with respect to the five percent not qualifying for nonrecognition under section 1101. Further, the provisions of such part VIII of subchapter O do not provide for nonrecognition of gain to the distributing bank holding company. Accordingly, gain will be recognized to the distributing corporation in appropriate cases. For example, if a bank holding company, in a distribution qualifying under section 1101, distributes installment obligations, LIFO inventory, or property subject to a liability in excess of its adjusted basis, gain may be recognized to the corporation under section 453(d) or section 311. If, pursuant to section 1101(c)(2) or 1101(c)(3), a bank holding company places the property to be disposed of in a newly created corporation in exchange for all its stock which is then distributed by the bank holding company to its shareholders, the extent, if any, to which gain will be recognized to the bank holding company on either the exchange or the subsequent distribution is not affected by such part VIII of subchapter O and must be determined under other provisions of the Internal Revenue Code. For example, if the conditions of section 351 are satisfied, the exchange of property for stock will result in nonrecognition of gain to the bank holding company under that section.

§ 1.1101–2 Certification by Board.

(a) *Requirement of certification.* Part VIII (section 1101 and following), subchapter O, chapter 1 of the Code, is applicable only with respect to distributions and exchanges by a qualified bank holding corporation as defined in section 1103(b). A bank holding company shall be treated as a qualified bank holding corporation only if the Board of Governors of the Federal Reserve System issues a certification that the company satisfies the requirements of section 1103(b). (See 12 CFR 222.5(c).)

(b) *Nonrecognition of gain.* Distributions of property (other than stock and securities in a corporation created in accordance with the provisions of section 1101(c)(2) or (c)(3)) will not result in nonrecognition of gain to the shareholders and security holders of a bank holding company under section 1101(a)(1) or (b)(1) unless, before the distribution, the Board has issued a certification pursuant to section 1101(a)(1)(B) or (b)(1)(B), whichever is applicable. Distributions of stock and securities in a corporation created in accordance with section 1101(c)(2) or (c)(3) will not result in nonrecognition of gain to the shareholders and security holders of a bank holding company under section 1101(a)(2) or (b)(2) unless, before the exchange described in section 1101(c)(2)(A) or (c)(3)(A), the Board has issued a certification pursuant to section 1101(c)(2)(C) or (c)(3)(C), whichever is applicable. Further, unless a final certification is also made by the Board in accordance with section 1101(e), section 1101(a) or (b) will not apply to any distribution made by a bank holding company. Provisionally, however, pending the issuance of such final certification, section 1101(a) or (b) shall be deemed applicable to distributions otherwise qualifying under such part VIII of subchapter O which are made within the period described in section 1101(e)(1) or (e)(2)(B), whichever is applicable.

(c) *Limitations.* The period of limitations in section 6501 with respect to any deficiency resulting solely from the receipt by a shareholder or security holder of property, in a distribution certified by the Board in accordance with section 1101(a)(1)(B), (b)(1)(B), (c)(2)(C), or (c)(3)(C), shall not expire prior to the period prescribed in section 1102(b), notwithstanding that the shareholder or security holder relied on a provision of law other than section 1101(a) or (b), for example section 355, to obtain nonrecognition of gain on the distribution. (See § 1.1102–2.)

§ 1.1101–3 Tax avoidance.

(a) *Recognition of gain.* Irrespective of whether the transaction meets the other requirements of sections 1101, 1102, and 1103, a distribution will not qualify for nonrecognition of gain pursuant to the provisions of section 1101 if, in connection with such distribution, the distributing corporation retains, or transfers to any corporation after May 15, 1955, property pursuant to a plan one of the principal purposes of which is the distribution of earnings and profits of a corporation so as to avoid the Federal income tax on dividends. A certification that a particular distribution of property is necessary or appropriate in order to comply with the Bank Holding Company Act of 1956 (12 U.S.C. ch. 17) shall not be considered as permitting nonrecognition of gain where such distribution is a part of a plan to distribute earnings and profits in avoidance of the Federal income tax on dividends.

(b) *Continuity and other factors.* Section 1101 contemplates a continuity of the enterprise as modified and a continuity of interest in all or part of the property received or retained on the part of those who, directly or indirectly, were the owners of the enterprise prior to the distribution or exchange. Whether or not a distribution is made under section 1101 in such a manner as to be in avoidance of Federal income tax is a question to be decided in the light of all the facts and circumstances surrounding the transaction. Some of the factors which may evidence a tax avoidance plan in appropriate circumstances are the following:

(1) A company making acquisitions of property shortly before May 15, 1955, in anticipation of the legislation in order to qualify under the Bank Holding Company Act of 1956.

(2) A greatly disproportionate shift to banking or nonbanking assets shortly before or after May 15, 1955, from the normal course of holdings or any unusual shift within such groups of assets that is inconsistent with prior holdings, particularly if made to such assets that are or may be more readily marketable.

(3) A separation of assets, the acquisition of which was substantially financed out of the earnings of particular properties, from such properties (whether or not such properties are retained), particularly where said assets are in the

form of cash or highly marketable securities, stocks, or other investments, and where such separation is not necessary or appropriate to effectuate the policies of the Bank Holding Company Act of 1956.

(4) A transfer of "other property" in an exchange described in section 1101 (c)(2) or (c)(3), which property is greater in amount than that reasonably required by the newly created corporation for its working capital or is disproportionate to or inconsistent with the holding operations previously engaged in.

(5) An indication that a liquidation of either of the corporations separated pursuant to section 1101(c)(2) or 1101(c)(3) is contemplated or that dominant shareholders thereof intended to sell the stock received or retained.

(6) An indication that dominant shareholders contemplated the sale of property distributed directly.

(7) The fact that any distribution to or exchange with preferred shareholders or security holders results in the transaction being disproportionate to their holdings and interests as such holders in the distributing corporation immediately prior to the distribution.

A shift of assets to a corporation to be separated will not in itself establish a plan to avoid tax if such action is consistent with the holding operations previously engaged in and in conformity with good business practice. Similiarly, a reasonable transfer of cash and securities to a corporation availed of under section 1101(c)(2) or 1101(c)(3) for the reasonable working capital needs of a newly organized corporation will not, by itself, establish an attempt to distribute earnings and profits. Where it is established that a contribution to capital was made after May 15, 1955, and prior to the enactment of the Bank Holding Company Act of 1956 with one of the principal purposes of distributing earnings and profits of any corporation, such action will not in itself cause the proportionate remainder of a distribution to fail to qualify for treatment under section 1101. (See section 1101(d)(3).)

§ 1.1101–4 Records to be kept and information to be filed with returns.

Each stock or security holder who receives stock or securities or other property upon a distribution made by a qualified bank holding corporation under section 1101 shall maintain records of, and file as a part of his income tax return for the taxable year in which such distribution is received a complete statement of, all facts pertinent to the nonrecognition of gain upon such distribution, including—

(a) Name and address of the corporation from which the distribution is received.

(b) A statement of the name or designation, type, class, number, and fair market value on the date of receipt of the stock or securities or other property received upon the distribution and a record of the disposition made thereof, or of any stock or securities retained in the distributing corporation in the year of receipt.

(c) The date the distribution was received.

(d) If preferred stock is exchanged for preferred stock or securities are exchanged for securities within the meaning of section 1101(a)(2)(A) or section 1101(b)(2)(A), a statement of the terms and amount of such newly issued securities or preferred stock, as well as of those surrendered.

(e) Identification of the plan forming the basis of the issuance by the Board of Governors of the Federal Reserve System of any certification under section 1101, and any certifications of said Board concerning the distribution received, including the dates thereof and an outline of the terms thereof.

(f) A statement as to the distributee's holdings immediately prior to the record date for the distribution of each class of stock or securities outstanding of the distributing corporation, together with the date and manner of acquisition thereof.

(g) The value of the distributing corporation's stock per share or securities immediately prior to and after the distribution.

§ 1.1102 Statutory provisions; distributions pursuant to Bank Holding Company Act of 1956; special rules.

SEC. 1102. *Special rules*—(a) *Basis of property acquired in distributions.* If, by reason of section 1101, gain is not recognized with respect to the receipt of any property, then, under regulations prescribed by the Secretary or his delegate—

(1) If the property is received by a shareholder with respect to stock, without the surrender by such shareholder of stock, the basis of the property received and of the stock with respect to which it is distributed shall, in the distributee's hands, be determined by allocating between such property and such stock the adjusted basis of such stock; or

(2) If the property is received by a shareholder in exchange for stock or by a security holder in exchange for securities, the basis of the property received shall, in the distributee's hands, be the same as the adjusted basis of the stock or securities exchanged, increased by—

(A) The amount of the property received which was treated as a dividend, and

(B) The amount of gain to the taxpayer recognized on the property received (not including any portion of such gain which was treated as a dividend).

(b) *Periods of limitation.* The periods of limitation provided in section 6501 (relating to limitations on assessment and collection) shall not expire, with respect to any deficiency (including interest and additions to the tax) resulting solely from the receipt of property by shareholders in a distribution which is certified by the Board under subsection (a), (b), or (c) of section 1101, until five years after the distributing corporation notifies the Secretary or his delegate (in such manner and with such accompanying information as the Secretary or his delegate may by regulations prescribe) that the period (including extensions thereof) prescribed in section 4(a) of the Bank Holding Company Act of 1956, or section 1101(e)(2)(B), whichever is applicable, has expired; and such assessment may be made notwithstanding any provision of law or rule of law which would otherwise prevent such assessment.

(c) *Allocation of earnings and profits*—(1) *Distribution of stock in a controlled corporation.* In the case of a distribution by a qualified bank holding corporation under section 1101 (a)(1) or (b)(1) of stock in a controlled corporation, proper allocation with respect to the earnings and profits of the distributing corporation and the controlled corporation shall be made under regulations prescribed by the Secretary or his delegate.

(2) *Exchanges described in section 1101(c)(2) or (3).* In the case of any exchange described in section 1101(c)(2) or (3), proper allocation with respect to the earnings and profits of the corporation transferring the property and the corporation receiving such property shall be made under regulations prescribed by the Secretary or his delegate.

(3) *Definition of controlled corporation.* For purposes of paragraph (1), the term "controlled corporation" means a corporation with respect to which 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 is owned by the distributing qualified bank holding corporation.

(d) *Itemization of property.* In any certification under this part, the Board shall make such specification and itemization of property as may be necessary to carry out the provisions of this part.

[Sec. 1102 as added by sec. 10(a), Bank Holding Company Act 1956 (70 Stat. 139)]

§ 1.1102–1 Basis of property acquired in distributions by qualified bank holding corporations.

In the case of a distribution to a shareholder with respect to stock, without the surrender by such shareholder of stock, to which section 1101 (a) or (b) applies, the sum of the basis of all the stock in the distributing corporation held immediately after the transaction plus the basis of all the nonrecognition property received in the transaction shall be the same as the basis of all the stock in such corporation held immediately before the transaction allocated in proportion to the respective fair market value of each. In the case of an exchange to which section 1101 (a) or (b) applies, in which property is received by a shareholder in exchange for stock or by a security holder in exchange for securities, the basis of all the property received in the exchange and as a part thereof shall be the same as the adjusted basis of the stock or securities exchanged, increased by—

(a) The amount of the property received as part of the exchange which was treated as a dividend, and

(b) The amount of gain to the taxpayer recognized on the property received as part of the exchange (not including any portion of such gain which was treated as a dividend).

The basis, in a case involving an exchange, must be apportioned to the properties received, and for this purpose there must be allocated to such other property received as part of the exchange (not permitted to be received without the recognition of gain) an amount of such basis equivalent to the fair market value of such other property at the date of the exchange. Any other property received in connection with a transaction under section 1101 on which gain is realized shall receive a basis in accordance with whichever Code section may be applicable to that portion of the transaction.

§ 1.1102–2 Filing of notification under section 1102(b) by qualified bank holding corporations.

Every distributing corporation which is certified as being a qualified bank holding corporation under section 1103 (b) shall, as soon as practical, by written statement notify the Commissioner of Internal Revenue, Washington 25, D.C., Attention: T:R:R, that the period (including extensions thereof granted by the Board of Governors of the Federal Reserve System) prescribed in section 4(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(a)), or section 1101(e)(2)(B) of the Code, whichever is applicable, has expired. In order for such statement to satisfy the requirements for notification under section 1102 (b), there shall be included a complete statement of all facts pertinent to the divestment of assets under part VIII (section 1101 and following), subchapter O, chapter 1 of the Code, including the following:

(a) Name and address of the distributing corporation.

(b) A copy of the plan of divestment forming the basis of the issuance by the Board of any certification under section 1101(a)(1)(B), section 1101(b)(1)(B), section 1101(c)(2)(C), or section 1101 (c)(3)(C), as the case may be.

(c) A copy of any such certifications issued to the distributing corporation by the Board.

(d) A certified copy of the corporate resolution authorizing every distribution under section 1101.

(e) Identification and date of acquisition by the distributing corporation of all property distributed under section 1101.

(f) Identification and date of acquisition by the distributing corporation of all property which was transferred to a new corporation under section 1101(c)(2) or (3).

(g) If the date of acquisition in paragraph (e) or (f) of this section was after May 15, 1955, a complete statement of details surrounding the acquisition. If any of such property was acquired in a distribution under section 1101, a copy of the certification covering such distribution.

(h) A statement as to whether any of the distributions under section 1101 contained installment obligations, LIFO inventory, or property either subject to a liability in excess of its basis or in connection with the receipt of which any shareholder assumed a liability in excess of its basis. If so, the statement shall include complete details, including dates of distribution.

(i) [Reserved.]

(j) Name and address of each distributee.

(k) Number of shares of outstanding stock of the corporation, by class, and amount of securities actually owned by each distributee prior to the distribution.

(l) If preferred stock was exchanged for preferred stock or securities were exchanged for securities under section 1101(a)(2)(A) or section 1101(b)(2)(A), the terms and amount of the newly issued securities or preferred shares received and of those surrendered.

(m) Identification of the property distributed to each distributee under section 1101, by date, together with the fair market value at date of distribution.

(n) Fair market value of the distributing corporation's outstanding securities and stock per share immediately after a distribution.

(o) The amount of the undistributed earnings and profits of the distributing corporation accumulated after February 28, 1913, to date of transfer to a new corporation in an exchange to which section 1101(c)(2) or (3) applies.

(p) If property was transferred to a new corporation under the provisions of section 1101(c)(2) or (3), a statement giving the value of the assets transferred together with the value of assets retained. If cash was transferred, a complete substantiation thereof.

(q) If stock in a controlled corporation within the meaning of section 1102(c)(3) is distributed under section 1101(a)(1) or (b)(1), a statement giving the accumulated earnings and profits of the controlled corporation (or deficit in earnings as the case may be) immediately prior to the distribution.

(r) A copy of the final certification if issued to the distributing corporation by the Board pursuant to section 1101(e).

(s) The date of expiration of the period (including extensions thereof) prescribed in section 4(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(a)), or section 1101(e)(2)(B), whichever is applicable.

(t) A statement showing, for the 5-year period preceding any exchange or distribution described in section 1101, the amount of income and expenditures attributable to each of the respective activities and holdings of the bank holding company and further showing the holdings and activities, after the distributions and exchanges described in section 1101, of the bank holding company and the corporations the stock of which is distributed under section 1101.

The periods of limitation (section 6501) with respect to any deficiency, including interest and additions to the tax, resulting solely from the receipt of property by shareholders in a distribution certified by the Board under subsection (a), (b), or (c) of section 1101 shall not expire until 5 years following the date of the notification required under section 1102(b) and this section.

§ 1.1102–3 Allocation of earnings and profits in certain distributions by qualified bank holding corporations.

(a) *Exchanges described in section 1101(c)(2) or (3).* Under section 1102(c), if a qualified bank holding corporation transfers property to a newly created corporation in exchange for all of its stock in a transaction described in section 1101(c)(2)(A) or (3)(A) and immediately thereafter the stock and securities of the controlled corporation are distributed in a distribution or exchange to which section 1101(a)(2) or (b)(2) applies, the earnings and profits of the bank holding corporation immediately before the transaction shall be allocated between such bank holding corporation and the controlled corporation. Such allocation generally shall be made in proportion to the fair market value of the assets retained by the bank holding corporation and the assets of the controlled corporation immediately after the transaction. In a proper case, allocation shall be made in proportion to the net basis of the assets transferred and of the assets retained or by such other method as may be appropriate under the facts and circumstances of the case. The term "net basis" means the basis of the assets less liabilities assumed or liabilities to which such assets are subject. The part of the earnings and profits of the taxable year of the bank holding corporation in which the transaction occurs allocable to the controlled corporation shall be included in the computation of the earnings and profits of the first taxable year of the controlled corporation ending after the date of the transaction.

(b) *Distribution of stock in a controlled corporation under section 1101(a)(1) or (b)(1).* If a qualified bank holding corporation distributes stock of a controlled corporation (as defined in section 1102(c)(3)) in a distribution or exchange to which section 1101(a)(1) or (b)(1) applies, the earnings and profits of the bank holding corporation shall be decreased by the lesser of the following amounts:

(1) The amount by which the earnings and profits of the bank holding corporation would have been decreased if it had transferred the stock of the controlled corporation to a new corporation in a transaction to which section 1101(c)(2) or (3) applied and immediately thereafter distributed the stock of such new corporation under section 1101(a)(2) or (b)(2) or,

(2) The net worth of the controlled corporation. (For this purpose the term "net worth" means the sum of the bases of all of the properties plus cash minus all liabilities.)

If the earnings and profits of the controlled corporation immediately before the transaction are less than the amount of the decrease in earnings and profits of the bank holding corporation (including the case in which the controlled corporation has a deficit) the earnings and profits of the controlled corporation, after the transaction, shall be equal to the amount of such decrease. If the earnings and profits of the controlled corporation immediately before the transaction are more than the amount of the decrease in the earnings and profits of the bank holding corporation they shall remain unchanged.

(c) *Deficits.* A deficit of the distributing corporation shall in no case be allocated to a controlled corporation.

§ 1.1103 Statutory provisions; distributions pursuant to Bank Holding Company Act of 1956; definitions.

SEC. 1103. *Definitions*—(a) *Bank holding company.* For purposes of this part, the term "bank holding company" has the meaning assigned to such term by section 2 of the Bank Holding Company Act of 1956.

(b) *Qualified bank holding corporation*—(1) *In general.* Except as provided in paragraph (2), for purposes of this part the term

"qualified bank holding corporation" means any corporation (as defined in section 7701 (a)(3)) which is a bank holding company and which holds prohibited property acquired by it—

(A) On or before May 15, 1955,

(B) In a distribution in which gain to such corporation with respect to the receipt of such property was not recognized by reason of subsection (a) or (b) of section 1101, or

(C) In exchange for all of its stock in an exchange described in section 1101 (c)(2) or (c)(3).

(2) *Limitations.* (A) A bank holding company shall not be a qualified bank holding corporation, unless it would have been a bank holding company on May 15, 1955, if the Bank Holding Company Act of 1956 had been in effect on such date, or unless it is a bank holding company determined solely by reference to—

(i) Property acquired by it on or before May 15, 1955,

(ii) Property acquired by it in a distribution in which gain to such corporation with respect to the receipt of such property was not recognized by reason of subsection (a) or (b) of section 1101, and

(iii) Property acquired by it in exchange for all of its stock in an exchange described in section 1101(c) (2) or (3).

(B) A bank holding company shall not be a qualified bank holding corporation by reason of property described in subparagraph (B) of paragraph (1) or clause (ii) of subparagraph (A) of this paragraph, unless such property was acquired in a distribution with respect to stock, which stock was acquired by such bank holding company—

(i) On or before May 15, 1955,

(ii) In a distribution (with respect to stock held by it on May 15, 1955, or with respect to stock in respect of which all previous applications of this clause are satisfied) with respect to which gain to it was not recognized by reason of subsection (a) or (b) of section 1101, or

(iii) In exchange for all of its stock in an exchange described in section 1101(c)(2) or (3).

(C) A corporation shall be treated as a qualified bank holding corporation only if the Board certifies that it satisfies the foregoing requirements of this subsection.

(c) *Prohibited property.* For purposes of this part, the term "prohibited property" means, in the case of any bank holding company, property (other than nonexempt property) the disposition of which would be necessary or appropriate to effectuate section 4 of the Bank Holding Company Act of 1956 if such company continued to be a bank holding company beyond the period (including any extensions thereof) specified in subsection (a) of such section or in section 1101(e)(2)(B) of this part, as the case may be. The term "prohibited property" does not include shares of any company held by a bank holding company to the extent that the prohibitions of section 4 of the Bank Holding Company Act of 1956 do not apply to the ownership by such bank holding company of such property by reason of subsection (c)(5) of such section.

(d) *Nonexempt property.* For purposes of this part, the term "nonexempt property" means—

(1) Obligations (including notes, drafts, bills of exchange, and bankers' acceptances) having a maturity at the time of issuance of not exceeding 24 months, exclusive of days of grace;

(2) Securities issued by or guaranteed as to principal or interest by a government or subdivision thereof or by any instrumentality of a government or subdivision; or

(3) Money, and the right to receive money not evidenced by a security or obligation (other than a security or obligation described in paragraph (1) or (2)).

(e) *Board.* For purposes of this part, the term "Board" means the Board of Governors of the Federal Reserve System.

[Sec. 1103 as added by sec. 10(a), Bank Holding Company Act 1956 (70 Stat. 139)]

[F.R. Doc. 61-529; Filed, Jan. 19, 1961; 8:48 a.m.]

[26 CFR Part 48]

COOPERATIVE ADVERTISING

Notice of Hearing on Proposed Regulations

Proposed regulations under section 4216(f) of the Code, relating to cooperative advertising, were published in the FEDERAL REGISTER for December 29, 1960.

A public hearing on the provisions of these proposed regulations will be held on Friday, February 17, 1961, at 10:00 a.m., e.s.t, in Room 3313, Internal Revenue Building, 12th and Constitution Avenue NW., Washington 25, D.C.

Persons who plan to attend the hearing are requested to notify the Commissioner of Internal Revenue, Attention: T:P, Washington 25, D.C., by February 14, 1961.

[SEAL] PAUL T. MAGINNIS,
Acting Director, Technical Planning Division, Internal Revenue Service.

[F.R. Doc. 61-536; Filed, Jan. 19, 1961; 8:51 a.m.]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 1019]

[Docket No. AO-305-A3]

MILK IN CONNECTICUT MARKETING AREA

Notice of Hearing on Proposed Amendments to Tentative Marketing Agreement and Order

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), notice is herby given of a public hearing to be held at the Bond Hotel, Hartford, Connecticut, beginning at 9:30 a.m., e.s.t., on January 24, 1961 with respect to proposed amendments to the tentative marketing agreement and to the order, regulating the handling of milk in the Connecticut marketing area.

The public hearing is for the purpose of receiving evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreement and to the order.

The proposal amendments, set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by the Connecticut Milk Producers Association:

Proposal No. 1. In § 1019.3(c)(2), immediately preceding the colon (:) add the following: "or to a plant of a producer-handler in the marketing area".

Proposal No. 2. In § 1019.32(b), immediately after the first reference to § 1019.60(a), insert the following: "to be made on or before the 22nd day after the end of each month".

Proposal No. 3. In § 1019.32(b), immediately after the first reference to cooperative association, insert the following: "on or before the 21st day after the end of each month".

Proposal No. 4. In § 1019.32 add a new paragraph (c) as follows:

(c) In making payments to producers prescribed in § 1019.60(a) to be made on or before the 5th day after the end of each month, each pool handler shall furnish each producer with a supporting statement showing the month and the identity of the handler and of the producer, the total pounds of milk delivered by the producer in not less than the first 20 days of the month, the rate which is used in making the payment, and the net amount of payment to the producer: *Provided,* That in the case of producers for whom the handler makes payment to a cooperative association on or before the 3d day after the end of each month such supporting information shall be furnished by the handler to such cooperative association on or before the 25th day of the month for which such payment is due.

Proposal No. 5. Replace paragraphs (a), (b) and (c) of § 1019.60 with:

(a) On or before the 5th day after the end of each month, for not less than the quantity of milk received during the first 20 days of the month, at not less than $3.00 per hundredweight, and on or before the 22nd day after the end of each month, for the quantity of milk received during the month, at not less than the basic uniform price per hundredweight computed pursuant to § 1019.51, subject to the differentials provided in §§ 1019.61, 1019.62 and 1019.63: *Provided:* That with respect to each deduction for hauling, or for any other purpose, made from such payment, the burden shall rest upon the handler making the deduction to prove that each deduction is authorized, and properly chargeable to the producer: *And provided further,* That if by such date such handler has not received full payment from the market administrator pursuant to § 1019.66, he may reduce pro rata his payment to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payment pursuant to this paragraph next following after receipt of the balance due from the market administrator: *And provided further,* That the amount paid on or before the 5th day after the end of each month may be deducted from the amount due on or before the 22nd day as calculated according to this section.

(b) In the case of an association of producers which the Secretary determines is authorized by its producer-members to collect payment for their milk and which has so requested any

handler in writing, such handler on or before the 3d day after the end of each month, shall pay the association at a price not less than $3.00 per hundredweight for not less than the quantity of milk received during the first 20 days of the month, and on or before the 21st day after the end of each month, shall pay the association for milk received during such month from the producer-members of such association, as determined by the market administrator, an amount not less than the total due such producer-members as determined pursuant to paragraph (a) of this section, less the amount paid on or before the 3d day after the end of each month.

(c) In the case of a handler who receives fluid milk products from the plant of an association of producers in its capacity as a handler, such handler, on or before the 3d day after the end of each month, shall pay such association at a price not less than $3.00 per hundredweight for not less than the quantity of milk received during the first 20 days of the month, and on or before the 21st day after the end of each month, shall pay such association not less than the value of skim milk and butterfat in such fluid milk products as classified pursuant to § 1019.24 at the applicable class prices computed for such month pursuant to § 1019.40 subject to the butterfat differential computed pursuant to § 1019.61, less the amount paid on or before the 3d day after the end of each month.

Proposal No. 6. In § 1019.69(a) insert immediately after the word "producers" as it first appears therein, the following: "on or before the 22d day after the end of each month".

Proposed by the Dairy Division, Agricultural Marketing Service:

Proposal No. 7. In § 1019.2(e)(3) replace "delivering" with "delivered".

Proposal No. 8. In § 1019.12(f) replace "1019.31(a)(3)" with "1019.31(a)(4)".

Proposal No. 9. In § 1019.46(c) replace "complied" with "computed".

Proposal No. 10. In § 1019.46(e) immediately after "payment" insert the following: "by the 19th day of the following month".

Proposal No. 11. In § 1019.63(a) replace "New York State Extension of the Massachusetts Turnpike" with "Berkshire Section of the New York State Thruway".

Proposal No. 12. In § 1019.64 replace the reference "1019.46(d)" with "1019.46 (d) and (e)"; delete the second reference "and 1019.68" therein; and insert "and" before "1019.67" where it appears for the second time in such section.

Proposal No. 13. Make such changes as may be necessary to make the entire marketing agreement and the order conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the order may be procured from the Market Administrator, Mr. D. O. Hammerberg, 1049 Asylum Avenue, Hartford, Connecticut, or from the Hearing Clerk, Room 112, Administration Building, United States Department of Agriculture, Washington 25, D.C., or may be there inspected.

Issued at Washington, D.C., this 17th day of January 1961.

F. R. BURKE,
Acting Deputy Administrator,
Agricultural Marketing Service.

[F.R. Doc. 61-537; Filed, Jan. 19, 1961; 8:51 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 121]

FOOD ADDITIVES

Notice of Filing of Petition

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786; 21 U.S.C. 348 (b)(5)), notice is given that a petition has been filed by Hercules Powder Company, Wilmington, Delaware, proposing the issuance of a regulation to provide for the safe use in food package coatings, adhesives, and inks of certain rosins and rosin derivatives, as follows:

Gum rosin.
Wood rosin.
Tall oil rosin.
Partially hydrogenated rosin.
Fully hydrogenated rosin.
Partially dimerized rosin.
Fully dimerized rosin.
Disproportionated rosin.
Glycerin ester of wood rosin.
Glycerin ester of partially hydrogenated wood rosin (two different products).
Glycerin ester of partially dimerized rosin.
Glycerin ester of fully dimerized rosin.
Glycerin ester of maleic anhydride-modified wood rosin.
Methyl ester of rosin, partially hydrogenated.
Pentaerythritol ester of wood rosin.
Pentaerythritol ester of partially hydrogenated wood rosin.
Pentaerythritol ester of maleic anhydride-modified wood rosin (four different products).
Pentaerythritol ester of maleic anhydride-modified wood rosin modified with bisphenol A-formaldehyde condensate.
Mixed methyl and pentaerythritol ester of maleic anhydride-modified wood rosin.
Triethylene glycol ester of partially hydrogenated wood rosin.

Dated: January 16, 1961.

[SEAL] J. K. KIRK,
Assistant to the Commissioner of Food and Drugs.

[F.R. Doc. 61-531; Filed, Jan. 19, 1961; 8:50 a.m.]

[21 CFR Part 121]

FOOD ADDITIVES

Notice of Filing of Petition

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786; 21 U.S.C. 348 (b)(5)), notice is given that a petition has been filed by Adhesives Manufacturers Association of America, 441 Lexington Avenue, New York 17, New York, proposing the issuance of a regulation to provide for the safe use of the following named substances as components of adhesives for containers to be used in dry food packaging:

Adhesive Bases

Acrylic and methacrylic esters (aqueous emulsions of polymers).
Albumin, blood.
Albumin, egg.
Ammonium alginate.
Ammonium polyacrylate.
Ammonium salt of a copolymer of ethylene and maleic anhydride.
Ammonium salt of a copolymer of styrene and maleic anhydride.
Animal glue.
Balata rubber polymer.
Bisphenol-epichlorohydrin resins.
Butadiene-acrylonitrile copolymer.
Butadiene-acrylonitrile latex.
Butadiene-acrylonitrile-styrene copolymer.
Butadiene-acrylonitrile-styrene latex.
Butadiene-styrene copolymer.
Butadiene-styrene latex.
Butyl rubber polymer.
Butyl rubber polymer dispersion.
Calcium alginate.
Carboxymethylcellulose polymer.
Carob bean gum (locust bean gum).
Casein.
Cellulose acetate polymer.
Cellulose acetate-butyrate polymer.
Cellulose acetate-propionate polymer.
Chinawood oil (tung oil).
Chlorinated rubber polymer (natural rubber containng approximately 67% chlorine).
Chondrus extract.
Copal.
Coumarone-indene resin.
Cyclohexanone and formaldehyde condensate.
Damar.
Dextran.
Dextrin.
Diethylene glycol-adipic acid polymer.
Elemi gum.
Ethyl acrylate and methyl methacrylate copolymers of itaconic acid or methacrylic acid.
Ethyl cellulose polymer.
Ethylene-vinyl acetate copolymer.
Ethyl hydroxyethyl cellulose polymer.
Fish glue.
Formaldehyde reacted starch.
Gelatin.
Glyceryl ester of damar, copal, elemi, and sandarac.
Guar gum.
Gum arabic.
Gum ghatti.
Gum karaya.
Gum tragacanth.
Hydroabietyl alcohol.
Hydroxyethyl cellulose polymer.
Hydroxyethyl starch.
Hydroxypropyl methylcellulose polymer.
Isobutylene and isoprene copolymer.
Itaconic acid (polymerized).
Lignin sulfonate calcium salt.
Lignin sulfonate sodium salt.
Limed wood resin.
Linseed oil.
Maleic anhydride-vinyl condensates.
Melamine-formaldehyde polymer.
Methylcellulose polymer.
Methylethyl ketone and formaldehyde condensate.
Neoprene polymer.
Neoprene latex.
Nitrocellulose polymer.
Pentaerythritol ester of maleic anhydride.
Petroleum hydrocarbon resins.
Phenol-coumarone-indene resin.
Phenol-formaldehyde resin.
Pimaric acid, abietic acid, and/or rosin constituents polymers.
Pinene, polymerized.
Polyacrylic acid.
Polyamide.
Polybutadiene.
Polybutene.

Polybutyl methacrylate.
Polyethyl acrylate.
Polyethyl methacrylate.
Polyisobutylene.
Polymeric esters of polyhydric alcohols and polycarboxylic acids prepared from glycerin and phthalic anhydride and modified with benzoic acid, castor oil, coconut oil, linseed oil, rosin, soybean oil, styrene, and vinyl toluene.
Polymethyl acrylate.
Polymethyl methacrylate.
Polymethyl styrene.
Polyvinyl acetate and copolymer emulsions.
Polyvinyl acetate and copolymer resins.
Polyvinyl alcohol.
Polyvinyl butyral.
Polyvinyl chloride and copolymer resins.
Polyvinyl chloride and copolymer emulsions.
Polyvinyl ethyl ether.
Polyvinyl formal.
Polyvinyl methyl ether.
Polyvinyl pyrrolidone.
Polyvinyl stearate.
Polyvinylidene chloride and copolymer resins.
Polyvinylidene chloride and copolymer emulsions.
Poppyseed oil.
Potassium salt of a copolymer of ethylene and maleic anhydride.
Potassium salt of a copolymer of styrene and maleic anhydride.
Protein, soybean.
Rosin, decarboxylated.
Rosin, gasoline-insoluble fraction.
Rosin modified with ammonium caseinate.
Rosin oil.
Rosins—Wood, gum, and tall oil and dimers thereof, and these substances as modified by the following reactants:
  Bisphenol-formaldehyde.
  Diethylene glycol.
  Ethylene glycol.
  Formaldehyde.
  Fumaric acid.
  Glycerin.
  Hydrogen.
  Maleic anhydride.
  Methanol.
  Octyl phenol.
  Pentaerythritol.
  Phthalic anhydride.
  Polyethylene glycol.
  Sulfuric acid.
Rubber hydrochloride polymer.
Rubber latex, natural.
Sandarac.
Shellac.
Sodium alginate.
Sodium carboxymethylcellulose.
Sodium caseinate.
Sodium pectinate.
Sodium polyacrylate.
Sodium silicates.
Starch, unmodified or modified.
Styrene-acrylonitrile copolymer.
Styrene-carboxyl copolymer.
Styrene-isobutylene copolymer.
Styrene-maleic anhydride copolymers.
Styrene methacrylic acid copolymer.
Styrene methacrylic copolymer potassium.
Sunflower oil.
Tall oil.
Urea formaldehyde polymer.
Zein.

Pigments and Fillers

Aluminum.
Aluminum potassium silicate (mica).
Antimony oxide.
Asbestos.
Bentonite.
Calcium carbonate.
Calcium metasilicate.
Carbon black (channel process).
Clay (kaolin).
Diatomaceous earth.
Iron oxides.
Magnesium carbonate.
Magnesium silicate.
Silicon dioxide.
Sodium aluminosilicate.
Sodium calcium aluminum silicate.
Sodium calcium silicate.
Titanium dioxide.
Titanium dioxide-barium sulfate.
Titanium dioxide-calcium sulfate.
Titanium dioxide-magnesium silicate.
Zinc oxide.
Zinc sulfide.

Plasticizers

Acetyl tributyl citrate.
Acetyl triethyl citrate.
Alkylated aromatic hydrocarbon where the alkylated compound may be benzene or naphthalene or their homologues; alkylating agents are C_7–C_{12} olefins.
2-Biphenyl diphenyl phosphate.
Butoxy polypropylene glycol.
Butoxy polypropylene glycol oleate.
Butyl acetyl ricinoleate.
Butyl benzyl phthalate.
Butyldecyl phthalate.
Butyloctyl phthalate.
p-tert-Butylphenyl salicylate.
Butyl phthalyl butyl glycolate.
Calcium ricinoleate.
Castor oil.
Castor oil, hydrogenated.
Chlorinated biphenyl.
Chlorinated terphenyl.
tri-β-Chloroethyl phosphate.
Coconut oil.
N-Cyclohexyl *p*-toluene sulfonamide.
Dibutoxy ethyl phthalate.
Dibutyl maleate.
Dibutyl phthalate.
Dibutyl sebacate.
Dicyclohexyl phthalate.
Diethyl phthalate.
Diethylene glycol dibenzoate.
di-(2-Ethylhexoate).
di-(2-Ethylhexyl) adipate.
di-(2-Ethylhexyl) phthalate.
di-(2-Ethylhexyl) hexahydrophthalate.
Dihydroxy abietyl phthalate.
Dimethyl phthalate.
di-*n*-Octyldecyl adipate.
Dioctyl phthalate.
Dioctyl sebacate.
di-Isobutyl adipate.
di-Isobutyl phthalate.
di-Isodecyl adipate.
di-Isodecyl phthalate.
di-Isooctyl phthalate.
Diphenyl-2-ethylhexyl phosphate.
Diphenyl phthalate.
Diphenyl and terphenyl, hydrogenated.
Dipropylene glycol.
Dipropylene glycol dibenzoate.
Epoxidized soybean oil.
Ethylene glycol.
2-Ethylhexyl diphenyl phosphate.
Ethyl phthalyl ethyl glycolate.
Ethyl-*p*-toluene sulfonamide.
Fish oil.
Formaldehyde o- and *p*- toluene sulfonamide.
Glycerin.
Glycol fatty ester polymer.
1,2,6-Hexanetriol.
Hexylene glycol.
Hydrogenated terphenyl.
Invert sugar.
Isopropyl citrate.
Kerosene oil.
Kerosene oil, deodorized.
Ketene dimers of palmitic and stearic acids mixtures.
Mannitol.
Methyl acetyl ricinoleate.
Methyl ethers of mono-, di- and tripropylene glycol.
Methyl phthalyl ethyl glycolate.
Methyl ricinoleate.
Mineral oil.
o-Nitro biphenyl.
Octyldecyl phthalate.
Oiticica oil.
Oleic acid and polyethylene glycol ester.
Palm oil.
Peanut oil, sulfated.
Pentaerythritol tetrastearate.
Phenoxypolyethylene glycol.
Pine oil.
Polyalkylene glycol.
Polyester resins.
Polyethylene glycol (molecular weight 200–6000).
Polyoxyethylated castor oil.
Polyoxyethylated fatty alcohols.
Polyoxyethylated nonyl phenol.
Polyoxyethylated oleyl alcohol.
Polyoxyethylene (9–11 ethoxy groups) (octyl- and/or nonylphenol).
Polyoxyethylene (4-phenol).
Polypropylene glycol (150–3000 molecular weight).
Propylene glycol.
Rice bran oil, sulfated.
Sodium ricinoleate.
Sorbitol.
Soybean oil.
Starch hydrolysates.
Stearyl citrate (mono-, di-, tri-).
Sucrose octaacetate.
Terphenyl.
Tetrasodium *n*-(1,2-dicarboxyethyl)-*n*-octadecyl sulfosuccinate.
Tin stearate.
o- and *p*-Toluene ethyl sulfonamide.
o- and *p*-Toluene sulfonamide.
Triacetin (glyceryl triacetate).
Tributyl citrate.
Triethyl citrate.
Triethylhexyl phosphate.
Triethylene glycol.
Triethylene glycol di-(2-ethyl) hexoate.
Triethylphosphate.
Triphenylphosphate.
3-(2-Xenolyl)-1,2-epoxypropane.

Preservatives (Maximum Percent in Adhesive as Indicated)

	Percent
Alkyl dimethyl benzyl ammonium chloride	0.5
Benzoic acid	1.0
p-Benzoxyphenol	0.5
p-Benzyloxyphenol	0.5
2,6-di-*tert*-Butyl-4-methylphenol	0.5
tri-*tert*-Butyl-*p*-phenylphenol	0.5
Calcium propionate	1.0
Calcium sorbate	1.0
p-Chlorometracresol	0.5
Coconut amine salt of tetrachlorophenol	0.5
Copper 8-quinolinolate	0.5
Copper sulfate	0.5
Ethyl-*p*-hydroxybenzoate	1.0
Formaldehyde	0.5
p-Formaldehyde	0.5
4,4'-Isopropylidenediphenol (polybutylated) mixture	0.5
Methylparaben (methyl *p*-hydroxybenzoate)	1.0
Pentachlorophenol	0.5
Phenol	0.5
o-Phenylphenol	0.5
Potassium sorbate	1.0
Propylparaben (propyl *p*-hydroxybenzoate)	1.0
Quaternary ammonium chloride (hexadecyl, octadecyl, octadecenyl derivative)	0.5
Salicylic acid	1.0
Sodium benzoate	1.0
Sodium dehydroacetate	0.5
Sodium diacetate	1.0
Sodium pentachlorophenate	0.5
Sodium o-phenylphenate	0.5
Sodium propionate	1.0
Sodium salicylate	1.0
Sodium salt of mercaptobenzothiazole	0.5
Sodium salt of dimethyl dithiocarbamic acid and 2-mercaptobenzothiazole	0.5
Sodium sorbate	1.0
Sorbic acid	1.0
Thymol	0.5
Zinc napthenate and dehydrobiethyl amine mixture	0.5

Solvents

Acetone.
Aminomethylpropanol.
Amyl acetate.
Benzene (benzol).
Benzyl alcohol.
Butoxy-ethoxy propanol.
Butyl acetate.
n-Butyl alcohol.
Butyl alcohol, *tert*.
Butyl lactate.
Carbon tetrachloride.
Chloroform.
Cyclohexanol.
Diacetone alcohol.
Diethylene glycol monobutyl ether.
Diethylene glycol monobutyl ether acetate.
Diethylene glycol monoethyl ether.
Diethylene glycol monoethyl ether acetate.
Diethylene glycol monomethyl ether.
Diisobutyl ketone.
Diisoheptane.
Dimethyl formamide.
Dioxane.
Dipentene.
Ethyl acetate.
Ethyl alcohol.
Ethylene dichloride.
Ethylene glycol monobutyl ether.
Ethylene glycol monobutyl ether acetate.
Ethylene glycol monoethyl ether.
Ethylene glycol monoethyl ether acetate.
Ethylene glycol monoethyl ether ricinoleate.
Ethylene glycol monoethyl ether.
Ethyl formate.
Ethyl lactate.
Furfural.
Furfuryl alcohol.
Glycol diacetate.
Heptane.
Hexadecanol.
Hexane.
Isobutyl alcohol.
Isophorone.
Isopropyl acetate.
Isopropyl alcohol.
Kerosene, completely aliphatic.
Methyl acetate.
Methyl alcohol.
Methylene chloride.
Methyl ethyl ketone.
Methyl isobutyl ketone.
Monochlorobenzene.
Naphtha.
2-Nitropropane.
Perchloroethylene.
Propyl alcohol.
Propylene carbonate.
Tetrahydrofuran.
Tetrahydrofurfuryl alcohol.
Toluene.
1,1,1-Trichloroethane.
1,1,2-Trichloroethane.
Trichloroethylene.
Turpentine.
Xylene.

Antioxidants

4,4-thiobis-6-*tert*-Butyl-*m*-cresol.
Butylated hydroxyanisole.
Butylated hydroxytoluene.
Dihydroxydichlorodiphenyl methane.
Dilauryl triodipropionate.
Dinonylphenol.
N,N'-Diphenyl-*p*-phenylenediamine.
Distearyl thiodipropionate.
Gum guaiac.
Hydroquinone monobenzyl ether.
p-Isopropoxy diphenylamine.
Nordihydroguaiaretic acid.
Octylphenol.
Octylphenoxyethanols.
Phenol monosulfide, polyalkylated.
Phenyl-β-naphthylamine (free of β-naphthylamine).
Polymerized trimethyl dihydroquinoline.
Propyl gallate.
Thiodipropionic acid.
p-(*p*-Tolyl sulfanilamide) diphenylamine.
2,4,5-Trihydroxy butyrophenone.
tri tert.-Butyl-*p*-phenylphenol.

Surface-Active Agents, Including Defoamers (Maximum Percent in Adhesive 1.0 Percent)

Aliphatic polyoxyethylene ethers. Methyl tallowate.
Amine, secondary (hexadecyl, octadecyl) of hard tallow.
Ammonium linoleate.
Butyl ricinoleate.
Cetyl alcohol.
Coconut alkylolamide.
Coconut oil, sulfonated.
Corn oil.
Cottonseed fatty acid.
Diethanolamine stearate.
Diethylene glycol hydrogenated tallowate, monoester.
Diethylene glycol laurate.
Diglycol laurate.
Dimethyle polysiloxane.
Dioctyl sodium sulfosuccinate.
Glycerides, di- and mono-esters from edible fats or oils.
Lauryl alcohol.
Lauryl alcohol sulfate sodium salts.
Lecithin.
Marine oil fatty acid soaps (hydrogenated).
Methyl oleate.
Methyl oleate-palmitate mixture.
Mustardseed oil, sulfated.
Myristyl alcohol.
Myristyl (tetradecyl) sulfate, sodium.
Naphthalene, monosulfonated.
Nonyl phenolethylene oxide condensates (with 40 mols ethylene oxide).
Octylphenoxy ethanol.
Oil paraffin.
Oleic acid, sulfated.
Pentaerythritol monostearate.
Polyalykylene glycol ethers.
Polyethylene glycol 200 monooleate.
Polyethylene glycol 200 monostearate.
Polyethylene glycol 200 monotallate.
Polyethylene glycol 400 stearate.
Polyethylene glycol 400 dioleate.
Polyethylene glycol 400 distearate.
Polyethylene glycol 400 ditallate.
Polyethylene glycol 400 monococoate.
Polyethylene glycol 400 monolaurate.
Polyethylene glycol 400 monooleate.
Polyethylene glycol 400 monostearate.
Polyethylene glycol 400 monotallate.
Polyethylene glycol 400 tallow diester and glycerides.
Polyethylene glycol 450 monostearate.
Polyethylene glycol 600 dioleate.
Polyethylene glycol 600 monoricinoleate.
Polyethylene glycol 600 oleate.
Polyethylene glycol 600 monooleate.
Polyethylene glycol 1900 di-*sec*-butylphenyl ether.
Polyethylene glycol monoisooctyl-phenyl ether.
Polyglycol ether of tridecyl alcohol.
Polyoxyalkylene glycol (800 to 4000 molecular weight).
Polyoxyethylene oleate.
Polyoxyethylene sorbitan monolaurate.
Polyoxyethylene (20) sorbitan monooleate.
Polyoxyethylene sorbitan monopalmitate.
Polyoxyethylene sorbitan monostearate.
Polyoxyethylene (40) stearate.
Potassium oleate.
Potassium stearate.
Propylene glycol monococoate.
Propylene glycol monolaurate.
Rice bran oil, sulfated.
Silicones.
Sodium alkyl aryl sulfonate.
Sodium decylsulfate.
Sodium dihexyl sulfosuccinate.
Sodium dioctyl sulfosuccinate.
Sodium dodecyl benzene sulfonate.
Sodium 2-ethylhexyl sulfate.
Sodium lauryl sulfate.
Sodium oleate.
Sodium palmitate.
Sodium salt of naphthalene sulfonic acid condensed with formaldehyde.
Sodium stearate.
Sorbitan monooleate.
Sorbitan monopalmitate.
Sorbitan monostearate.
Sorbitan tristearate.
Stearyl cetyl alcohol, technical grade, approximately 65%–80% stearyl and 20%–35% cetyl.
Sulfonated castor oil.
Tall oil fatty acids (linoleic, oleic).
Tall oil fatty acid, methyl ester.
Tall oil soaps.
Tallow.
Tallow, alcohol (hydrogenated).
Tallow, blown (oxidized).
Tallow fatty acids.
Tallow, monoglyceride.
Tallow, propylene glycol ester.
Tallow, sodium soap.
Tallow, sulfated.
Tributyl phosphate.
Triisopropanolamine.

Miscellaneous

Acetic acid.
n-acetylethanolamine.
Aldol-naphthylamine.
1-Alkyl-(C_6-C_{18}) amino-3-amino-propane monoacetate.
Aluminum ammonium sulfate.
Aluminum calcium silicate.
Aluminum hydrate.
Aluminum hydroxide.
Aluminum oleate.
Aluminum palmitate.
Aluminum potassium sulfate.
Aluminum stearate (mono-, di-, tri-).
Aluminum sodium sulfate.
Aluminum sulfate.
Ammonium bicarbonate.
Ammonium bifluoride.
Ammonium borate.
Ammonium carbonate.
Ammonium chloride.
Ammonium citrate.
Ammonium hydroxide.
Ammonium persulfate.
Ammonium phosphate (mono- and di-).
Ammonium potassium hydrogen phosphate.
Ammonium saccharin.
Ammonium silicofluoride.
Ammonium sulfamate.
Ammonium sulfate.
Ammonium thiocyanate.
2,5-di-*tert*-Amylhydroquinone.
Barium peroxide.
Barium sulfate.
Beeswax, bleached (white wax).
Beeswax (yellow wax).
Benzothiazyl disulfide.
Borax.
Boric acid.
Butyl stearate.
Butyl titanate, polymerized.
Calcium acetate.
Calcium chloride.
Calcium citrate.
Calcium diacetate.
Calcium ethyl acetoacetate.
Calcium glycerophosphate.
Calcium hexametaphosphate.
Calcium hydroxide.
Calcium nitrate.
Calcium oleate.
Calcium oxide.
Calcium phosphate (mono-, di-, tri-).
Calcium silicate (mono- and tri-).
Calcium stearate.
Calcium sulfate.
Camphor.
Candelilla wax.
Caramel.
Carnauba wax.
Ceresin wax.
Citric acid.
Cottonseed oil.
Cresyldiphenylphosphate.
Dehydroacetic acid.
Dextrose.
Dicyandiamide.
Diethyl oxalate.
Diethanolamine.
Enzymes.

Ethylenediamine tetraacetic acid tetrasodium salt.
Ferric chloride.
Formamide.
Formic acid.
Fumaric acid.
Glutaro-aldehyde.
Glyceryl borate, modified (glycol boriborate resin).
Glyceryl monohydroxystearate.
Glyceryl monohydroxytallowate.
Glyceryl monooleate.
Glyceryl monoricinoleate.
Glyceryl monostearate.
Glyoxal.
Hexamethylene tetramine.
Hydrochloric acid.
Hydrofluoric acid.
Hydrofluosilicic acid.
Hydrogenated fish oil.
Hydrogen peroxide.
Hydroxyacetic acid.
1-(2-Hydroxyethyl)-1-(4-chlorobutyl)-2-alkyl-(C_8-C_{17}) imidazolinium chloride.
β-Hydroxyethyl pyridinium salt of 2-mercaptobenzothiazole.
Isopropanol amine (mono-, di-, tri-).
tetra-Isopropyl titanate.
Japan wax.
Lactic acid.
Lauryl pyridinium salt of 5-chloro-2-mercaptobenzothiazole.
Linoleamide (linoleic acid amide).
Linoleic acid.
Magnesium chloride.
Magnesium cyclohexyl sulfamate.
Magnesium fluoride.
Magnesium glycerophosphate.
Magnesium hydroxide.
Magnesium oxide.
Magnesium phosphate.
Magnesium stearate.
Magnesium sulfate.
Maleic acid.
Malic acid.
Maltose.
Manganese acetate.
Melamine.
2-Mercaptobenzothiazole.
Methacrylato chromic chloride complex.
2,2-Methylene-bis(4-ethyl-6-*tert*-butyl phenol).
2,2-Methylene-bis(4-methyl-6-nonyl phenol).
2,2-Methylene-bis(4-methyl-6-*tert*-butyl phenol).
1-Methyl-2-hydroxy-4-isopropyl benzene.
Methyl salicylate.
Monoethanolamine.
Microcrystalline wax.
Montan wax.
Morpholine.
Myristo chromic chloride complex.
di-β-Naphthyl-*p*-phenylenediamine.
Octyl alcohol.
Oleamide (oleic acid amide).
Oleic acid.
Oxazoline.
n-Oxydiethylene benzothiazol.
Ozocerite wax.
Palmitamide (palmitic acid amide).
Papain.
Paraffin wax.
Paraffin wax (halogenated).
Petrolatum.
Phosphoric acid.
o-Phthalic acid.
Piperidinium pentamethylenedithiocarbamate.
Polyethylene.
Polyethylene (branched and linear).
Polyethylene (slightly oxidized).
Polyethylene wax.
Polypropylene.
Polystyrene.
Polytetrafluoroethylene.
Polyurethane resin.
Potassium alginate.
Potassium aluminum sulfate.
Potassium bicarbonate.
Potassium bisulfite.
Potassium carbonate.
Potassium Chloride.
Potassium citrate (mono-,di-,tri-).
Potassium hydroxide.
Potassium metabisulfite.
Potassium permanganate.
Potassium persulfate.
Potassium phosphate (mono-,di-,tri-).
Potassium ricinoleate.
Potassium sodium tartrate.
Potassium sulfate.
Potassium tripolyphosphate.
Propionic acid.
Saccharin.
Sebacic acid.
Sodium acetate.
Sodium acid pyrophosphate.
Sodium aluminate.
Sodium aluminum phosphate.
Sodium aluminum pyrophosphate.
Sodium aluminum sulfate.
Sodium bicarbonate.
Sodium bisulfate.
Sodium bisulfite.
Sodium carbonate.
Sodium chloride.
Sodium chlorite.
Sodium chromate.
Sodium citrate (mono-,di-,tri-).
Sodium dehydroacetate.
Sodium fluoride.
Sodium formate.
Sodium heptadecylsulfate.
Sodium hexametaphosphate.
Sodium hydrosulfite.
Sodium hydroxide.
Sodium hypochlorite.
Sodium mercaptobenzol.
Sodium metabisulfite.
Sodium metaborate.
Sodium metaphosphate.
Sodium α-naphthalene sulfonate.
Sodium nitrate.
Sodium nitrite.
Sodium perborate.
Sodium phosphate (mono-,di-,tri-).
Sodium phosphoaluminate.
Sodium polystyrene sulfonate.
Sodium potassium tartrate.
Sodium pyrophosphate.
Sodium saccharin.
Sodium sesquicarbonate.
Sodium sulfate.
Sodium sulfite.
Sodium tetradecylsulfate.
Sodium tetrapyrophosphate.
Sodium thiocyanate.
Sodium thiosulfate.
Sodium triphosphate.
Sodium tripolyphosphate.
Sperm oil wax.
Spermaceti wax.
Stannous chloride.
Stearamide (stearic acid amide).
Stearato-chromic chloride complex.
Stearic acid.
Stearyl dimethylbenzyl ammonium chloride.
Sucrose.
Sulfamic acid.
Sulfur.
Sulfur dioxide.
Sulfuric acid.
Talc.
Terpineol.
Tetraethylene pentamine.
Tetraethylthiuram disulfide.
Tetramethylthiuram disulfide.
Tetramethylthiuram monosulfide.
Triethanolamine.
Urea.
Vanillin.
Waxes, microcrystalline and paraffin Type I: A congealing point of 160° F. maximum (ASTM D-938), an absorptivity at 290 millimicrons of 0.04 liter per gram centimeter maximum (ASTM E-131), an oil content of 1.5 percent maximum (ASTM D-721), and a Saybolt color of 20 minimum (ASTM D-156). Type II: Absorptivity at 290 millimicrons of 1.0 maximum, an oil content of 5.0 percent maximum, and a color of 3.0 maximum (ASTM D-1500).
Zinc acetate.
Zinc ammonium chloride.
Zinc chloride.
Zinc dibutyldithiocarbamate.
Zinc diethyldithiocarbamate.
Zineb (zinc dimethyldithiocarbamate in combination with zinc salt of 2-mercaptobenzothiazole).
Zinc formaldehyde sulfoxalate.
Zinc hydrosulfite.
Zinc orthophosphate.
Zinc resinate.
Zinc salt of mercaptobenzothiazole.
Zinc stearate.
Zinc sulfate.

Adhesive Ingredients

Alkyl aryl polyether alcohols.
Alkyl phenolethylene oxide condensates.

Others

Certified food colors.
Terpene phenolic resins.
Terpene resins.

Dated: January 16, 1961.

[SEAL] J. K. KIRK,
Assistant to the Commissioner of Food and Drugs.

[F.R. Doc. 61-532; Filed, Jan. 19, 1961; 8:50 a.m.]

FEDERAL AVIATION AGENCY

[14 CFR Part 507]

[Reg. Docket No. 626]

AIRWORTHINESS DIRECTIVES

Piper Aircraft

Pursuant to the authority delegated to me by the Administrator (14 CFR Part 405), notice is hereby given that the Federal Aviation Agency has under consideration a proposal to amend Part 507 of the Regulations of the Administrator to include an airworthiness directive requiring inspection of the fuselage fabric on Piper aircraft. This directive would supersede AD 59-16-3 published as Amendment 34, 24 F.R. 6581. As a result of inspections made in accordance with AD 59-16-3 it has been found that on some aircraft the fabric attachment is not adequate and it is not possible to detect critical deterioration unless the windshield is removed.

Interested persons may participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should be submitted in duplicate to the Docket Section of the Federal Aviation Agency, Room B-316, 1711 New York Avenue NW., Washington 25, D.C. All communications received on or before February 21, 1961, will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of comments received. All comments submitted will be available, in the Docket Section, for examination by interested persons when the prescribed date for return of comments has expired. The proposal will not be given further distribution as a draft release.

This amendment is proposed under the authority of sections 313(a), 601 and 603 of the Federal Aviation Act of 1958 (72 Stat. 752, 775, 776; 49 U.S.C. 1354(a), 1421, 1423).

In consideration of the foregoing, it is proposed to amend § 507.10(a) of Part 507 (14 CFR Part 507) by adding the following airworthiness directive:

PIPER. Applies to all Models J–4, J–5, PA–12, PA–14, PA–15, PA–16, PA–17, and PA–20 aircraft, and Model PA–22, Serial Numbers 22–1 up to and including Serial Number 22–7999.

Compliance required as indicated.

Fabric failures have been experienced where the fabric attaches to the channel along the top edge of the windshield.

(a) For all aircraft not on progressive inspection systems the requirements of paragraph (c) must be accomplished at the next periodic inspection after the effective date of this amendment and at each periodic inspection thereafter.

(b) For all aircraft on progressive inspection systems the requirements of paragraph (c) must be accomplished by not later than June 15, 1961, and at least once each year thereafter.

(c)(1) Inspect the fabric over the top surface of the attachment channel and along its forward edge (windshield removal not required).

(2) If any deterioration is found, prior to further flight, remove the windshield and add a fabric reinforcement strip starting from a line at least two inches behind the aft side of the channel and extending under the forward edge of the channel, around the inner surface of the channel and down to the fuselage tube member.

(d) For aircraft manufactured prior to June 1, 1959, in addition to the requirements of paragraph (c), the following must be accomplished prior to June 15, 1961.

(1) Remove the windshield and inspect the fabric attachment to the channel that retains the top edge of the windshield.

(2) If any deterioration is found, a fabric reinforcement strip must be added as described in paragraph (c) prior to further flight.

(3) If no deterioration is found, unless already accomplished, the fabric attachment to the channel must be modified so that the fabric or a spliced-in section of fabric follows the contour of the channel and extends down to the fuselage tube member.

This supersedes Amendment 34, 24 F.R. 6581.

Issued in Washington, D.C., on January 16, 1961.

GEORGE C. PRILL,
Acting Director, Bureau of Flight Standards.

[F.R. Doc. 61–493; Filed, Jan. 19, 1961; 8:47 a.m.]

[14 CFR Part 601]

[Airspace Docket No. 60–LA–59]

CONTROL ZONES

Designation

Pursuant to the authority delegated to me by the Administrator (14 CFR 409.13), notice is hereby given that the Federal Aviation Agency is considering an amendment to Part 601 of the regulations of the Administrator, the substance of which is stated below.

The Federal Aviation Agency has under consideration the designation of a control zone at Gray Army Air Field, Fort Lewis, Wash., within a 5-mile radius of the Gray AAF Terminal VOR (latitude 47°05′01″ N., longitude 122° 35′04″ W.) and within 2 miles either side of the 352° True radial of the Terminal VOR extending from the 5-mile radius zone to 10 miles north of the Terminal VOR excluding the area which would coincide with the McChord AFB, Wash., control zone, Fort Lewis, Wash., Restricted Areas (R–504 and R–505) and the Tacoma, Wash. (McChord AFB) Restricted Area/Military Climb Corridor (R–546).

Designation of the control zone as proposed would provide protection to aircraft executing prescribed instrument approach procedures at Fort Lewis AAF.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Management Field Division, Federal Aviation Agency, 5651 West Manchester Avenue, P.O. Box 90007, Airport Station, Los Angeles 45, Calif. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Management Field Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room B–316, 1711 New York Avenue NW., Washington 25, D.C. An informal Docket will also be available for examination at the office of the Regional Air Traffic Management Field Division Chief.

This amendment is proposed under sections 307(a) and 313(a) of the Federal Aviation Act of 1958 (72 Stat. 749, 752; 49 U.S.C. 1348, 1354).

Issued in Washington, D.C., on January 12, 1961.

CHARLES W. CARMODY,
Chief, Airspace Utilization Division.

[F.R. Doc. 61–494; Filed, Jan. 19, 1961; 8:47 a.m.]

Notices

DEPARTMENT OF THE TREASURY

Office of the Secretary

[AA 643.3–W]

PORTLAND CEMENT FROM DENMARK

Determination of No Sales at Less Than Fair Value

JANUARY 13, 1961.

A complaint was received that portland cement from Denmark was being sold in the United States at less than fair value within the meaning of the Antidumping Act of 1921.

I hereby determine that portland cement from Denmark is not being, nor likely to be, sold at less than fair value within the meaning of section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)).

Statement of reasons. The available information indicated that a comparison between purchase price and adjusted home market price was appropriate for the purpose of a fair value comparison. It was found that the purchase price was lower than the adjusted home market price as to one of the two importations received this year, both imported in the first quarter of 1960.

The purchase price was computed on the basis of the C&F price less included ocean freight, stowage, and cost of spare bags included in the shipments. The adjusted home market price was computed on the basis of the ex-factory price less a quantity discount and cash discount, plus an adjustment for commission included in the purchase price, and for packing cost differential.

The total quantity of the importation which appeared to show a dumping margin amounted to about 0.01 percent of domestic production of portland cement. This was received and appraised prior to receipt of the complaint. The quantity involved was considered to be not more than insignificant, and there have been no importations since that time.

This determination and the statement of reasons therefor are published pursuant to section 201(c) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(c)).

[SEAL] A. GILMORE FLUES,
Acting Secretary of the Treasury.

[F.R. Doc. 61–527; Filed, Jan. 19, 1961; 8:50 a.m.]

[Treasury Dept. Order 150–54]

DEPUTY COMMISSIONER

Designation To Serve as Acting Commissioner

Deputy Commissioner of Internal Revenue C. I. Fox is designated to serve as Acting Commissioner of Internal Revenue until a Commissioner of Internal Revenue is appointed and assumes the duties of the office.

Dated: January 19, 1961.

[SEAL] FRED C. SCRIBNER, Jr.,
Acting Secretary of the Treasury

[F.R. Doc. 61–655; Filed, Jan. 19, 1961; 11:22 a.m.]

POST OFFICE DEPARTMENT

ORGANIZATION AND ADMINISTRATION

Bureau of the Chief Postal Inspector

Federal Register Document 60–6425, appearing on pages 6526 to 6545 of the issue for July 12, 1960, is amended by revising section 823.1 *Bureau of the Chief Postal Inspector* to read as follows:

823.1 BUREAU OF THE CHIEF POSTAL INSPECTOR

a. Directs the execution of policies, regulations, and procedures governing all investigations, and operating inspections and audits for the Postal Service.

b. Advises the Postmaster General, the Deputy Postmaster General, and other principal assistants on the condition and needs of the service.

c. Acts as Security Officer and Defense Mobilization Officer for the Postal Establishment.

d. Directs the selections, training, and supervision of inspection service personnel.

e. Maintains liaison with other investigative and law enforcement agencies of the Government.

.11 *Deputy Chief Postal Inspector.* Advises and assists the Chief Postal Inspector and acts for him in his absence or at his direction.

.12 *Assistant Chief Postal Inspector.* Directs those responsibilities of the Chief Postal Inspector which relate to mail loss and depredations, mail fraud investigations, financial investigations, service investigations and inspections, and identification laboratory.

.121 *Mail Loss and Depredations Division.* a. Directions investigations of:

(1) Mail theft, loss, rifling, and damage.

(2) Armed robbery, burglary, or assaults on postal employees.

(3) Casualties, fires, natural disasters, and train and plane crashes involving the Postal Service.

(4) Alterations and forgeries of postal financial papers.

(5) Counterfeiting of stamps, money orders, or other postal paper.

b. Traces registered and other mail losses with foreign governments.

c. Maintains liaison with other Federal, State, and local law enforcement agencies.

d. Coordinates major postal criminal cases on national basis.

.122 *Mail Fraud Investigations Division.* a. Directs investigations of:

(1) Mail frauds, lotteries, conspiracies.

(2) Extortions, mailing of bombs, poisons, obscene, scurrilous, libelous, or other prohibited matter.

b. Maintains liaison with Department of Justice and U.S. attorneys.

c. Examines, analyzes, and disseminates information and decisions affecting criminal investigations.

.123 *Financial Investigations Division.* a. Directs investigations involving:

(1) Embezzlement of funds.

(2) Falsification of records, payroll irregularities.

(3) Inflation of stamp sales.

(4) Misuse of mail permits.

(5) Violations of Private Express Statutes.

b. Determines financial responsibility in cases involving mistreatment of mail or irregularities in handling of official funds, revenues, and property, and accidents and claims arising therefrom.

c. Initiates actions to enforce recoveries resulting from mail robberies, misappropriations, and other financial irregularities; determines ownership and disposition of money and property recovered by inspectors.

.124. *Service Investigations and Inspections Division.* a. Directs special and confidential investigations.

b. Inspects and rates post offices.

c. Directs surveys and service investigations requested by operating management.

d. Directs investigations of:

(1) Major charges involving postal employees and the preparation of charges.

(2) Malfeasance and Misfeasance (coordinated, as applicable, with Department of Justice).

(3) Suitability of postmaster candidates.

c. Plans for and transports in inspector custody President's mail while he is traveling or is away from Washington.

.125 *Identification Laboratory.* a. Conducts scientific examination and identification of questioned documents, inks, etc., used in postal crimes.

b. Presents expert testimony in court action.

.13 *Assistant to the Chief Postal Inspector.* Administers staff matters and, with the Chief Postal Inspector, provides general direction on defense coordination matters as follows:

a. Assists the Chief Postal Inspector on matters of organization, personnel administration, budget administration, management controls, methods, procedures, office management, records management, and issuance of publications and instructions; on examination and selection of inspection service personnel; and on operation of Inspectors' Training School.

b. Formulates, develops, and coordinates civil defense and defense mobilization programs for the Postal Establishment; maintains liaison with the Office of Civil and Defense Mobilization, State and local civil defense organizations, and other agencies concerning these activities.

c. Maintains liaison with the Department of Defense on postal service problems and administers the Army Affiliation Program for the Postal Establishment.

.14 *Internal Audit Division.* a. Develops and directs an internal audit program for the Post Office Department, including property, fiscal, cost, and operating accounts pertaining to revenues, appropriated funds, and assets of the Department.

b. Establishes standards, principles, and procedures for audits of all postal activities and organizations for use by internal auditors and postal inspectors.

c. Develops programs and conducts internal audits of postal activities and organizations other than post offices.

d. Makes post-audit reviews and evaluations of the procurement and contracting policies, procedures, methods, and practices which the Department follows.

e. Provides audit service to the Department's contracting officers under negotiated fixed-price and cost-type contracts by (1) analyzing and substantiating cost and price estimates and proposals submitted by prospective contractors, (2) performing on-site audits of contractors' records and determining allowable cost under cost-type and price-redeterminable contracts, and (3) coordinating results when Defense Department auditors perform assist-audits of contractors' records for the Post Office Department.

f. Represents the Department in dealing with other Government agencies and industry representatives on internal and contract auditing matters, including the coordination of audit programs with General Accounting Office auditors assigned to the Post Office Department.

.15 *Personnel Security.* a. Formulates, with the Office of the General Counsel, personnel security regulations and procedures of the Department; administers personnel and physical security programs for the Postal Establishment.

b. Maintains liaison with the Department of Justice, the Civil Service Commission, and other agencies relative to security activities.

c. Assists operating officials and appointing officers in determining sensitive positions; evaluates security checks and investigation; effects clearances or recommends appropriate action; prepares charges in instances of suspension.

d. Collaborates with the Office of the General Counsel on recommendations for disposition of cases in which suspended employees have submitted statements refuting or explaining security charges against them.

e. Designates postal officials to serve on security hearing boards and arranges facilities for those boards.

(R.S. 161, as amended, sec. 1(b), 63 Stat. 1066, sec. 501, 74 Stat. 580 (Pub. Law 86-682); 5 U.S.C. 22, 133z-15, 39 U.S.C. 501)

[SEAL] HERBERT B. WARBURTON,
General Counsel.

[F.R. Doc. 61-526; Filed, Jan. 19, 1961; 8:49 a.m.]

DEPARTMENT OF AGRICULTURE

Office of the Secretary

CALIFORNIA, IDAHO, MISSISSIPPI, NORTH CAROLINA AND UTAH

Designating Certain Lands as National Forests or Parts of National Forests

Pursuant to authority contained in section 11 of the Act of March 1, 1911 (36 Stat. 962; 16 U.S.C. 521) it is hereby ordered as follows:

(1) Any lands of the United States within the areas hereinafter described under the captions "Delta National Forest—Mississippi" and "Uwharrie National Forest—North Carolina" that have been or hereafter may be acquired pursuant to the said Act of March 1, 1911, as amended and supplemented, shall be administered as the said national forests respectively:

DELTA NATIONAL FOREST—MISSISSIPPI

CHOCTAW MERIDIAN

T. 9 N., R. 5 W.,
That part of the township lying westerly of the Yazoo River.
T. 10 N., R. 5 W.,
That part of the township lying westerly or northerly of the Big Sunflower and Yazoo Rivers.
T. 11 N., R. 5 W.,
Secs. 17 to 20, inclusive, secs. 28 to 31, inclusive, and those parts of secs. 16, 21, 27, 32, 33, and 34 lying northerly or westerly of the Big Sunflower River.
T. 12 N., R. 5 W.,
That part of the township lying northwest of the Sharkey-Yazoo County line.
T. 13 N., R. 5 W.,
Secs. 25 to 29, inclusive;
Sec. 31, E½;
Secs. 32 to 36, inclusive.
T. 9 N., R. 6 W.,
Secs. 1 to 6, inclusive;
Secs. 8 to 17, inclusive;
Secs. 20 to 29, inclusive;
Secs. 34 to 36, inclusive.
T. 10 N., R. 6 W.
T. 11 N., R. 6 W.
T. 12 N., R. 6 W.,
Secs. 1, 12, 13, 14, 15, 22, and 28, those parts lying southerly and easterly of the Big Sunflower River;
Secs. 23 to 27, inclusive;
Sec. 29, S½, and that part of the NE¼ lying easterly of the Big Sunflower River;
Sec. 30, S½N½, S½;
Secs. 31 to 36, inclusive.

UWHARRIE NATIONAL FOREST—NORTH CAROLINA

Beginning at a point on the easterly and left bank of the Pee Dee River at intersection with North Carolina State Highway No. 27; thence in a south and easterly direction with the northerly right-of-way line of said highway to the easterly right-of-way line of North Carolina State Highway No. 109; thence in a southerly direction along the easterly right-of-way line of said highway to the center line of Big Town Creek; thence in a southerly direction with the center line of said creek to the northerly right-of-way line of North Carolina State Highway No. 731; thence in an easterly direction along the said northerly right-of-way line of State Highway 731 to the westerly right-of-way line of U.S. Highway No. 220; thence, northerly, along said westerly right-of-way line of U.S. Highway No. 220, to the city limits of the Town of Candor, North Carolina; thence with the city limits of said Town, along its westerly periphery to the westerly right-of-way line of U.S. Highway 220; thence, continuing northerly along the westerly right-of-way line of said highway to the city limits of the Town of Biscoe, North Carolina; thence with the city limits of said town along its south and west boundaries to the southerly right-of-way line of North Carolina State Highway No. 27; thence westerly along the southerly right-of-way line of said highway to the south boundary of Forest Service Tract No. 798; thence northeasterly along the south line of said tract to Corner No. 13; thence in same direction and along same line to Corner No. 14; thence southeasterly along the center line of Spring Branch which is the south line of said tract to Corner No. 1; thence in a northerly direction along the east line of said tract which is the center line of Denson Creek to Corner No. 2; thence northeasterly along the east line of said tract to Corner No. 4; thence southwesterly along the north line of said tract to Corner No. 5; thence northwesterly along the north line of said tract to Corner No. 6; thence southwesterly along the north line of said tract to Corner No. 7; thence northwesterly along the north line of said tract to Corner 8; thence southwesterly along the north line of said tract to Corner No. 9; thence southerly along the west line of said tract to the southerly right-of-way line of North Carolina State Highway No. 27-A; thence in a westerly direction along the southerly right-of-way line of said highway to the city limits of the Town of Troy, North Carolina; thence with the city limits of said town along its east and north boundaries to the westerly right-of-way line of County Road No. 1310; thence in a northerly direction along the westerly right-of-way line of said road to the northerly right-of-way line of County Road No. 1315; thence in an easterly direction along the northerly right-of-way line of said road to the westerly right-of-way line of County Road No. 1312; thence northerly along the westerly right-of-way line of said road to the south line of Forest Service Tract No. 1241; thence easterly along the south line thereof to Corner No. 4; thence northerly along the east line thereof to Corner No. 5; thence westerly along the north line thereof to the westerly right-of-way line of County Road No. 1312; thence in a northerly direction along the westerly right-of-way line of said road to the westerly right-of-way line of County Road No. 1116; thence northerly along the westerly right-of-way line of said road to the southerly right-of-way line of County Road No. 1115; thence westerly along the southerly right-of-way line of said road to the westerly right-of-way line of County Road No. 1114; thence in a northerly direction along the westerly right-of-way line of said road to the southerly right-of-way line of County Road No. 1142; thence westerly along the southerly right-of-way line of said road to the center line of Betty McGee's Creek; thence with the center line thereof in a southwesterly direction to the easterly right-of-way line of County Road No. 1107; thence, southerly and westerly with the easterly right-of-way line of County Roads 1107 and 1105, to the westerly right-of-way line of County Road 1103; thence in a northerly direction with the westerly right-of-way line of County Road 1103 to the southerly right-of-way line of County Road 1100;

thence in a westerly direction with said right-of-way line to Corner No. 1 of Forest Service Tract No. 431 in the center line of said County Road No. 1100; thence westerly, along the north line of said tract No. 431, 4.28 chains to Corner No. 2 thereof; thence in a southerly direction along west line of said tract to the southerly right-of-way line of said County Road 1100; thence with said right-of-way line of County Road No. 1100, in a southwesterly direction, to the westerly right-of-way line of North Carolina State Highway No. 109; thence in a northwesterly direction, with the westerly right-of-way line of North Carolina Highway No. 109, to the southerly right-of-way line of County Road No. 2546; thence in a northwesterly direction with the southerly right-of-way line of County Road No. 2546 to the southeasterly right-of-way line of North Carolina State Highway No. 49; thence in a southwesterly direction with said right-of-way line to the North line of Forest Service Tract No. 517; thence westerly along the north line thereof to Corner No. 8 of said tract; thence in a southerly direction along the west line of said tract to the southeasterly right-of-way line of North Carolina State Highway No. 49; thence in a southwesterly direction along the southeasterly right-of-way line of said highway to the east boundary line of Forest Service Tract No. 7b; thence in a northerly direction along the east line thereof to Corner No. 7 of said tract; thence northerly along the east line of said tract to Corner No. 6 of said tract; thence in a westerly direction along the north line of said tract to Corner No. 5 of said Tract No. 7b; thence in a southerly direction along the west line of said tract to the southeasterly right-of-way line of State Highway No. 49; thence in a southwesterly direction along the southeasterly right-of-way line of State Highway No. 49 to the east and left bank of the Yadkin River; thence in a southerly direction along the easterly banks of, and following the various meanders of, the Yadkin River, the Badin Lake (into which the Yadkin River flows), the Pee Dee River (which starts at the spillway of Badin Lake Dam) and Lake Tillery approximately 30 miles to the point of beginning.

Also, those certain tracts acquired by the United States and located outside of the above-described boundaries, said tracts being identified as Forest Service Tracts numbered 197, 352, 365, 367, 1263a, 1265, 1279, 120, 228, 243;

The boundaries of the area described above as "Uwharrie National Forest" are graphically shown on the diagram attached hereto and made a part hereof;

(2) Those certain lands of the United States in California and Idaho that were transferred under Public Law 804—84th Congress approved July 26, 1956 (70 Stat. 656), from the Secretary of the Army to the Secretary of Agriculture by order approved April 12, 1957 (22 F.R. 3901–02), (corrected by order approved August 26, 1960 (25 F.R. 8972)), and by order approved August 13, 1959 (25 F.R. 1922), shall be administered as parts of the Los Padres National Forest, California, and the Boise National Forest, Idaho, respectively;

(3) The following-described lands which were acquired by the United States under section 7 of the Act of June 7, 1924 (43 Stat. 654; 16 U.S.C. 569), shall be administered as parts of the national forests hereinafter designated:

LASSEN NATIONAL FOREST, CALIFORNIA

MOUNT DIABLO MERIDIAN

T. 35 N., R. 2 E.,
Sec. 5, SE¼SW¼;
Sec. 8, N½NE¼;
Sec. 10, E½NE¼, SW¼NE¼;
Sec. 11, W½NW¼;
Sec. 12, E½NE¼, SW¼NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 13, E½NE¼, SW¼NW¼, N½SW¼, NE¼SE¼;
Sec. 14, S½NE¼, S½;
Sec. 15, NE¼SE¼.
T. 35 N., R. 3 E.,
Sec. 7, SW¼NE¼, S½NW¼, SW¼;
Sec. 10, NE¼;
Sec. 22, SW¼.

MODOC NATIONAL FOREST, CALIFORNIA

MOUNT DIABLO MERIDIAN

T. 38 N., R. 15 E.,
Sec. 33, NW¼NE¼, NW¼.

BOISE NATIONAL FOREST, IDAHO

BOISE MERIDIAN

T. 2 N., R. 8 E.,
Sec. 20, N½N½, NW¼SW¼.

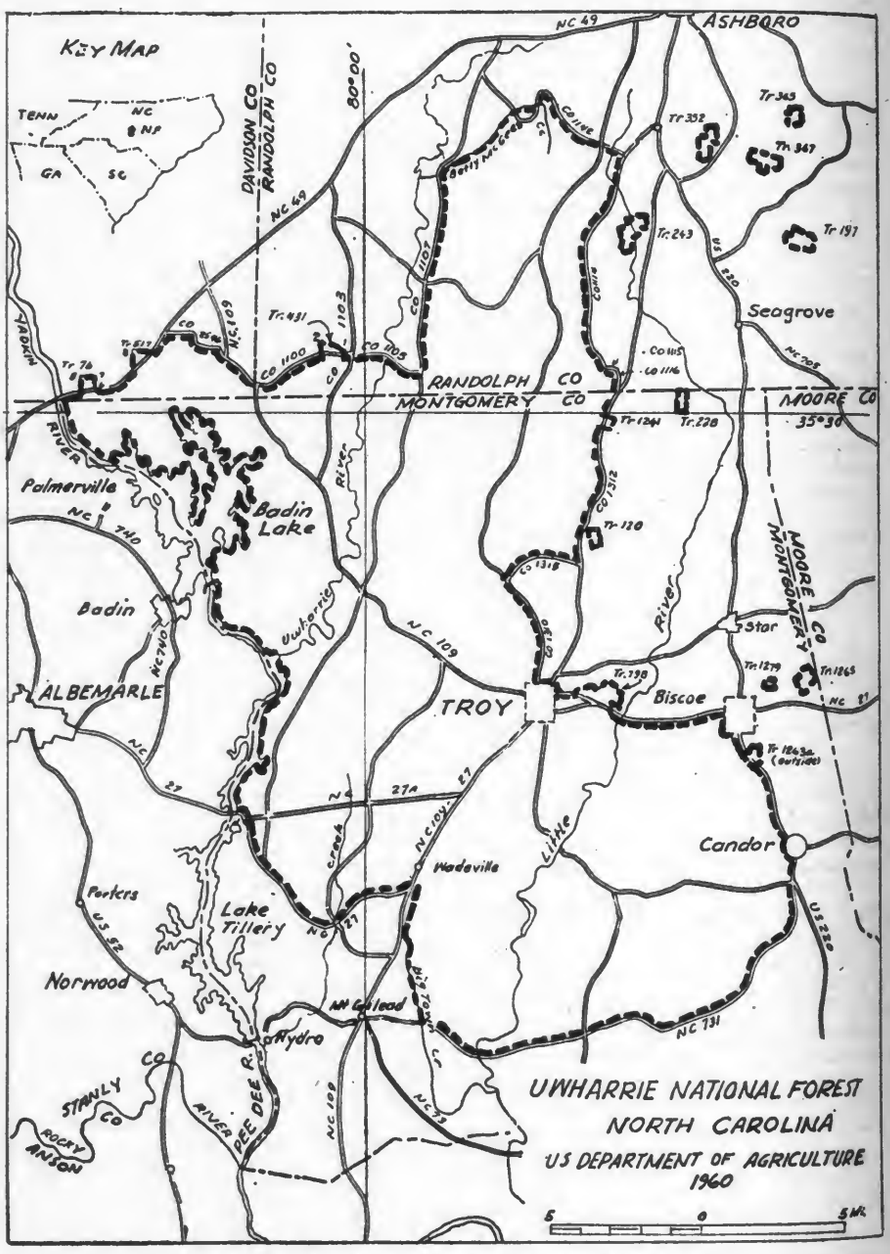
MANTI-LASAL NATIONAL FOREST, UTAH

SALT LAKE MERIDIAN

T. 15 S., R. 5 E.,
Sec. 33, E½W½SE¼SW¼, E½SE¼SW¼, S½SE¼;
Sec. 34, SW¼SW¼.
T. 18 S., R. 3 E.,
Sec. 8, S½SW¼;
Sec. 17, NW¼NW¼;
Sec. 18, NE¼NE¼.

Dated: January 12, 1961.

E. T. BENSON,
Secretary of Agriculture.



[F.R. Doc. 61-362; Filed, Jan. 19, 1961; 8:48 a.m.]

ARKANSAS, MISSISSIPPI, NEW MEXICO, AND SOUTH DAKOTA

Designation of Areas for Production Emergency Loans

For the purpose of making production emergency loans pursuant to section 2 (a) of Public Law 38, 81st Congress (12 U.S.C. 1148a–2(a)), as amended, it has been determined that in the following counties in the States of Arkansas, Mississippi, New Mexico, and South Dakota, production disasters have caused a need for agricultural credit not readily available from commercial banks, cooperative lending agencies, or other responsible sources.

ARKANSAS: Pulaski.
MISSISSIPPI: Washington.
NEW MEXICO: Lea, Quay.
SOUTH DAKOTA: Edmunds.

Pursuant to the authority set forth above, production emergency loans will not be made in the above-named counties after June 30, 1961, except to applicants who previously received such assistance and who can qualify under established policies and procedures.

Done at Washington, D.C., this 16th day of January 1961.

TRUE D. MORSE,
Acting Secretary.

[F.R. Doc. 61–521; Filed, Jan. 19, 1961; 8:49 a.m.]

ATOMIC ENERGY COMMISSION

[Docket No. 50–29]

YANKEE ATOMIC ELECTRIC CO.

Notice of Issuance of Facility License Amendment

Please take notice that the Atomic Energy Commission has issued to Yankee Atomic Electric Company Amendment No. 2 to Facility License DPR–3, which specifies the procedure whereby Yankee may submit requests for authorization for any change in the reactor or in its operation requiring a change in the technical specifications and the procedure whereby the Commission will act on such requests. The license amendment was issued pursuant to the fourth intermediate decision including order amending License DPR–3 in respect to procedures for changes in technical specifications issued by the Presiding Officer December 30, 1960.

Dated at Germantown, Md., this 12th day of January 1961.

For the Atomic Energy Commission.

R. L. KIRK,
Deputy Director, Division of Licensing and Regulation.

[F.R. Doc. 61–478; Filed, Jan. 19, 1961; 8:45 a.m.]

CIVIL AERONAUTICS BOARD

[Docket 5482 etc.]

REOPENED KANSAS-OKLAHOMA LOCAL SERVICE CASE

Notice of Prehearing Conference

Notice is hereby given that a prehearing conference, pursuant to Order E–16203, is assigned to be held on February 1, 1961, at 10:00 a.m., e.s.t., in Room 911, Universal Building, Connecticut and Florida Avenues NW., Washington, D.C., before Examiner Merritt Ruhlen.

Dated at Washington, D.C., January 17, 1961.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F.R. Doc. 61–534; Filed, Jan. 19, 1961; 8:50 a.m.]

[Docket 11473 etc.]

UNITED AIR LINES ET AL.

Notice of Hearing

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that hearing in the above-entitled proceedings is assigned to be held on January 24, 1961, at the following times:

United Air Lines Service to Cheyenne Case, Docket 11473 et al. at 10:00 a.m., e.s.t.

Lines Aereas Taca de Colombia, S. A., Docket 11909, at 10:15 a.m., e.s.t.

Compania Nacional de Turismo Aereo "Cinta Limitada", Docket 11967, at 10:30 a.m., e.s.t.

Eastern Air Lines, Inc., Docket 10651, at 11:00 a.m., e.s.t.

All of the above hearings will be held in Room 725, Universal Building, Connecticut and Florida Avenues NW., Washington, D.C., before Examiner John A. Cannon.

Dated at Washington, D.C., January 17, 1961.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F.R. Doc. 61–535; Filed, Jan. 19, 1961; 8:50 a.m.]

CIVIL SERVICE COMMISSION

FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

Notice of Time Limit for Applications for Approval of Group-Practice Prepayment Health Benefits Plans and Individual-Practice Prepayment Health Benefits Plans

Under the provisions of the Federal Employees Health Benefits Act of 1959, the Civil Service Commission has determined that applications received before March 1, 1961, from groups wishing to offer group-practice prepayment health benefits plans and individual-practice prepayment health benefits plans to Federal employees under the Act will be considered for approval for the second contract period. The second contract period begins November 1, 1961. Applications received after February 28, 1961, will be considered for approval for subsequent contract periods.

A statement of the kinds of information which must accompany the application may be obtained from the Bureau of Retirement and Insurance, United States Civil Service Commission, Washington 25, D.C.

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

[F.R. Doc. 61–533; Filed, Jan. 19, 1961; 8:50 a.m.]

FEDERAL POWER COMMISSION

[Docket No. CP61–162]

HOPE NATURAL GAS CO.

Notice of Application and Date of Hearing

JANUARY 13, 1961.

Take notice that Hope Natural Gas Company (Applicant), 445 West Main Street, Clarksburg, West Virginia, filed an application on December 7, 1960, pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon certain natural gas facilities as hereinafter described subject to the jurisdiction of the Commission all as more fully represented in the application which is on file with the Commission and open to public inspection.

Applicant seeks permission and approval to abandon its existing Wright Compressor Station located in Marion County, West Virginia. Applicant states that its Wright Station is presently equipped with two obsolete 500 horsepower compressor units and appurtenances that have been used since 1913 to compress local West Virginia Gas produced in the surrounding area. Applicant further states that the volume of gas available from the area has declined to an extent that it is uneconomical to operate the station. Such operation was discontinued in October 1959. The remaining gas available in the area is handled through Applicants existing nearby Hastings and Sardis Compressor Stations.

In support of its proposal, applicant states that no abandonment of service will result and that operating and maintenance expenses at the station will be eliminated.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Com-

mission's rules of practice and procedure, a hearing will be held on February 20, 1961, at 9:30 a.m., e.s.t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C., concerning the matters involved in and the issues presented by such application: *Provided, however,* That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30(c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before February 3, 1961. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 61-495; Filed, Jan. 19, 1961; 8:47 a.m.]

[Docket No. CP60-117]

LONE STAR GAS CO.

Notice of Application and Date of Hearing

JANUARY 13, 1961.

Take notice that Lone Star Gas Company (Applicant), 301 South Harwood Street, Dallas, Texas, filed an application on June 10, 1960, pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon certain natural gas facilities as hereinafter described subject to the jurisdiction of the Commission all as more fully represented in the application which is on file with the Commission and open to public inspection.

Applicant seeks permission and approval to abandon its tap line FX-416-T, consisting of 254 feet of 6-inch and 910 feet of 3-inch pipeline extending from applicants 8-inch line GB-B in Northeasterly direction to the connection of W. B. Cleary, Inc.'s Smith Heir's No. 2 well in the Fox-Graham Field, Carter County, Oklahoma.

The application states that the reservoir pressure has declined to such an extent that the gas cannot enter into its pipeline against the working pressure maintained therein and that the operator of the well has indicated that no further development of the acreage is planned.

Applicant estimates that the salvage value of the facilities proposed to be abandoned is $840 and the cost of removal approximately $350 or a net salvage value of $490.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on February 20, 1961, at 9:30 a.m., e.s.t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C., concerning the matters involved in and the issues presented by such application: *Provided, however,* That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30(c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before February 3, 1961. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 61-496; Filed, Jan. 19, 1961; 8:47 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 812-1361]

CENTER, INC.

Notice of Filing of Application

JANUARY 12, 1961.

Notice is hereby given that The Center, Inc. ("Center"), a corporation organized under the laws of Minnesota, has filed an application and an amendment thereto pursuant to section 17(b) of the Investment Company Act of 1940 ("Act") requesting an order of the Commission exempting from the provisions of section 17(a) of the Act proposed borrowings from Investors Syndicate of America, Inc. ("Investors Syndicate"), a registered, face-amount certificate company, as hereinafter described. The application requests the exemption to permit Investors Syndicate to make three construction mortgage loans aggregating $20,000,000 to Center to finance in part the development of certain properties in Minneapolis, Minnesota. Center, as described herein, is an affiliated person of an affiliated person of Investors Diversified Services, Inc. ("IDS"), a registered, face-amount certificate company which controls Investors Syndicate.

Center, which was recently organized for the purpose of acquiring and developing the properties is presently wholly owned by Baker Properties, Inc. ("Baker"). Baker operates and owns or controls various business properties principally in the city of Minneapolis and will act as agent of Center in managing and operating its properties. According to the application, Center is in the process of acquiring interests, principally long-term leasehold interests, in an entire block in downtown Minneapolis. Center proposes to demolish all of the present improvements on the property so acquired, except an office building which will be completely modernized, and to construct an integrated set of buildings thereon. When completed the project will contain rentable space consisting of 411,500 square feet of office space, 47,600 square feet of commercial space and 104,000 square feet of storage space, and a 1,000-car parking garage and 150 unit motor hotel structure, together with recreational and restaurant facilities for hotel guests and office personnel. Center has already entered into lease arrangement for terms of not less than twenty-five years, with minor exceptions, with tenants of established financial worth whereby such tenants will lease approximately 77 percent of the total office space, 63 percent of the total commercial space and 85 percent of the total storage space. Applicant estimates that the rentals to be received under such leases plus estimated average net income from the operations of the parking garage and motor hotel will be more than ample to pay all operating costs, real estate taxes, and debt services on the senior mortgage loans even if no additional office space should be rented.

Applicant estimates that the total cash requirements for acquiring and developing the properties will be $24,850,000, of which $22,600,000 will be total construction costs and the remainder will be for ground rent, interest and real estate taxes, financing costs and miscellaneous expenses. Center proposes to raise $1,000,000 of this amount by a sale of its stock; $1,350,000 through a five-year unsecured loan from Baker in conjunction with the sale of its stock; $1,153,500 through a fifteen-year term loan from a building company which has a lessee interest in the properties; junior mortgage loans in the amount of $725,000 from certain tenants which have already entered into leases with Center; and $20,000,000 through the proposed senior mortgage loans from Investors Syndicate. Baker has agreed to loan or cause to be loaned to Center under arrangements satisfactory to Investors Syndicate such additional amounts as are necessary for the payment of construction costs and other requirements.

According to the application the mortgages to Investors Syndicate will be senior liens upon property appraised at $30,000,000. This figure was estimated for Investors Syndicate by independent appraisers whose appraisal report is filed as an exhibit to the application. The $30,000,000 figure includes the value of the land and the buildings to be constructed and modernized, in the light of the value of the long term leases already negotiated with tenants. The three mortgage loans will consist of a leasehold

mortgage in the amount of $5,000,000, and "fee" mortgages in the amounts of $12,400,000 and $2,600,000 respectively. In connection with the "fee" mortgages, to the extent that Center's interest in such properties is less than the fee, the fee owners have agreed to join with Center in such mortgages for the purpose of subjecting their interests in the premises to the lien of the mortgages. The application states that the loans will be qualified investments under the Insurance Code of the District of Columbia, which code determines the eligibility of investments of Investors Syndicate, and will bear interest at the rate of 5.85 percent per annum. Other terms of the loan include a provision for reducing the total amount of the loan if construction costs are lower than estimated, and a provision that there shall be no prepayment of principal, in whole or in part, without Investors Syndicate's consent during the first ten years of the loan.

All of the outstanding capital stock of Investors Syndicate is owned by IDS. Baker, the parent of Center, owns beneficially a fifty-one percent interest in the trust which owns the "Investors Building", in which IDS and Investors Syndicate have their home offices, and IDS owns the remaining interest. Baker and IDS also have the same percentage ownership in a corporation which supplies heat to the Investors Building and other nearby buildings in Minneapolis. Baker also owns about fifty-one percent of the outstanding capital stock of The Roanoke Building Company which owns the Roanoke Building in Minneapolis, adjacent to the Investors Building and in which a portion of the home offices of IDS and Investors Syndicate are located. The application states that by virtue of these facts Center is an affiliated person of an affiliated person of IDS which controls Investors Syndicate.

Section 2(a)(3) of the Act defines an "affiliated person" of another person as, among other things, any person directly or indirectly owning, controlling or holding with power to vote five percent or more of the outstanding voting securities of such other person. Section 17(a) of the Act prohibits an affiliated person of a registered investment company or any affiliated person of such a person, from selling to, or purchasing from such registered investment company or a company controlled by it any securities or property, subject to certain exceptions not pertinent here. In view of the affiliation and control relationship the transfer of the mortgages to Investors Syndicate is prohibited unless exempted under the Act. The Commission upon application pursuant to section 17(b) may grant an exemption from the provisions of section 17(a) if it finds that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, that the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed under the Act, and is consistent with the general purposes of the Act.

In support of the application it is pointed out that the proposed senior mortgage loans will be amply secured, and that the interest rates thereon and the restrictions on prepayment are such as to make the proposed loans attractive to any large institutional lender. It is stated that in the opinion of Investors Syndicate the terms of the proposed mortgage loan, with particular emphasis on the interest rate return, are fully competitive with those of other commercial mortgage loan investments recently made by other institutional lenders in the Minneapolis metropolitan area, and that they are on a basis at least as favorable, and more attractive in several instances, than such other investments. The application also points out that Investors Syndicate will benefit taxwise from the proposed mortgage loans. Since Minnesota mortgages will be involved, Investors Syndicate can offset the amount of such mortgages against its capital stock, surplus and undivided profits in computing its state shares tax.

Notice is hereby given that any interested person may, not later than January 26, 1961, 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, if any, 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 communication should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D.C. At any time after said date, as provided by Rule O–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 showing contained in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 61–500; Filed, Jan. 19, 1961; 8:48 a.m.]

[File No. 70–3929]

MILWAUKEE GAS LIGHT CO. AND AMERICAN NATURAL GAS CO.

Notice of Proposed Increase of Authorized Common Stock by Subsidiary, Proposed Issuance and Sale of Common Stock by Subsidiary and Acquisition Thereof by Parent and Proposed Issuance and Sale of Short-Term Notes to Banks

JANUARY 12, 1961.

Notice is hereby given that American Natural Gas Company ("American Natural"), a registered holding company, and its public-utility subsidiary company, Milwaukee Gas Light Company ("Milwaukee"), have filed with this Commission a joint application-declaration, pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating sections 7, 9, 10, and 12(f) of the Act and Rules 43, 50(a)(2), 50(a)(3), and 70(b)(2) promulgated thereunder as applicable to the proposed transactions which are summarized as follows:

Milwaukee proposes (1) to increase its authorized $12 par value common stock from 3,200,000 shares to 3,625,000 shares by amending its Articles of Incorporation; (2) to issue and sell 416,667 shares of its common stock for $5,000,004 in cash, representing the aggregate par value thereof; and (3) to issue and sell, from time to time during 1961, up to an aggregate amount of $20,000,000 promissory notes of Milwaukee all maturing June 1, 1962. Each note will be unsecured, will bear interest at the prime rate effective at The First National City Bank of New York on the date of its issuance and such interest rate will be adjusted to such prime rate in effect at the beginning of each 90-day period subsequent to the issue date of the first note. The notes will be issued to the following named banks up to the maximum amounts shown:

The First National City Bank of New York, New York, N.Y.	$7,500,000
The Hanover Bank, New York, N.Y.	5,000,000
First Wisconsin National Bank of Milwaukee, Milwaukee, Wis.	4,250,000
Marine National Exchange Bank, Milwaukee, Wis.	1,500,000
Marshall and Ilsley Bank, Milwaukee, Wis.	1,500,000
American State Bank, Milwaukee, Wis.	250,000
Total	20,000,000

American proposes to purchase, for $5,000,004 in cash, the 416,667 shares of Milwaukee's common stock.

The fees and expenses to be incurred by Milwaukee in connection with the proposed transactions are estimated as follows:

	Common stock	*Notes*
Federal original issue tax	$5,000	$-----
Fees and taxes of various states	5,000	6,000
Counsel fees—Sidley, Austin, Burgess & Smith	250	-----
Counsel fees—Foley, Sammond & Lardner	250	-----
American Natural Gas Service Company services at cost	500	500
Miscellaneous	1,000	500
Total	13,000	7,000

The joint application-declaration states that the proceeds from the sale of the common stock and notes will be used to finance in part Milwaukee's 1961 and early 1962 construction program. It is further stated that the proposed notes will be repaid in 1962 from the proceeds of a permanent financing program to be submitted to the Commission at that time.

The joint application-declaration states that the approval of the Public Service Commission of Wisconsin is necessary for the issuance and sale of additional shares of common stock by Mil-

waukee and such of the notes as mature more than 12 months after the dates of issuance; that the order of that State commission will be filed by amendment; and that no other State commission or Federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than January 30, 1961 at 5:30 p.m., request the Commission in writing that a hearing be held on such matters, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said filing which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D.C. At any time after said date, the joint application-declaration, as filed or as amended, may be granted and permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 61-501; Filed, Jan. 19, 1961; 8:48 a.m.]

TARIFF COMMISSION

[336-121]

BROOMS MADE OF BROOMCORN

Notice of Investigation and Date of Hearing

Investigation instituted. Having completed a preliminary inquiry made in connection with an application from the National Broom Manufacturers and Allied Industries Association for an investigation under section 336 of the Tariff Act of 1930 (19 U.S.C. 1336), the United States Tariff Commission, on the 16th day of January 1961, instituted an investigation for the purposes of the said section 336 of the differences in the costs of production of foreign brooms made of broomcorn, provided for in paragraph 1506 of the Tariff Act of 1930, and like or similar domestic articles.

Public hearing ordered. A public hearing in connection with the foregoing investigation will be held beginning at 10 a.m., e.s.t., on April 18, 1961, in the Hearing Room, Tariff Commission Building, Eighth and E Streets NW., Washington, D.C. Interested parties will be given opportunity to be present, to produce evidence, and to be heard at the said hearing. Requests for appearance at the hearing should be in writing and submitted to The Secretary, U.S. Tariff Commission, Washington 25, D.C., at least five days prior to the date set for the hearing.

Issued: January 17, 1961.

By order of the Tariff Commission.

[SEAL] DONN N. BENT, *Secretary.*

[F.R. Doc. 61-502; Filed, Jan. 19, 1961; 8:48 a.m.]

[AA1921-16]

PORTLAND CEMENT FROM SWEDEN

Notice of Hearing

Notice is hereby given that the United States Tariff Commission, on January 16, 1961, ordered a public hearing held in connection with the investigation instituted under section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), with respect to portland cement, other than white, nonstaining portland cement, from Sweden. Notice of the institution of the investigation was published in the FEDERAL REGISTER on January 12, 1961 (26 F.R. 241).

The hearing will be held in the Hearing Room, Tariff Commission Building, Eighth and E Streets NW., Washington, D.C., beginning at 10 a.m., e.s.t., on February 28, 1961. Interested parties desiring to appear and to be heard at such hearing should notify the Secretary of the Commission, in writing, at least three days in advance of the date set for the hearing.

Issued: January 17, 1961.

By order of the Tariff Commission.

[SEAL] DONN N. BENT, *Secretary.*

[F.R. Doc. 61-503; Filed, Jan. 19, 1961; 8:48 a.m.]

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATIONS FOR RELIEF

JANUARY 17, 1961.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the general rules of practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 36844: *Substituted service—L&N for Dixie Ohio Express, Inc.* Filed by Central and Southern Motor Freight Tariff Association, Incorporated, Agent (No. 47), for interested carriers. Rates on property loaded in trailers and transported on railroad flat cars, between Covington, and Louisville, Ky., Nashville, Chattanooga and Knoxville, Tenn., on the one hand, and specified points in Alabama, Georgia, Kentucky, and Tennessee, on the other, as described in the application.

Grounds for relief: Motor-truck competition.

Tariff: Supplement 2 to Central and Southern Motor Freight Tariff Association, Incorporated tariff MF-I.C.C. 228.

FSA No. 36845: *Petroleum residual fuel oil to Minnesota and Wisconsin points.* Filed by Western Trunk Line Committee, Agent (No. A-2161), for interested rail carriers. Rates on petroleum residual fuel oil, in tank-car loads, from specified points in Colorado, Kansas, Missouri, Montana and Wyoming, to specified points in Minnesota and Wisconsin.

Grounds for relief: Market competition.

Tariff: Supplement 72 to Chicago and North Western Railway Company tariff I.C.C. 11296, and other schedules named in the application.

FSA No. 36846: *Fine coal from Brilliant, Ala., to Chickasaw, Ala.* Filed by O. W. South, Jr., Agent (No. A-4058), for interested rail carriers. Rates on fine coal, as described in the application, in carloads, from Brilliant, Ala., to Chickasaw, Ala.

Grounds for relief: Restore origin rate relationship.

Tariff: Supplement 58 to Southern Freight Association tariff I.C.C. S-39.

FSA No. 36847: *Substituted service—IC for Nolte Bros.* Filed by William A. Landau, Agent (No. 1), for interested carriers. Rates on property moving in less-than-truckload quantities, loaded in trailers and transported on railroad flat cars, between Chicago, Ill., on the one hand, and Council Bluffs and Fort Dodge, Iowa, on the other, on traffic originating at or destined to such points or points beyond as described in the application.

Grounds for relief: Motor-truck competition.

Tariff: Agent William A. Landau tariff MF-I.C.C. 36.

FSA No. 36848: *Substituted service—WAB. and PRR for Cooper-Jarrett, Inc.* Filed by The Eastern Central Motor Carriers Association, Inc., Agent (No. 176), for interested carriers. Rates on property loaded in trailers and transported on railroad flat cars, between Kansas City, Mo., on the one hand, and Baltimore, Md., Kearny, N.J., and Philadelphia, Pa., on the other, on traffic originating at or destined to such points or points beyond as described in the application.

Grounds for relief: Motor-truck competition.

Tariff: Supplement 7 to Eastern Central Motor Carriers Association, Inc., tariff MF-I.C.C. A-185.

FSA No. 36849: *Substituted service—C&O and LV for Roadway Express, Inc.* Filed by The Eastern Central Motor Carriers Association, Inc., Agent (No. 178), for interested carriers. Rates on property loaded in trailers and transported on railroad flat cars, between Jersey City, N.J., on the one hand, and Detroit and Saginaw, Mich., on the other, on traffic originating at or destined to such points or points beyond as described in the application.

Grounds for relief: Motor-truck competition.

Tariff: Supplement 7 to Eastern Central Motor Carriers Association, Inc., tariff MF-I.C.C. A-185.

FSA No. 36850: *Substituted service—C&NW for the Emery Transportation Company.* Filed by The Eastern Central Motor Carriers Association, Inc., Agent (No. 177), for interested carriers. Rates on property loaded in trailers and transported on railroad flat cars, between Chicago, Ill., on the one hand, and Cedar Rapids, Council Bluffs, Des Moines, Ft. Dodge, Mason City and Sioux City, Iowa, on traffic originating at or destined to such points or points beyond as described in the application.

Grounds for relief: Motor-truck competition.

Tariff: Supplement 7 to Eastern Central Motor Carriers Association, Inc., tariff MF-I.C.C. A-185.

By the Commission.

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

[F.R. Doc. 61-523; Filed, Jan. 19, 1961; 8:49 a.m.]

[Notice 437]

MOTOR CARRIER TRANSFER PROCEEDINGS

JANUARY 17, 1961.

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

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

No. MC-FC 63857. By order of January 13, 1961, the Transfer Board approved the transfer to McKay Freight Line, Inc., Fairbury, Nebr., of Certificate No. MC 822 issued August 6, 1954, to C. C. McKay and Earl R. McKay, a partnership, doing business as McKay Freight Line, Fairbury, Nebr., authorizing the transportation, over regular routes, of general commodities, with the usual exceptions, between Fairbury, Nebr., and Montrose, Kans.; between Fairbury, Nebr., and Red Cloud, Nebr.; between Alma, Nebr., and Omaha, Nebr.; between Fairbury, Nebr., and Linn, Kans.; and from and to and between various specified points in Nebraska; fruits, from Fairbury, Nebr., to Washington, Kans.; commodities usually dealt in by wholesale grocery companies, between Fairbury, Nebr., and Osborne and Clyde, Kans.; and between Osborne, Kans., and Stockton, Kans.; household goods, between Fairbury, Nebr., on the one hand, and, on the other, points in Kansas and Iowa; and windmills and other parts, manufactured by Windmill manufacturing Companies, from Fairbury, Nebr., to Sioux City and Des Moines, Iowa, and Salina and Hutchinson, Kans. J. Max Harding, 605 South 12th Street, Lincoln, Nebr., for applicants.

No. MC-FC 63859. By order of January 13, 1961, the Transfer Board approved the transfer to Primo Motor Car Co., a corporation, Kearny, N.J., of Certificate in No. MC 10942, issued May 4, 1943, to Mente Bros., Inc., Kenilworth, N.J., authorizing the transportation of: General commodities, excluding household goods, commodities in bulk, and other specified commodities, between points in New Jersey, on the one hand, and, on the other, New York, N.Y., and points in Westchester County, N.Y.; steel and steel products, between Kenilworth and Union, N.J., on the one hand, and, on the other, Philadelphia and Wilkes-Barre, Pa., and Cold Springs, N.Y.; copper, bronze and copper wire, from Kenilworth, N.J., to Manheim, Hanover, and York, Pa.; and materials and supplies used in sewer construction from Kenilworth, N.J., to points in New York and Pennsylvania within 125 miles of Kenilworth. Bert Collins, Attorney, 140 Cedar Street, New York, N.Y., for applicants.

No. MC-FC 63871. By order of January 16, 1961, the Transfer Board approved the transfer to Burggrabe Truck Lines, Inc., Warrenton, Mo., of Certificate No. MC 10457, issued April 13, 1937, to E. A. Burggrabe, doing business as E. A. Burggrabe Drayage Service, Warrenton, Mo., authorizing the transportation of general commodities, including household goods, with various specified excepted commodities, over regular route, between Warrenton, Mo., and East St. Louis, Ill., serving all intermediate points and off-route points of Truesdale and O'Fallon, Mo. G. M. Rebman, 1230 Boatmen's Bank Building, St. Louis 2, Mo., for applicants.

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

[F.R. Doc. 61-524; Filed, Jan. 19, 1961; 8:49 a.m.]

DEPARTMENT OF JUSTICE

Office of Alien Property

ERNESTA BARDONE ET AL.

Notice of Intention To Return Vested Property

Pursuant to section 32(f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property, and Location

Ernesta Bardone, Pavia, Italy; $72.01 in the Treasury of the United States.

Cesarina Bardone Corrada, Pavia, Italy; $72.00 in the Treasury of the United States.

Angela Bardone Silva, Pavia, Italy; $72.00 in the Treasury of the United States. Claim No. 44021.

Primo Schiavi, Pavia, Italy; $72.00 in the Treasury of the United States. Claim No. 44022.

Vesting Order No. 582.

Executed at Washington, D.C., on January 13, 1961.

For the Attorney General.

[SEAL] PAUL V. MYRON, *Deputy Director, Office of Alien Property.*

[F.R. Doc. 61-525; Filed, Jan. 19, 1961; 8:49 a.m.]

CUMULATIVE CODIFICATION GUIDE—JANUARY

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

3 CFR

5 CFR

6 CFR

7 CFR

8 CFR

10 CFR

12 CFR

13 CFR

13 CFR—Continued

14 CFR

15 CFR

16 CFR

17 CFR

19 CFR

21 CFR

22 CFR

24 CFR

25 CFR

FEDERAL REGISTER

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