

tion" shall include consultation with the Secretary of State, the Director of the National Science Foundation, and any other appropriate Federal agency.

(12) Those under section 104(l) of the Act by the Department of State and by any other agency or agencies designated therefor by the Secretary of State.

(13) Those under section 104(n) of the Act by the Librarian of Congress.

(14) Those under section 104(r) of the Act by the Department of State and by the United States Information Agency, as they shall agree.

(e) In negotiation international agreements in pursuance of the Act, the Secretary of State shall endeavor to avoid restrictions which would limit the application of normal budgetary and appropriation controls to the use of those foreign currencies accruing under Title I of the Act which are to be available for operations of United States Government agencies.

**SEC. 5. Reservation of functions to the President.** There are hereby reserved to the President the functions conferred upon him by section 108 of the Act (including that section as affected by section 406 of the Act), with respect to making reports to Congress.

**SEC. 6. Definition; references.** (a) As used in this order, the term "Act" and the term "Agricultural Trade Development and Assistance Act of 1954" mean the Agricultural Trade Development and Assistance Act of 1954 (68 Stat. 454) as amended from time to time, and include, except as may be inappropriate, provisions thereof amending other laws.

(b) References in any prior order not superseded by this order to any provisions of any Executive order superseded by this order shall hereafter be deemed to be references to the corresponding provisions, if any, of this order.

(c) References in this order or in any other Executive order to this order or any provision of this order shall be deemed to include references thereto, respectively, as amended from time to time.

**SEC. 7. Superseding and saving provisions.** (a) To the extent not heretofore superseded, the following-described orders and parts of orders are hereby superseded:

(1) Executive Order No. 10560 of September 9, 1954.

(2) Executive Order No. 10685 of October 27, 1956.

(3) Executive Order No. 10708 of May 6, 1957.

(4) Executive Order No. 10746 of December 12, 1957.

(5) Sections 1 and 2 of Executive Order No. 10799 of January 15, 1959.

(6) Executive Order No. 10827 of June 25, 1959.

(7) Executive Order No. 10884 of August 17, 1960.

(8) Without prejudice to section 3(c) of this order, the text enclosed in parentheses in section 304(a)(2) of Executive Order No. 10893 of November 8, 1960.

(b) Except to the extent that they may be inconsistent with this order, all determinations, authorizations, regulations, rulings, certificates, orders, directives, contracts, agreements, and other actions made, issued, or entered into with respect to any function affected by this order and not revoked, superseded, or otherwise made inapplicable before the date of this order, shall continue in full force and effect until amended, modified, or terminated by appropriate authority.

DWIGHT D. EISENHOWER

THE WHITE HOUSE,  
January 5, 1961.

[F.R. Doc. 61-183; Filed, Jan. 6, 1961;  
1:21 p.m.]

# Rules and Regulations

## Title 26—INTERNAL REVENUE, 1954

### Chapter I—Internal Revenue Service, Department of the Treasury

[T.D. 6524]

#### PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DE- CEMBER 31, 1953

##### Definition of Property

On August 13, 1960, notice of proposed rule making with respect to regulations under section 614 of the Internal Revenue Code of 1954, as amended by section 37 of the Technical Amendments Act of 1958 (72 Stat. 1633), relating to the definition of property was published in the FEDERAL REGISTER (25 F.R. 7743). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the following regulations are hereby adopted and are applicable for taxable years beginning after December 31, 1953, and ending after August 16, 1954, except as otherwise provided.

- Sec.
- 1.614 Statutory provisions; definition of property.
- 1.614-0 Introduction.
- 1.614-1 Definition of property.
- 1.614-2 Election to aggregate separate operating mineral interests under section 614(b).
- 1.614-3 Rules relating to separate operating mineral interests in the case of mines.
- 1.614-4 1939 Code treatment with respect to separate operating mineral interests in the case of oil and gas wells.
- 1.614-5 Special rules as to aggregating non-operating mineral interests.
- 1.614-6 Rules applicable to basis, holding period, and abandonment losses where mineral interests have been aggregated.

AUTHORITY: §§ 1.614 to 1.614-6 issued under section 7805, I.R.C. 1954; 68A Stat. 917; 26 U.S.C. 7805.

##### § 1.614 Statutory provisions; definition of property.

SEC. 614. *Definition of property*—(a) *General rule.* For the purpose of computing the depletion allowance in the case of mines, wells, and other natural deposits, the term "property" means each separate interest owned by the taxpayer in each mineral deposit in each separate tract or parcel of land.

(b) *Special rule as to operating mineral interests*—(1) *Election to aggregate separate interests.* If a taxpayer owns two or more separate operating mineral interests which constitute part or all of an operating unit, he may elect (for all purposes of this subtitle)—

(A) To form one aggregation of, and to treat as one property, any two or more of such interests; and

(B) To treat as a separate property each such interest which he does not elect to in-

clude within the aggregation referred to in subparagraph (A).

For purposes of the preceding sentence, separate operating mineral interests which constitute part or all of an operating unit may be aggregated whether or not they are included in a single tract or parcel of land and whether or not they are included in contiguous tracts or parcels. A taxpayer may not elect to form more than one aggregation of operating mineral interests within any one operating unit.

(2) *Manner and scope of election.* The election provided by paragraph (1) shall be made, for each operating mineral interest in accordance with regulations prescribed by the Secretary or his delegate, not later than the time prescribed by law for filing the return (including extensions thereof) for whichever of the following taxable years is the later: The first taxable year beginning after December 31, 1953, or the first taxable year in which any expenditure for exploration, development, or operation in respect of the separate operating mineral interest is made by the taxpayer after the acquisition of such interest. Such an election shall be binding upon the taxpayer for all subsequent taxable years, except that the Secretary or his delegate may consent to a different treatment of the interest with respect to which the election has been made.

(3) *Operating mineral interests defined.* For purposes of this subsection, the term "operating mineral interest" includes only an interest in respect of which the costs of production of the mineral are required to be taken into account by the taxpayer for purposes of computing the 50 percent limitation provided for in section 613, or would be so required if the mine, well, or other natural deposit were in the production stage.

(4) *Termination with respect to mines.* Except in the case of oil and gas wells—

(A) An election made under the provisions of this subsection shall not apply with respect to any taxable year beginning after December 31, 1957, and

(B) If a taxpayer makes an election under the provisions of subsection (c)(3)(B) for any operating mineral interest which constitutes part or all of an operating unit, an election made under the provisions of this subsection shall not apply with respect to any operating mineral interest which constitutes part or all of such operating unit for any taxable year for which the election under subsection (c)(3)(B) is effective.

(c) *1958 Special rules as to operating mineral interests in mines*—(1) *Election to aggregate separate interests.* Except in the case of oil and gas wells, if a taxpayer owns two or more separate operating mineral interests which constitute part or all of an operating unit, he may elect (for all purposes of this subtitle)—

(A) To form an aggregation of, and to treat as one property, all such interests owned by him which comprise any one mine or any two or more mines; and

(B) To treat as a separate property each such interest which is not included within an aggregation referred to in subparagraph (A).

For purposes of this paragraph, separate operating mineral interests which constitute part or all of an operating unit may be aggregated whether or not they are included in a single tract or parcel of land and whether or not they are included in contiguous tracts or parcels. For purposes of this paragraph, a taxpayer may elect to form more than one

aggregation of operating mineral interests within any one operating unit; but no aggregation may include any operating mineral interest which is a part of a mine without including all of the operating mineral interests which are a part of such mine in the first taxable year for which the election to aggregate is effective, and any operating mineral interest which thereafter becomes a part of such mine shall be included in such aggregation.

(2) *Election to treat a single interest as more than one property.* Except in the case of oil and gas wells, if a single tract or parcel of land contains a mineral deposit which is being extracted, or will be extracted, by means of two or more mines for which expenditures for development or operation have been made by the taxpayer, then the taxpayer may elect to allocate to such mines, under regulations prescribed by the Secretary or his delegate, all of the tract or parcel of land and of the mineral deposit contained therein, and to treat as a separate property that portion of the tract or parcel of land and of the mineral deposit so allocated to each mine. A separate property formed pursuant to an election under this paragraph shall be treated as a separate property for all purposes of this subtitle (including this paragraph). A separate property so formed may, under regulations prescribed by the Secretary or his delegate, be included as a part of an aggregation in accordance with paragraphs (1) and (3), but the provisions of paragraph (4) shall not apply with respect to such separate property. The election provided by this paragraph may not be made with respect to any property which is a part of an aggregation formed by the taxpayer under paragraph (1) except with the consent of the Secretary or his delegate.

(3) *Manner and scope of election*—(A) *In general.* Except as provided in subparagraph (D), the election provided by paragraph (1) shall be made for each operating mineral interest, in accordance with regulations prescribed by the Secretary or his delegate, not later than the time prescribed by law for filing the return (including extensions thereof) for whichever of the following taxable years is the later: The first taxable year beginning after December 31, 1957, or the first taxable year in which any expenditure for development or operation in respect of the separate operating mineral interest is made by the taxpayer after the acquisition of such interest. Except as provided in subparagraph (D), the election provided by paragraph (2) shall be made for any property, in accordance with regulations prescribed by the Secretary or his delegate, not later than the time prescribed by law for filing the return (including extensions thereof) for whichever of the following taxable years is the later: The first taxable year beginning after December 31, 1957, or the first taxable year in which expenditures for development or operation of more than one mine in respect of the property are made by the taxpayer after the acquisition of the property. No election may be made pursuant to this subparagraph for any operating mineral interest which constitutes part or all of an operating unit if the taxpayer makes an election pursuant to subparagraph (B) with respect to any operating mineral interest which constitutes part or all of such operating unit.

(B) *Taxable years beginning before January 1, 1958.* The election provided by paragraph (1) may, at the election of the taxpayer, be made for each operating mineral interest, in accordance with regulations pre-

scribed by the Secretary or his delegate, within the time provided in subparagraph (D), for whichever of the following taxable years is the later (not including any taxable year in respect of which an assessment of deficiency is prevented on the date of the enactment of the Technical Amendments Act of 1958 by the operation of any law or rule of law): The first taxable year of the taxpayer which begins after December 31, 1953, and ends after August 16, 1954, or the first taxable year in which any expenditure for development or operation in respect of the separate operating mineral interest is made by the taxpayer after the acquisition of such interest. The election provided by paragraph (2) may, at the election of the taxpayer, be made for any property, in accordance with regulations prescribed by the Secretary or his delegate, within the time prescribed in subparagraph (D), for whichever of the following taxable years is the later (not including any taxable year in respect of which an assessment of deficiency is prevented on the date of the enactment of the Technical Amendments Act of 1958 by the operation of any law or rule of law): The first taxable year beginning after December 31, 1953, and ending after August 16, 1954, or the first taxable year in which expenditures for development or operation of more than one mine in respect of the property are made by the taxpayer after the acquisition of the property.

(C) *Effect.* An election made under paragraph (1) or (2) shall be binding upon the taxpayer for all subsequent taxable years, except that the Secretary or his delegate may consent to a different treatment of any interest with respect to which an election has been made.

(D) *Election after final regulations.* Notwithstanding any other provision of this paragraph the time for making an election under paragraph (1) or (2) shall not expire prior to the first day of the first month which begins more than 90 days after the date of publication in the FEDERAL REGISTER of final regulations issued under the authority of this subsection.

(E) *Statute of limitations.* If the taxpayer makes an election pursuant to subparagraph (B) and if assessment of any deficiency for any taxable year resulting from such election is prevented on the first day of the first month which begins more than 90 days after the date of publication in the FEDERAL REGISTER of final regulations issued under authority of this subsection, or at any time within one year after such day, by the operation of any law or rule of law, such assessment may, nevertheless, be made if made within one year after such day. An election by a taxpayer pursuant to subparagraph (B) shall be considered as a consent to the assessment pursuant to this subparagraph of any such deficiency. If refund or credit of any overpayment of income tax resulting from an election made pursuant to subparagraph (B) is prevented on such day, or at any time within one year after such day, by the operation of any law or rule of law, refund or credit of such overpayment may, nevertheless, be made or allowed if claim therefor is filed within one year after such day. This subparagraph shall not apply to any taxable year in respect of which an assessment of a deficiency, or a refund or credit of an overpayment, as the case may be, is prevented by the operation of any law or rule of law on the date of the enactment of the Technical Amendments Act of 1958.

(4) *Special rule as to deductions under section 615(a) prior to aggregation.*—(A) *In general.* If an aggregation of operating mineral interests formed under paragraph (1) includes any interest or interests in respect of which exploration expenditures, paid or incurred after the acquisition of such interest or interests, were deducted by the tax-

payer under section 615(a) for any taxable year all or any portion of which precedes the date on which such aggregation becomes effective, or the date on which such interest or interests become a part of such aggregation (as the case may be), then the tax imposed by this chapter for such taxable year shall be recomputed as provided in subparagraph (B). In the case of any taxable year beginning before January 1, 1958, this subparagraph shall apply to exploration expenditures deducted in respect of any interest or interests for such taxable year, only if such interest or interests constitute part or all of any operating unit with respect to which the taxpayer makes an election pursuant to paragraph (3) (B) which is applicable with respect to such taxable year.

(B) *Recomputation of tax.* A recomputation of the tax imposed by this chapter shall be made for each taxable year described in subparagraph (A) for which exploration expenditures were deducted as though, for each such year, an election had been made to aggregate the separate operating mineral interest or interests with respect to which such exploration expenditures were deducted with those operating mineral interests included in the aggregation formed under paragraph (1) in respect of which any expenditure for exploration, development, or operation had been made by the taxpayer before or during the taxable year to which such election would apply. A recomputation of the tax imposed by this chapter (or by the corresponding provisions of the Internal Revenue Code of 1939) shall also be made for taxable years affected by the recomputation described in the preceding sentence. If the tax so recomputed for any taxable year or years, by reason of the application of this paragraph, exceeds the tax liability previously determined for such year or years, such excess shall be taken into account in the first taxable year to which the election to aggregate under paragraph (1) applies and succeeding taxable years as provided in subparagraph (C).

(C) *Increase in tax.* The tax imposed by this chapter for the first taxable year to which the election to aggregate under paragraph (1) applies, and for each succeeding taxable year until the full amount of the excess described in subparagraph (B) has been taken into account, shall be increased by an amount equal to the quotient obtained by dividing such excess by the total number of taxable years described in subparagraph (A) in respect of which—

(i) Exploration expenditures were deducted by the taxpayer under section 615(a), and

(ii) The recomputation of tax described in the first sentence of subparagraph (B) results in an increase in tax or a reduction of a net operating loss.

If the taxpayer dies or ceases to exist, then so much of the excess described in subparagraph (B) as was not taken into account under the preceding sentence for taxable years preceding such death, or such cessation of existence, shall be taken into account for the taxable year in which such death, or such cessation of existence, occurs.

(D) *Basis adjustment.* If the tax liability of a taxpayer is increased by reason of the application of this paragraph, proper adjustments shall be made with respect to the basis of the aggregated property owned by such taxpayer, in accordance with regulations prescribed by the Secretary or his delegate, as though the tax liability of the taxpayer for the prior taxable year or years had been determined in accordance with the recomputation of tax described in subparagraph (B).

(5) *Operating mineral interests defined.* For purposes of this subsection, the term "operating mineral interest" has the meaning as assigned to it by subsection (b) (3).

(d) *1939 Code treatment with respect to operating mineral interests in case of oil and*

*gas wells.* In the case of oil and gas wells, any taxpayer may treat any property (determined as if the Internal Revenue Code of 1939 continued to apply) as if subsections (a) and (b) had not been enacted. If any such treatment would constitute an aggregation under subsection (b), such treatment shall be taken into account in applying subsection (b) to other property of the taxpayer.

(e) *Special rule as to nonoperating mineral interests.*—(1) *Aggregation of separate interests.* If a taxpayer owns two or more separate nonoperating mineral interests in a single tract or parcel of land or in two or more adjacent tracts or parcels of land, the Secretary or his delegate shall, on showing by the taxpayer that a principal purpose is not the avoidance of tax, permit the taxpayer to treat (for all purposes of this subtitle) all such mineral interests in each separate kind of mineral deposit as one property. If such permission is granted for any taxable year, the taxpayer shall treat such interests as one property for all subsequent taxable years unless the Secretary or his delegate consents to a different treatment.

(2) *Nonoperating mineral interests defined.* For purposes of this subsection, the term "nonoperating mineral interests" includes only interests which are not operating mineral interests within the meaning of subsection (b) (3).

[Sec. 614 as amended by sec. 37, Technical Amendments Act, 1958 (72 Stat. 1633)]

#### § 1.614-0 Introduction.

Section 614 relates to the definition of property and to the various special rules by means of which taxpayers are permitted to aggregate separate properties. These rules are set forth in detail in §§ 1.614-1 through 1.614-6. Section 1.614-1 sets forth rules under section 614(a) relating to the definition of the term "property". Section 1.614-2 contains the rules relating to the election under section 614(b) to aggregate operating mineral interests. In the case of mines, the rules contained in § 1.614-2 are applicable only to taxable years beginning before January 1, 1958, to which the Internal Revenue Code of 1954 applies. In the case of oil and gas wells, the rules contained in § 1.614-2 are applicable for all taxable years to which the 1954 Code applies. In the case of oil and gas wells, the taxpayer may, however, treat any operating mineral interests as if section 614 (a) and (b) had not been enacted. If any operating mineral interests are so treated, the rules contained in § 1.614-2 are not applicable to such interests and such interests are subject to the rules set forth in § 1.614-4 relating to the 1939 Code treatment of separate operating mineral interests in the case of oil and gas wells. Section 1.614-3 prescribes the rules relating to the election under section 614(c) (1) permitting the aggregation of operating mineral interests in the cases of mines for taxable years beginning after December 31, 1957. Section 1.614-3 also sets forth rules relating to the election under section 614(c) (2) in the case of mines by means of which a taxpayer is permitted to treat a single operating mineral interest as more than one such interest for taxable years beginning after December 31, 1957. At the election of the taxpayer with respect to an operating unit, the rules contained in § 1.614-3 are also applicable to taxable years beginning before January 1, 1958, to which the 1954 Code applies. If the taxpayer makes

such an election, the rules contained in § 1.614-2 are not applicable to any of the operating mineral interests which are part of the operating unit with respect to which the election described in § 1.614-3 is made. Section 1.614-5 sets forth the rules relating to the aggregation of nonoperating mineral interests. Section 1.614-6 contains the rules relating to basis, holding period, and abandonment and casualty losses where properties have been aggregated.

#### § 1.614-1 Definition of property.

(a) *General rule.* (1) For purposes of subtitle A of the Internal Revenue Code of 1954, in the case of mines, wells, and other natural deposits, the term "property" means each separate interest owned by the taxpayer in each mineral deposit in each separate tract or parcel of land.

(2) The term "interest" means an economic interest in a mineral deposit. See paragraph (b) of § 1.611-1. The term includes working or operating interests, royalties, overriding royalties, production payments and net profits interests.

(3) The term "tract or parcel of land" is merely descriptive of the physical scope of the land to which the taxpayer's interest relates. It is not descriptive of the nature of his rights or interests in the land. All contiguous areas (even though separately described) included in a single conveyance or grant or in separate conveyances or grants at the same time from the same owner constitute a single separate tract or parcel of land. Areas included in separate conveyances or grants (whether or not at the same time) from separate owners are separate tracts or parcels of land even though the areas described may be contiguous. If the taxpayer's rights or interests within the same tract or parcel of land are dissimilar, then each such dissimilar interest constitutes a separate property. If the taxpayer's rights or interests (whether or not dissimilar) within the same tract or parcel of land relate to more than one separate mineral deposit, then his interest with respect to each such separate deposit is a separate property.

(4) Upon the transfer of a "property" in any transaction in which the basis of such property in the hands of the transferee is determined by reference to the basis of such property in the hands of the transferor, such property shall, notwithstanding the provisions of subparagraph (3) of this paragraph, retain the same status and identity in the hands of the transferee as it had in the hands of the transferor. See paragraph (c) of § 1.614-6 if the transferor has made a binding election to treat a separate mineral interest as a separate property, to treat a separate mineral interest as more than one property under section 614(c), or to treat two or more separate mineral interests as an aggregated property under section 614 (b), (c), or (e).

(5) The provisions of this paragraph may be illustrated by the following examples:

*Example (1).* A taxpayer owns one tract of land under which lie three separate and distinct seams of coal. Therefore, the taxpayer

owns three separate mineral interests each of which constitutes a separate property.

*Example (2).* A taxpayer conducts mining operations on eight tracts of land as a single unit. He acquired his interests in each of the eight tracts from separate owners. Even if each tract of land contains part of the same mineral deposit, the taxpayer owns eight separate mineral interests each of which constitutes a separate property.

*Example (3).* A taxpayer owns a tract of land under which lies one mineral deposit. The taxpayer operates a well on part of the tract and leases to another operator the mineral rights in the remainder retaining a royalty interest therein. The taxpayer thereafter owns two separate mineral interests each of which constitutes a separate property.

*Example (4).* In 1954, a taxpayer acquires from a single owner, in a single deed, three noncontiguous tracts of mineral land for a single consideration. Even if each tract contains part of the same mineral deposit, the taxpayer owns three separate mineral interests each of which constitutes a separate property.

*Example (5).* In 1954, taxpayer A simultaneously acquires in fee two contiguous tracts of mineral land from two separate owners. The same mineral deposit underlies both tracts. Thereafter, taxpayer A owns two separate mineral interests each of which constitutes a separate property.

*Example (6).* Assume that in 1955, taxpayer A, in example (5), leases the two contiguous tracts of mineral land that he acquired in 1954 to taxpayer B by means of a single lease. Thereafter, taxpayer B owns one mineral interest which constitutes a separate property for such time as the lease continues in existence.

*Example (7).* Assume that in 1955, taxpayer A, in example (5), sells at the same time all the mineral land he acquired in 1954 to taxpayer B. Thereafter, taxpayer B owns one mineral interest which constitutes a separate property. If taxpayer B acquires the mineral land in a transaction in which the basis of such mineral land in his hands is determined by reference to the basis of such mineral land in the hands of taxpayer A, then taxpayer B owns two separate mineral interests each of which constitutes a separate property.

*Example (8).* In 1954, taxpayer A simultaneously acquires two contiguous leasehold interests from two separate owners. The same mineral deposit underlies both tracts. Thereafter, taxpayer A owns two separate mineral interests each of which constitutes a separate property.

*Example (9).* In 1955, taxpayer A, in example (8), simultaneously assigns the two leases to taxpayer B. Thereafter, taxpayer B owns two separate mineral interests each of which constitutes a separate property.

(b) *Separation of interests treated as "single property" under prior regulations.* Each separate mineral interest which, in accordance with paragraph (a) of this section, is a separate property shall be so treated, notwithstanding the fact that the taxpayer under paragraph (i) of § 39.23(m)-1 of Regulations 118 (26 CFR. (1939) 39.23(m)-1(i)) and corresponding provisions of prior regulations may have treated more than one of such interests as a "single property." The basis of each such separate property must be established by a reasonable method. See, however, section 614 (b), (c), (d), and (e) and §§ 1.614-2, 1.614-3, 1.614-4, and 1.614-5 for special rules relating to the treatment of two or more separate mineral interests as a single property.

(c) *Treatment of a waste bank or residue.* A waste bank or residue of

prior mining, the extraction of ores or minerals from which is treated as mining under section 613(c) (3), shall not be considered to be a separate mineral deposit but is a part of the mineral deposit from which it was extracted. However, if the owner of such waste bank or residue has disposed of the deposit from which the waste bank or residue was accumulated, or if the waste bank or residue cannot practically be attributed to a particular deposit of the owner, the waste bank or residue will be regarded as a separate deposit.

#### § 1.614-2 Election to aggregate separate operating mineral interests under section 614(b).

(a) *General rule.* A taxpayer who owns two or more separate operating mineral interests, which constitute part or all of an operating unit, may elect under section 614(b) and this section to form one aggregation of any two or more of such operating mineral interests and to treat such aggregation as one property. Any operating mineral interest which the taxpayer does not elect to include within the aggregation within the time prescribed in paragraph (d) of this section shall be treated as a separate property. The aggregation of separate properties which results from exercising the election shall be considered as one property for all purposes of subtitle A of the Internal Revenue Code of 1954. The preceding sentence does not preclude the use of more than one account under a single method of computing depreciation or the use of more than one method of computing depreciation under section 167, if otherwise proper. Any reasonable and consistently applied method or methods of computing depreciation of the improvements made with respect to the separate properties aggregated may be continued in accordance with section 167 and the regulations thereunder. Operating interests in different minerals which comprise part or all of the same operating unit may be included in the aggregation. It is not necessary for purposes of the aggregation that the separate operating mineral interests be included in a single tract or parcel of land or in contiguous tracts or parcels of land so long as such interests are a part of the same operating unit. Under section 614(b), a taxpayer cannot elect to form more than one aggregation of separate operating mineral interests within one operating unit. For definitions of "operating mineral interest" and "operating unit" see respectively paragraphs (b) and (c) of this section.

(b) *Operating mineral interest defined.* The term "operating mineral interest" means a separate mineral interest as described in section 614(a), in respect of which the costs of production are required to be taken into account by the taxpayer for purposes of computing the limitation of 50 percent of the taxable income from the property in determining the deduction for percentage depletion computed under section 613, or such costs would be so required to be taken into account if the mine, well, or other natural deposit were in the production stage. The term does

not include royalty interests or similar interests, such as production payments or net profits interests. For the purpose of determining whether a mineral interest is an operating mineral interest, "costs of production" do not include intangible drilling and development costs, exploration expenditures under section 615, or development expenditures under section 616. Taxes, such as production taxes, payable by holders of nonoperating interests are not considered costs of production for this purpose. A taxpayer may not aggregate operating mineral interests and nonoperating mineral interests such as royalty interests.

(c) *Operating unit defined.* (1) The term "operating unit" refers to the operating mineral interests which are operated together for the purpose of producing minerals. An "operating unit" of a particular taxpayer must be determined on the basis of his own operations. It is recognized that operating units may not be uniform in the various natural resources industries or in any one of the natural resources industries, such as coal, oil and gas, and the like. As to a particular taxpayer, business reasons may require the formation of operating units that vary in size and content. The term "operating unit" refers to a producing unit, and not to an administrative or sales organization. Among the factors which indicate that mineral interests are operated together as a unit are—

- (i) Common field or operating personnel,
- (ii) Common supply and maintenance facilities,
- (iii) Common processing or treatment plants, and
- (iv) Common storage facilities.

However, operating mineral interests which are geographically widespread may not be treated as parts of the same operating unit merely because a single set of accounting records, a single executive organization, or a single sales force is maintained by the taxpayer with respect to such interests, or merely because the products of such interests are processed at the same treatment plant.

(2) If aggregated, an undeveloped operating mineral interest shall be aggregated only with those interests with which it will be operated as a unit when it reaches the production stage.

(3) While a taxpayer may operate an operating mineral interest through an agent, a coowner may aggregate only his operating mineral interests that are actually operated as a unit. For example, if A owned and actually operated the entire working interest in lease X and also owned an undivided fraction of lease Y in which B owned the remaining interest and which B actually operated as a unit with lease Z, A may not aggregate his interest in lease X with his undivided interest in lease Y, since they are not actually operated as a unit.

(4) The determination of the taxpayer as to what constitutes an operating unit is to be accepted unless there is a clear and convincing basis for a change in such determination.

(d) *Manner and scope of election—*  
(1) *Election; when made.* (i) Except as provided in subparagraph (2) (ii) of this paragraph, the election under section 614(b) and paragraph (a) of this section to treat an operating mineral interest as part of an aggregation shall be made not later than the time prescribed by law for filing the taxpayer's income tax return (including extensions thereof), for whichever of the following taxable years is the later:

(a) The first taxable year beginning after December 31, 1953, and ending after August 16, 1954, or

(b) The first taxable year in which any expenditure for exploration, development, or operation in respect of the separate operating mineral interest is made by the taxpayer after the acquisition of such interest.

See, however, paragraph (c) of § 1.614-6 as to the binding effect of an election where the basis of a separate operating mineral interest in the hands of the taxpayer is determined by reference to the basis in the hands of a transferor. The election under section 614(b) may not be made with respect to any taxable year beginning after December 31, 1957, except in the case of oil and gas wells. See paragraph (e) of this section for rules with respect to the termination of the election under section 614(b) except in the case of oil and gas wells. If an expenditure has been made in respect of a separate operating mineral interest, it is immaterial whether or not any proven deposit has been discovered with respect to such interest when such expenditure has been made. The provisions of this subdivision may be illustrated by the following example:

*Example.* Taxpayer A is producing from an oil and gas horizon and in 1958 he drills for the purpose of locating a deeper horizon which will be operated in the same operating unit as the upper producing horizon. At the end of the taxable year 1958 he has expended \$50,000 drilling for the purpose of locating a deeper horizon although at such time there is no assurance that such a horizon will be found. If taxpayer A desires to aggregate the deeper horizon, if found, with the upper horizon under section 614(b), he must elect to do so in his return for 1958. If the election to aggregate the upper and lower horizons as one property is made, the drilling expenditures with respect to the prospective lower horizon must be taken into account along with the income and expenses with respect to the upper producing horizon in computing the depletion allowance on the aggregated property.

However, where expenditures for development of, or production from, a particular mineral deposit result in the discovery of another mineral deposit, the election with respect to such other deposit shall be made for the taxable year in which it is discovered and not for the taxable year in which the expenditures were first made which resulted in such discovery.

(ii) Except in the case of oil and gas wells, if a taxpayer fails to make an election under section 614(b) to aggregate a particular operating mineral interest on or before the time prescribed for the making of such election, such interest will be treated as if an election had been

made under section 614(b) to treat it as a separate property and it cannot be included in any aggregation within the operating unit of which it is a part unless the taxpayer obtains the consent of the Commissioner. However, where the taxpayer owns more than one property within an operating unit, but has elected to treat such properties separately and one or more additional operating mineral interests are subsequently acquired, any one or more of the latter may be aggregated with one of the existing separate properties within the operating unit but not with more than one of them since they cannot be validly aggregated with each other.

(iii) In the case of oil and gas wells, if the taxpayer fails to make an election under section 614(b) with respect to a particular operating mineral interest on or before the time prescribed for the making of such election, the taxpayer shall be deemed to have treated such interest under the provisions of section 614(d). See section 614(d) and § 1.614-4.

(iv) For purposes of section 614(b), the acquisition of an option to acquire an economic interest in minerals in place does not constitute the acquisition of a mineral interest. Thus, a taxpayer who makes expenditures for the exploration of minerals on a particular tract under an option to acquire an economic interest in minerals in place is not required to make an election with respect to such interest at that time. Furthermore, the election need not be made in the taxable year in which payments are made for the acquisition of a lease, such as the payment of a bonus, unless exploratory, development, or operation expenditures are made thereafter with respect to the property in that year.

(2) *Election; how made.* (i) The election under section 614(b) must be made by a statement attached to the income tax return of the taxpayer for the first taxable year for which the election is made. This statement shall indicate that the taxpayer is making an aggregation of separate operating mineral interests within an operating unit under section 614(b) and shall contain a description of the aggregation and describe the operating mineral interests within the operating unit which are to be treated as separate properties apart from the aggregation. A general description, accompanied by maps appropriately marked, which accurately circumscribes the scope of the aggregation and identifies the properties which are to be treated separately will be sufficient. The statement shall also contain a description of the operating unit in sufficient detail to show that the aggregated operating mineral interests are properly within a single operating unit. See paragraph (c) of this section. The taxpayer shall maintain adequate records and maps in support of the above information. In the event expenditures are first made on an operating mineral interest within an operating unit after an election with respect to the aggregation of interests in that operating unit has been made, the taxpayer shall furnish only information describing such operating mineral interest, its location in the operating unit, and

whether it is to be included within the aggregation.

(ii) If the taxpayer made or did not make the election under section 614(b) with respect to a particular operating mineral interest and the last day prescribed by law for filing the return (including extensions of time therefor) on which the election was required to be made falls on or before the first day of the first month which begins more than 90 days after the regulations under section 614 are published in the FEDERAL REGISTER as a Treasury decision, consent is hereby given to the taxpayer to make or change the election not later than the first day of such first month. Any such election or change of such election shall be effective with respect to the earliest taxable year to which the election is applicable in respect of which assessment of a deficiency or credit or refund of an overpayment, as the case may be, resulting from such election or change is not prevented by any law or rule of law on the date such election or change is made. An election or change of election made pursuant to this subdivision shall be binding upon the taxpayer for the first taxable year for which it is effective and for all subsequent taxable years unless consent to a different treatment is obtained from the Commissioner. (See, however, paragraph (e) of this section for rules relating to the termination and nonapplicability of the election under section 614(b) except in the case of oil and gas wells.) Such election or change shall be made in the form of a statement setting forth the nature of the election or change, including information substantially the same as that required by subdivision (i) of this subparagraph, and shall be accompanied by an amended return or returns if necessary or, if appropriate, a claim for refund or credit. The appropriate documents must be filed on or before the first day of such first month with the district director for the district in which the original return was filed.

(3) *Election; when effective.* If a taxpayer has elected to aggregate an operating mineral interest, the date on which the aggregation becomes effective is the earliest date within the taxable year affected, on which the taxpayer incurred any expenditure for exploration, development, or operation of such interest. The application of this rule may be illustrated by the following examples:

*Example (1).* In 1953, a taxpayer owned and operated mineral interests Nos. 1, 2, and 3. All three interests form one operating unit. The taxpayer, who files his return on a calendar year basis, continued to own and operate these interests during the year 1954, and in his return for that year, filed on April 15, 1955, elected to aggregate these three interests. As the result of this election, the aggregation was effective for all purposes of subtitle A of the Internal Revenue Code of 1954 as of January 1, 1954.

*Example (2).* Assume that, on March 1, 1955, the taxpayer described in example (1) acquired operating mineral interest No. 4 which was also a part of the operating unit composed of operating mineral interests Nos. 1, 2, and 3, that he made his first expenditure for exploration with respect to operating mineral interest No. 4 on September 1, 1955, and that, in his return filed on April 15,

1956, he elected to aggregate operating mineral interest No. 4 with the aggregation consisting of Nos. 1, 2, and 3. As the result of that election, operating mineral interest No. 4 became a part of the aggregation for all purposes of subtitle A of the Internal Revenue Code of 1954 on September 1, 1955.

(4) *Election; binding effect.* A valid election made under section 614(b) and this section shall be binding upon the taxpayer for the taxable year for which made and all subsequent taxable years unless consent to make a change is obtained from the Commissioner. However, see paragraph (e) of this section for rules with respect to the termination of the election under section 614(b) except in the case of oil and gas wells. For rules relating to the binding effect of an election where the basis of a separate or an aggregated property in the hands of the transferee is determined by reference to the basis in the hands of the transferor, see paragraph (c) of § 1.614-6. A taxpayer can neither include within the aggregation a separate operating mineral interest which he had previously elected to treat separately, nor exclude from the aggregation a separate operating mineral interest previously included therein unless consent to do so is obtained from the Commissioner. A change in tax consequences alone is not sufficient to obtain consent to change the treatment of an operating mineral interest. However, consent may be appropriate where, for example, there has been a substantial change in the taxpayer's operations so that a major part of an aggregation becomes a part of another operating unit. Applications for consent shall be made in writing to the Commissioner of Internal Revenue, Washington 25, D.C. The application must be accompanied by a statement indicating the reason or reasons for the change and furnishing the information required under subdivision (i) of subparagraph (2) of this paragraph, unless such information has been previously filed and is current.

(5) *Invalid aggregations—(i) In general.* In addition to aggregations which are invalid under section 614(b) because of the failure to make timely elections, aggregations may be invalid under such section in situations which may be divided into two general categories. The first category involves basic aggregations which were timely but otherwise initially invalid. The second category involves invalid additions of operating mineral interests to basic aggregations which additions became subject to the election in years subsequent to the year in which the initial basic aggregation or aggregations were formed.

(ii) *Invalid basic aggregations.* The term "invalid basic aggregations" refers to those aggregations which are initially invalid. Generally, such basic aggregations will be invalid because more than one aggregation has been formed within an operating unit or because operating mineral interests in two or more operating units have been improperly aggregated. For any year in which an invalid basic aggregation exists, each operating mineral interest included in such aggregation shall be treated for all purposes as a separate property unless

consent is obtained from the Commissioner to treat any such interest in a different manner. Consent will be granted in appropriate cases as, for example, where the taxpayer demonstrates that he inadvertently formed an invalid basic aggregation. The provisions of this subdivision may be illustrated by the following examples:

*Example (1).* In 1953, taxpayer A owned six operating mineral interests, designated No. 1 through No. 6, and he continued to own and operate such interests during 1954. He acquired no other operating mineral interests during such year. All six of these operating mineral interests form one operating unit. Assume that A elected under section 614(b) to aggregate operating mineral interests Nos. 1 through 3 into one aggregation and Nos. 4 through 6 into another aggregation. Since A has formed two aggregations in one operating unit, they are invalid basic aggregations. Therefore, interests Nos. 1 through 6 must be treated as separate properties for 1954 and all subsequent taxable years unless consent is obtained from the Commissioner to treat any of such interests in a different manner.

*Example (2).* Assume the same facts as in example (1) and assume also that, in his return for 1954, A correctly elected to aggregate all six operating mineral interests into one aggregation under section 614(b). Assume further that all these operating mineral interests continued to be in one operating unit for the years 1954, 1955, and 1956 but that, because of changes in the facts and circumstances of A's operations, in 1957 operating mineral interests Nos. 1, 2, and 3 became a part of one operating unit and Nos. 4, 5, and 6 became a part of another operating unit. Notwithstanding the change in operations, the election made by A shall continue to be binding unless consent to change such election is obtained from the Commissioner.

(iii) *Invalid additions.* The term "additions" refers to the additions that a taxpayer makes by electing to aggregate an operating mineral interest with an aggregation formed in a previous year. Such additions will be invalid where the taxpayer either elected to aggregate an operating mineral interest with an invalid basic aggregation or elected to aggregate an operating mineral interest which is part of one operating unit with an aggregation of operating mineral interests which is a part of another operating unit. An operating mineral interest which is invalidly added to either a valid basic aggregation or to an invalid basic aggregation shall be considered as a separate property unless consent is obtained from the Commissioner to treat such interest in a different manner. The following are examples of invalid additions:

*Example (1).* In 1953, taxpayer A owned six operating mineral interests designated No. 1 through No. 6 and he continued to own and operate such interests during 1954. He acquired no other operating mineral interests during that year. Nos. 1 through 3 formed one operating unit and Nos. 4 through 6 formed another operating unit. In his return for 1954, A incorrectly elected to aggregate all six operating mineral interests into one aggregation under section 614(b). In 1955, A acquired and commenced development of operating mineral interest No. 7 which is correctly a part of the operating unit of which operating mineral interests Nos. 1, 2, and 3 are a part. A elected under section 614(b), for the year 1955, to aggregate operating mineral interest No. 7 with the invalid basic aggregation composed of

Nos. 1 through 6. Since operating mineral interest No. 7 was aggregated with an invalid basic aggregation, it is an invalid addition and must be treated as a separate property unless consent is obtained from the Commissioner to treat it in a different manner.

*Example (2).* In 1953, taxpayer A owned nine operating mineral interests designated No. 1 through No. 9. During 1954, he continued to own and operate such interests and acquired no other operating mineral interest. Interests No. 1 through No. 3 form one operating unit, Nos. 4 through 6 form another operating unit, and Nos. 7 through 9 form a third operating unit. For the year 1954, A elected under section 614(b) to aggregate operating mineral interests Nos. 1, 2, 3, and 4 into one aggregation, to treat Nos. 5 and 6 as separate properties, and to aggregate Nos. 7, 8, and 9 into another aggregation. Assume that in 1955 A acquired and commenced development of operating mineral interest No. 10 which was a part of the operating unit composed of Nos. 1, 2, and 3. Assume further that he elected under section 614(b) to aggregate No. 10 with the aggregation composed of Nos. 7, 8, and 9. This would be an invalid addition to a valid basic aggregation since operating mineral interest No. 10 was not properly a part of the operating unit formed by Nos. 7, 8, and 9. Therefore, interest No. 10 must be treated as a separate property for 1955 and all subsequent taxable years unless consent is obtained from the Commissioner to treat it in a different manner. However, the valid basic aggregation composed of interests Nos. 7 through 9 is not affected by the invalid addition of interest No. 10.

*Example (3).* Assume the same facts as in example (2) except that A elected under section 614(b) in 1955 to aggregate No. 10 with the aggregation of Nos. 1 through 4. This would also be an invalid addition because the aggregation composed of Nos. 1 through 4 is an invalid basic aggregation since operating mineral interest No. 4 is not a part of the operating unit consisting of Nos. 1, 2, and 3. Therefore, interest No. 10 must be treated as a separate property for 1955 and all subsequent taxable years unless consent is obtained from the Commissioner to treat such interest in a different manner.

(e) *Termination of election*—(1) *Taxable years beginning after December 31, 1957.* Except in the case of oil and gas wells, the election provided for under section 614(b) and paragraph (a) of this section to form an aggregation of separate operating mineral interests shall not apply with respect to any taxable year beginning after December 31, 1957. Thus, if a taxpayer makes a binding election under section 614(b) to form an aggregation of separate operating mineral interests within an operating unit for taxable years beginning before January 1, 1958, he must make a new election for the first taxable year beginning after December 31, 1957, under section 614(c) within the time prescribed in § 1.614-3 if he wishes to aggregate any separate operating mineral interests within such operating unit. A new election must be made under section 614(c) notwithstanding the fact that the aggregation formed under section 614(b) would constitute a valid aggregation under section 614(c). Failure to make such an election within the time prescribed shall constitute an election to treat each separate operating mineral interest within the operating unit as a separate property for taxable years beginning after December 31, 1957.

(2) *Taxable years beginning prior to January 1, 1958.* An election made under section 614(b) and paragraph (a) of this section to form an aggregation of separate operating mineral interests within a particular operating unit shall not apply with respect to any taxable year beginning prior to January 1, 1958, for which the taxpayer makes an election under section 614(c) (3) (B) and paragraph (f) (2) of § 1.614-3 which is applicable to any separate operating mineral interest within the same operating unit. The provisions of this subparagraph may be illustrated by the following examples:

*Example (1).* In 1953, taxpayer A owned six separate operating mineral interests, designated No. 1 through No. 6, which he operated as a unit. Operating mineral interests Nos. 1 through 5 comprise a mine, and operating mineral interest No. 6 represents one mineral deposit in a single tract of land which is being extracted by means of two mines. Taxpayer A previously made a binding election under section 614(b) to aggregate operating mineral interests Nos. 1 through 5 and to treat operating mineral interest No. 6 as a separate property. Under section 614(c) (2) and (3) (B) taxpayer A makes an election which is applicable for the taxable year 1954 and all subsequent taxable years to treat operating mineral interest No. 6 as two separate operating mineral interests. Therefore, the previous election of taxpayer A to aggregate operating mineral interests Nos. 1 through 5 under section 614(b) does not apply. Unless taxpayer A also makes an election to aggregate operating mineral interests Nos. 1 through 5 as one property under section 614(c) (1) and (3) (B) within the time prescribed in paragraph (f) (2) of § 1.614-3, he shall be deemed to have made an election to treat each of such interests as a separate property for 1954 and all subsequent taxable years.

*Example (2).* In 1953, taxpayer B owned six separate operating mineral interests, designated No. 1 through No. 6, which he operated as a unit. Operating mineral interests Nos. 1 through 3 comprise a mine and Nos. 4 through 6 comprise a second mine. Taxpayer B previously made a binding election under section 614(b) to aggregate operating mineral interests Nos. 1 through 3 and to treat Nos. 4 through 6 as separate properties. Under section 614(c) (1) and (3) (B) taxpayer B makes an election which is applicable for the taxable year 1954 and all subsequent taxable years to aggregate operating mineral interests Nos. 4 through 6 as one property. The previous election of the taxpayer under section 614(b) to aggregate operating mineral interests Nos. 1 through 3 does not apply even though such aggregation would constitute a valid aggregation if formed under section 614(c) (1). Therefore, if taxpayer B wishes to continue to treat operating mineral interests Nos. 1 through 3 as one property, he must also make an election to do so under section 614(c) (1) and (3) (B) within the time prescribed in paragraph (f) (2) of § 1.614-3.

(3) *Bases of separate operating mineral interests.* If an aggregation formed under section 614(b) is terminated by reason of the provisions of section 614(b) (4) (A), or is terminated under section 614(b) (4) (B) for any taxable year after the first taxable year to which the election under section 614(b) applies, the bases of the separate operating mineral interests included in such aggregation shall be determined in accordance with the rules contained in

paragraph (a) (2) of § 1.614-6 as of the first day of the first taxable year for which the termination is effective. However, if by reason of the provisions of section 614(b) (4) (B), an election to aggregate under section 614(b) does not apply for any taxable year under the 1954 Code for which such election was made, the bases of the separate operating mineral interests included in the aggregation formed under section 614(b) shall be determined without regard to the election under section 614(b).

(f) *Alternative treatment of separate operating mineral interests in the case of oil and gas wells.* For rules relating to an alternative treatment of separate operating mineral interests in the case of oil and gas wells, see § 1.614-4.

#### § 1.614-3 Rules relating to separate operating mineral interests in the case of mines.

(a) *Election to aggregate separate operating mineral interests*—(1) *General rule.* Except in the case of oil and gas wells, a taxpayer who owns two or more separate operating mineral interests, which constitute part or all of the same operating unit, may elect under section 614(c) (1) and this paragraph to form an aggregation of all such operating mineral interests which comprise any one mine or any two or more mines and to treat such aggregation as one property. The aggregated property which results from the exercise of such election shall be considered as one property for all purposes of subtitle A of the Internal Revenue Code of 1954. The preceding sentence does not preclude the use of more than one account under a single method of computing depreciation or the use of more than one method of computing depreciation under section 167, if otherwise proper. Any reasonable and consistently applied method or methods of computing depreciation of the improvements made with respect to the separate properties aggregated may be continued in accordance with section 167 and the regulations thereunder. It is not necessary for purposes of the aggregation that the separate operating mineral interests be included in a single tract or parcel of land or in contiguous tracts or parcels of land so long as such interests constitute part or all of the same operating unit. A taxpayer may elect to form more than one aggregation of separate operating mineral interests within one operating unit so long as each aggregation consists of all the separate operating mineral interests which comprise any one mine or any two or more mines. Thus, no aggregation may include any separate operating mineral interest which is a part of a mine without including all of the separate operating mineral interests which comprise such mine in the first taxable year for which the election to aggregate is effective. Any separate operating mineral interest which becomes a part of such mine in a subsequent taxable year must also be included in such aggregation as of the taxable year that such interest becomes a part of such mine. The taxable year in which such interest becomes a part of

such mine shall be determined upon the basis of the facts and circumstances of the particular case. If a taxpayer fails to make an election under this paragraph to aggregate a particular operating mineral interest (other than an interest which becomes a part of a mine with respect to which the interests have been aggregated in a prior taxable year) on or before the last day prescribed for making such an election, such interest shall be treated as if an election had been made to treat it as a separate property. A taxpayer may not aggregate operating mineral interests and nonoperating mineral interests such as royalty interests. For definitions of the terms "operating mineral interest", "operating unit", and "mine", see respectively paragraphs (c), (d), and (e) of this section.

(2) *Aggregation in subsequent taxable years.* If the taxpayer has made an election under section 614(c)(1) for a particular taxable year with respect to any operating mineral interest or interests within a particular operating unit, and if, for a subsequent taxable year, the taxpayer desires to make an election with respect to an additional operating mineral interest within the same operating unit, then whether or not the taxpayer may elect to include such additional interest in an aggregation or treat it as a separate property depends upon the nature of such additional interest and of the taxpayer's previous elections. If the additional interest is a part of a mine with respect to which the other interests have been aggregated, the additional interest must be included in such aggregation. If the additional interest is a part of a mine with respect to which the other interests have been treated as separate properties, the additional interest must be treated as a separate property. If the additional interest is part of a mine which previously consisted of only a single interest which has not been aggregated with any other mine, such additional interest may be aggregated or treated as a separate property. If the additional interest is an entire mine, it may, at the election of the taxpayer, (i) be added to any aggregation within the same operating unit, (ii) be aggregated with any other single interest which is an entire mine provided both interests are within the same operating unit even though such single interest has previously been treated as a separate property, or (iii) be treated as a separate property.

(b) *Election to treat a single operating mineral interest as more than one property*—(1) *General rule.* Except in the case of oil and gas wells, a taxpayer who owns a separate operating mineral interest in a mineral deposit in a single tract or parcel of land may elect under section 614(c)(2) and this paragraph to treat such interest as two or more separate operating mineral interests if such mineral deposit is being developed or extracted by means of two or more mines. In order for this election to be applicable, there must be at least two mines with respect to each of which an expenditure for development or operation has been made by the taxpayer. The election under section 614(c)(2) may also be

made with respect to a separate operating mineral interest formed by a previous election under section 614(c)(2) at such time as the mineral deposit previously allocated to such interest is being developed or extracted by means of two or more mines. If there is more than one mineral deposit in a single tract or parcel of land, an election under section 614(c)(2) with respect to any one of such mineral deposits has no application to the other mineral deposits. The election under section 614(c)(2) may not be made with respect to an aggregated property or with respect to any operating mineral interest which is a part of any aggregation formed by the taxpayer unless the taxpayer obtains consent from the Commissioner. Such consent will not be granted where the principal purpose for the request to make the election is based on tax consequences. Application for such consent shall be made in writing to the Commissioner of Internal Revenue, Washington 25, D.C. The application must be accompanied by a statement setting forth in detail the reason or reasons for the request to exercise the election with respect to an aggregated property.

(2) *Allocation of mineral deposit.* If the taxpayer elects to treat a separate operating mineral interest in a mineral deposit in a single tract or parcel of land as more than one separate operating mineral interest, then all of such mineral deposit therein and all of the portion of the tract or parcel of land allocated thereto must be allocated to the newly formed separate operating mineral interests. A portion of such mineral deposit and such tract or parcel of land must be allocated to each such newly formed separate operating mineral interest. There must be at least one mine, with respect to which an expenditure for development or operation has been made by the taxpayer, with respect to each such portion. The extent of the portion to be allocated to each newly formed separate operating mineral interest is to be determined upon the basis of the facts and circumstances of the particular case.

(3) *Bases of newly formed separate operating mineral interests.* The adjusted basis of each of the separate operating mineral interests formed by the making of the election under section 614(c)(2) shall be determined by apportioning the adjusted basis of the separate operating mineral interest with respect to which such election was made between (or among) the newly formed separate operating mineral interests in the same proportion as the fair market value of each such newly formed interest (as of the date on which the election becomes effective) bears to the total fair market value of the interest with respect to which the election was made as of such date.

(4) *Aggregation of newly formed separate operating mineral interests.* Any separate operating mineral interest formed by the making of the election under section 614(c)(2) may be included as a part of an aggregation subject to the requirements of paragraph (a) of this section, provided that the time for making the election under section 614(c)(1) to include such separate operat-

ing mineral interest in such aggregation has not expired. See paragraph (f) of this section. The provisions of this subparagraph may be illustrated by the following example:

*Example.* In 1958, taxpayer A acquired two separate operating mineral interests designated No. 1 and No. 2. Each is an interest in a single mineral deposit in a single tract of land. In the same year, taxpayer A made his first development expenditure with respect to a mine on operating mineral interest No. 1 and a mine on operating mineral interest No. 2. Operating mineral interests Nos. 1 and 2 are operated as a unit. Taxpayer A did not elect to aggregate operating mineral interests Nos. 1 and 2 under section 614(c)(1) within the time prescribed for making such an election. In 1960 taxpayer A made his first development expenditure with respect to a second mine on operating mineral interest No. 2. Taxpayer A elected under section 614(c)(2) to treat operating mineral interest No. 2 as two separate operating mineral interests, designated as Nos. 2(a) and 2(b), for the taxable year 1960 and all subsequent taxable years. No. 2(a) contained the mine for which the first development expenditure was made in 1958, and No. 2(b) contained the mine for which the first development expenditure was made in 1960. If taxpayer A wishes to do so, he may elect to aggregate mineral interests Nos. 1 and 2(b) under section 614(c)(1) for the taxable year 1960 and all subsequent taxable years since the first development expenditure with respect to the mine on operating mineral interest No. 2(b) was made during the taxable year 1960. Taxpayer A may not elect to aggregate mineral interests Nos. 1 and 2(a) under such section since the time for making such an election has expired.

(c) *Operating mineral interest defined.* For the definition of the term "operating mineral interest" as used in this section, see paragraph (b) of § 1.614-2.

(d) *Operating unit defined.* For the definition of the term "operating unit" as used in this section, see paragraph (c) of § 1.614-2.

(e) *Mine defined.* For purposes of this section, the term "mine" means any excavation or other workings or series of related excavations or related workings, as the case may be, for the purpose of extracting any known mineral deposit except oil and gas deposits. For the purpose of the preceding sentence, the term "excavations" or "workings" includes quarries, pits, shafts, and wells (except oil and gas wells). The number of excavations or workings that constitute a mine is to be determined upon the basis of the facts and circumstances of the particular case such as the nature and position of the mineral deposit or deposits, the method of mining the mineral, the location of the excavations or other workings in relation to the mineral deposit or deposits, and the topography of the area. The determination of the taxpayer as to the composition of a mine is to be accepted unless there is a clear and convincing basis for a change in such determination.

(f) *Manner and scope of election*—(1) *Election to apply section 614(c)(1) and (2) for taxable years beginning after December 31, 1957.* Except as provided in subparagraphs (2) and (3) of this paragraph, the election under section 614(c)(1) and paragraph (a) of this

section to treat an operating mineral interest as part of an aggregation shall be made under section 614(c)(3)(A) not later than the time prescribed by law for filing the taxpayer's income tax return (including extensions thereof) for whichever of the following taxable years is the later:

(i) The first taxable year beginning after December 31, 1957, or

(ii) The first taxable year in which any expenditure for development or operation in respect of the separate operating mineral interest is made by the taxpayer after the acquisition of such interest.

Except as provided in subparagraphs (2) and (3) of this paragraph, the election under section 614(c)(2) and paragraph (b) of this section to treat a single operating mineral interest as more than one operating mineral interest shall be made under section 614(c)(3)(A) not later than the time prescribed by law for filing the taxpayer's income tax return (including extensions thereof) for whichever of the following taxable years is the later:

(iii) The first taxable year beginning after December 31, 1957, or

(iv) The first taxable year in which expenditures for development or operation of more than one mine in respect of the separate operating mineral interest are made by the taxpayer after the acquisition of such interest.

However, if the latest time at which an election may be made under this subparagraph falls on or before the first day of the first month which begins more than 90 days after the regulations under section 614 are published in the FEDERAL REGISTER as a Treasury decision, such election may be made or modified at any time on or before the first day of such first month. See paragraph (c) of § 1.614-6 as to the binding effect of an election where the basis of a separate operating mineral interest in the hands of the taxpayer is determined by reference to the basis in the hands of a transferor.

(2) *Election to apply section 614(c)(1) and (2) for taxable years beginning before January 1, 1958.* In accordance with section 614(c)(3)(B), the election under section 614(c)(1) and paragraph (a) of this section to treat an operating mineral interest as part of an aggregation may, at the election of the taxpayer, be made not later than the time prescribed by law for filing the taxpayer's income tax return (including extensions thereof) for whichever of the following taxable years is the later:

(i) The first taxable year beginning after December 31, 1953, and ending after August 16, 1954, for which assessment of a deficiency or credit or refund of an overpayment, as the case may be, resulting from an election under section 614(c)(1), is not prevented on September 2, 1958, by the operation of any law or rule of law, or

(ii) The first taxable year in which any expenditure for development or operation in respect of the separate operating mineral interest is made by the taxpayer after the acquisition of such interest.

In accordance with section 614(c)(3)(B), the election under section 614(c)(2) and paragraph (b) of this section to treat an operating mineral interest as more than one operating mineral interest may, at the election of the taxpayer, be made not later than the time prescribed by law for filing the taxpayer's income tax return (including extensions thereof) for whichever of the following taxable years is the later:

(iii) The first taxable year beginning after December 31, 1953, and ending after August 16, 1954, for which assessment of a deficiency or credit or refund of an overpayment, as the case may be, resulting from an election under section 614(c)(2), is not prevented on September 2, 1958, by the operation of any law or rule of law, or

(iv) The first taxable year in which expenditures for development or operation of more than one mine in respect of the separate operating mineral interest are made by the taxpayer after the acquisition of such interest.

However, if the latest time at which an election may be made under this subparagraph falls on or before the first day of the first month which begins more than 90 days after the regulations under section 614 are published in the FEDERAL REGISTER as a Treasury decision, such election may be made or modified at any time on or before the first day of such first month. See paragraph (c) of § 1.614-6 as to the binding effect of an election where the basis of a separate operating mineral interest in the hands of the taxpayer is determined by reference to the basis in the hands of a transferor.

(3) *Limitation.* If the taxpayer makes an election under section 614(c)(1) or (2) in accordance with section 614(c)(3)(B) and subparagraph (2) of this paragraph with respect to any operating mineral interest which constitutes part or all of an operating unit, such taxpayer may not make any election under section 614(c)(1) or (2) in accordance with section 614(c)(3)(A) and subparagraph (1) of this paragraph with respect to any operating mineral interest which constitutes part or all of such operating unit. The provisions of this subparagraph may be illustrated by the following example:

*Example:* In 1953, taxpayer A owned six separate operating mineral interests, designated No. 1 through No. 6, which he operated as a unit. Operating mineral interests Nos. 1 through 5 comprise a mine, and operating mineral interest No. 6 represents one mineral deposit in a single tract of land which is being extracted by means of two mines. In accordance with section 614(c)(3)(B) and subparagraph (2) of this paragraph, taxpayer A elects under section 614(c)(2) to treat operating mineral interest No. 6 as two separate operating mineral interests for the taxable year 1954 and all subsequent taxable years. Unless taxpayer A also makes an election under section 614(c)(1) to aggregate operating mineral interests Nos. 1 through 5 for the taxable year 1954 and all subsequent taxable years in accordance with section 614(c)(3)(B) and subparagraph (2) of this paragraph, he shall be deemed to have made an election to treat each of such interests as a separate property. Taxpayer A may not elect, under section 614(c)(1) and (3)(A), to aggregate operating mineral

interests Nos. 1 through 5 for the taxable year 1958 or any subsequent taxable year.

(4) *Statute of limitations.* If the taxpayer makes any election in accordance with section 614(c)(3)(B) and subparagraph (2) of this paragraph and if assessment of any deficiency for any taxable year resulting from such election is prevented on the first day of the first month which begins more than 90 days after the regulations under section 614 are published in the FEDERAL REGISTER as a Treasury decision, or at any time within one year after such first day, by the operation of any law or rule of law, such assessment may, nevertheless, be made within one year after such first day. Any election by a taxpayer in accordance with section 614(c)(3)(B) shall constitute consent to the assessment of any deficiency resulting from any such election. If refund or credit of any overpayment of income tax resulting from any election made in accordance with section 614(c)(3)(B) is prevented on such first day, or at any time within one year after such first day, by the operation of any law or rule of law, refund or credit of such overpayment may, nevertheless, be made or allowed but only if claim therefor is filed within one year after such first day. This subparagraph shall not apply with respect to any taxable year of a taxpayer for which an assessment of a deficiency resulting from an election made in accordance with section 614(c)(3)(B) or a refund or credit of an overpayment resulting from any such election, as the case may be, is prevented by the operation of any law or rule of law on September 2, 1958.

(5) *Elections—how made—(i) General rule.* Except as provided in subdivision (ii) of this subparagraph, an election under section 614(c)(1) or (2) and paragraph (a) or (b) of this section must be made by a statement attached to the income tax return of the taxpayer for the first taxable year for which the election is made. The statement shall contain the following information:

(a) Whether the taxpayer is making an election or elections with respect to the operating unit in accordance with section 614(c)(3)(A) or (B);

(b) A description of the operating unit of the taxpayer in sufficient detail to identify the operating mineral interests which are included within such operating unit;

(c) A description of each aggregation to be formed within the operating unit in sufficient detail to show that each aggregation consists of all the separate operating mineral interests which comprise any one mine or any two or more mines;

(d) A description of each separate operating mineral interest within the operating unit which is to be treated as a separate property in sufficient detail to show that such interest is not a part of any mine for which an election to aggregate has been made;

(e) The taxable year in which the first expenditure for development or operation was made by the taxpayer with respect to each separate operating mineral interest within the operating unit, but if the first expenditure for development or operation has not been made

with respect to a separate operating mineral interest before the close of the taxable year for which the election under this section is made, such information should also be included;

(f) A description of each separate operating mineral interest within the operating unit which the taxpayer elects to treat as more than one such interest under section 614(c) (2) in sufficient detail to show that the separate operating mineral interest was not a part of an aggregation formed by the taxpayer under section 614(c) (1) for any taxable year prior to the taxable year for which the election under section 614(c) (2) is made, and to show that the mineral deposit representing the separate operating mineral interest is being developed or extracted by means of two or more mines;

(g) The taxable year in which the first expenditure for development or co-operation was made by the taxpayer with respect to each mine on the separate operating mineral interest that the taxpayer is electing to treat as more than one such interest; and

(h) The allocation of the mineral deposit representing the separate operating mineral interest between (or among) the newly formed interests and the method by which such allocation was made.

For the purpose of applying subdivisions (e) and (g) of this subdivision, if the first expenditure for development or operation with respect to a separate operating mineral interest or a mine was made prior to the first taxable year for which the election with respect to such interest or mine is applicable, the taxpayer may state that such is the case in lieu of identifying the exact taxable year in which such first expenditure was made. In any case where part of the information required under this subdivision can be adequately supplied by means of appropriately marked maps, the statement may be accompanied by such maps and may omit the required descriptive material to the extent replaced by the maps. The taxpayer shall maintain adequate records and maps in support of the above information. In the event that the first expenditure for development or operation with respect to a separate operating mineral interest is made by the taxpayer in a taxable year subsequent to the taxable year for which an election under this section has been made with respect to the operating unit of which such interest is a part, the taxpayer shall furnish information describing such interest in sufficient detail to identify it as a part of such operating unit, to show whether it is a part of a mine with respect to which the interests have previously been aggregated or have previously been treated as separate properties, and to indicate whether it is to be included within an aggregation.

(ii) *Special rule.* If the last day prescribed by law for filing the taxpayer's income tax return (including extensions thereof) for the first taxable year for which an election under section 614(c) (1) or (2) is made falls before the first day of the first month which begins more than 90 days after the regulations under section 614 are published in the FEDERAL REGISTER as a Treasury decision, the statement of election or

modification thereof for such taxable year must be filed on or before the first day of such first month with the district director for the district in which such return was filed. The statement must contain the information as required in subdivision (i) of this subparagraph, must indicate the first taxable year for which the election contained therein is made, and shall be accompanied by an amended return or returns if necessary or, if appropriate, a claim for refund or credit.

(6) *Elections; when effective.* If the taxpayer has elected to form an aggregation under section 614(c) (1) and this section, the date on which the aggregation becomes effective is the first day of the first taxable year for which the election is made; except that if any separate operating mineral interest included in such aggregation was acquired after such first day, the date on which the inclusion of such interest in such aggregation becomes effective is the date of its acquisition. If the taxpayer elects to add another operating mineral interest to such aggregation for a subsequent taxable year, the date on which aggregation of the additional interest becomes effective is the first day of such subsequent taxable year or the date of acquisition of such interest, whichever is later. If an operating mineral interest is required to be included in the aggregation for a subsequent taxable year because such interest becomes a part of a mine which the taxpayer has previously elected to aggregate, the date on which the inclusion of such interest in the aggregation becomes effective is the first day of the subsequent taxable year or the date of acquisition of such interest, whichever is later. If the taxpayer has elected to treat a separate operating mineral interest as more than one such interest, the date on which the election becomes effective is the first day of the first taxable year for which the election is made or the earliest date on which the first expenditure for development or operation has been made by the taxpayer with respect to a mine on each newly formed separate operating mineral interest, whichever is later.

(7) *Elections; binding effect.* A valid election under section 614(c) (1) or (2) whether made in accordance with section 614(c) (3) (A) or (B) shall be binding upon the taxpayer for the taxable year for which made and for all subsequent taxable years unless consent to change the treatment of an operating mineral interest with respect to which an election has been made is obtained from the Commissioner. For rules relating to the binding effect of an election where the basis of a separate or an aggregated property in the hands of the transferee is determined by reference to the basis in the hands of the transferor, see paragraph (c) of § 1.614-6. A taxpayer can neither include within an aggregation a separate operating mineral interest which he has previously elected to treat as a separate property, nor exclude from an aggregation a separate operating mineral interest which he has properly elected to include within such aggregation unless consent to do so is obtained from the Commissioner. A change in tax consequences alone is not sufficient

to obtain consent to change the treatment of an operating mineral interest. However, consent may be appropriate where, for example, there has been a substantial change in the taxpayer's operations so that a major part of an aggregation becomes a part of another operating unit. Applications for consent shall be made in writing to the Commissioner of Internal Revenue, Washington 25, D.C. The application must be accompanied by a statement indicating the reason or reasons for the change and furnishing the information required in subparagraph (5) (i) of this paragraph, unless such information has been previously filed and is current.

(8) *Invalid aggregations—(i) General rule.* In addition to aggregations which are invalid under this section because of the failure to make timely elections, aggregations may be invalid under this section in situations which may be divided into two general categories. The first category involves invalid basic aggregations. The second category involves invalid additions to basic aggregations.

(ii) *Invalid basic aggregations.* The term "invalid basic aggregations" refers to aggregations which are initially invalid. Generally, a basic aggregation is initially invalid because it does not include all the separate operating mineral interests which comprise a complete mine or mines or because it includes separate operating mineral interests which are not part of the same operating unit. If the taxpayer makes an invalid basic aggregation, each of the separate operating mineral interests included in such aggregation shall be treated as a separate property for the first taxable year for which the election is made and for all subsequent taxable years unless consent is obtained from the Commissioner to treat any such interest in a different manner. Consent will be granted in appropriate cases. For example, assume that the taxpayer elects to form an aggregation of the operating mineral interests which comprise one or more complete mines. If the taxpayer demonstrates that he inadvertently failed to include a minor part of one of the aggregated mines or inadvertently included a minor part of another mine that is not a part of the aggregation, consent will ordinarily be granted to maintain the aggregation by including the part omitted or by excluding the part included. The provisions of this subdivision may be illustrated by the following examples:

*Example (1).* In 1958, taxpayer A owned ten operating mineral interests, designated No. 1 through No. 10, which he operated as a unit. Interests Nos. 1 through 5 comprised mine X, and interests Nos. 6 through 10 comprised mine Y. Taxpayer A had made his first development expenditure with respect to each of the ten interests before January 1, 1958. Taxpayer A elected under section 614(c) (1) and (3) (A) to aggregate interests Nos. 1 through 8 for 1958 and all subsequent taxable years. The aggregation formed by taxpayer A is an invalid basic aggregation because it does not include all the operating mineral interests which comprise a complete mine or mines. Therefore, interests Nos. 1 through 8 must be treated as separate properties for 1958 and all subsequent taxable

years unless consent is obtained from the Commissioner to treat any of such interests in a different manner.

*Example (2).* In 1958, taxpayer B owned ten operating mineral interests designated No. 1 through No. 10. Interests Nos. 1 through 5 comprised mine X, and interests Nos. 6 through 10 comprised mine Y. Taxpayer B had made his first development expenditure with respect to each of the ten interests before January 1, 1958. Taxpayer B elected under section 614(c) (1) and (3)(A) to aggregate interests Nos. 1 through 10 for 1958 and all subsequent taxable years. Upon audit, it was determined that mines X and Y were in two separate operating units. Therefore, the aggregation formed by taxpayer B is invalid, and interests Nos. 1 through 10 must be treated as separate properties for 1958 and all subsequent taxable years unless consent is obtained from the Commissioner to treat any of such interests in a different manner.

(iii) *Invalid additions.* The term "invalid addition" refers to an operating mineral interest which is invalidly aggregated with an existing aggregation. Generally, an addition is invalid because it is a part of a mine and is aggregated with an aggregation which does not include other interests which are parts of the same mine, or because it is in one operating unit and is included as part of an aggregation which is in another operating unit. If an invalid addition is properly a part of a mine with respect to which other interests have been validly aggregated for a taxable year prior to the first taxable year for which the election to aggregate the invalid addition is made, then the invalid addition shall be included in the aggregation of which it is properly a part for such first taxable year and all subsequent taxable years. Any other invalid addition shall be treated as a separate property for the first taxable year for which the election to aggregate such addition is made and for all subsequent taxable years unless consent is obtained from the Commissioner to treat any such interest in a different manner. The provisions of this subdivision may be illustrated by the following examples:

*Example (1).* In 1958, taxpayer A owned six operating mineral interests, designated No. 1 through No. 6, which he operated as a unit. Interests Nos. 1 through 3 comprised mine X, and interests Nos. 4 through 6 comprised mine Y. Taxpayer A had made his first development expenditure with respect to each of the six interests before January 1, 1958. Taxpayer A elected under section 614(c) (1) and (3)(A) to aggregate interests Nos. 1 through 3 for 1958 and all subsequent taxable years. He elected to treat interests Nos. 4 through 6 as separate properties for 1958 and all subsequent taxable years. In 1959, taxpayer A acquired and made his first development expenditure with respect to interest No. 7. Interest No. 7 was a part of the mine composed of interests Nos. 4 through 6. Taxpayer A elected under section 614(c) (1) and (3)(A) to aggregate interest No. 7 with the aggregation of interests Nos. 1 through 3 for 1959 and all subsequent taxable years. Interest No. 7 is an invalid addition and must be treated as a separate property for 1959 and all subsequent taxable years. It cannot be aggregated with interests Nos. 4 through 6 since taxpayer A has previously elected to treat such interests as separate properties. However, the valid basic aggregation composed of interests Nos. 1 through 3 is not affected by the invalid addition of interest No. 7.

*Example (2).* Assume the same facts as in example (1) except that taxpayer A elected under section 614(c) (1) and (3)(A) to aggregate interests Nos. 1 through 3 as one aggregation and interests Nos. 4 through 6 as another aggregation for 1958 and all subsequent taxable years. The aggregation of interest No. 7 with the aggregation consisting of interests Nos. 1 through 3 constitutes an invalid addition. Interest No. 7 must be included in the aggregation consisting of interests Nos. 4 through 6 for 1959 and all subsequent taxable years.

*Example (3).* In 1958, taxpayer B owned three operating mineral interests, designated No. 1 through No. 3, which comprised mine X. Taxpayer B had made his first development expenditure with respect to each of the three interests before January 1, 1958. Taxpayer B elected under section 614(c) (1) and (3)(A) to aggregate interests Nos. 1 through 3 for 1958 and all subsequent taxable years. In 1959, taxpayer B acquired interests Nos. 4 through 7 which comprised mine Y. Taxpayer B made his first development expenditure with respect to each of the four interests during 1959. Taxpayer B elected under section 614(c) (1) and (3)(A) to aggregate interests Nos. 4 through 6 and to aggregate interest No. 7 with the aggregation consisting of interests Nos. 1 through 3 for 1959 and all subsequent taxable years. The aggregation consisting of interests Nos. 4 through 6 is an invalid basic aggregation, and the aggregation of interest No. 7 is an invalid addition. Interests Nos. 4 through 7 must be treated as separate properties for 1959 and all subsequent taxable years unless consent is obtained from the Commissioner to treat such interests in a different manner.

(g) *Special rule as to deductions under section 615(a) prior to aggregation—*

(1) *General rule.* If an aggregation of operating mineral interests under section 614(c) (1) and paragraph (a) of this section includes any interest or interests in respect of which exploration expenditures, paid or incurred after the acquisition of such interest or interests, were deducted by the taxpayer under section 615(a) for any taxable year which precedes the date on which such aggregation becomes effective, then the tax imposed by chapter 1 of the Internal Revenue Code of 1954 for the taxable year or years in which such exploration expenditures were so deducted shall be recomputed in accordance with the rules contained in this paragraph. If an operating mineral interest is added to such aggregation for a subsequent taxable year and exploration expenditures made with respect to such interest after its acquisition were deducted by the taxpayer under section 615(a) for any taxable year which precedes the date on which the aggregation of such additional interest becomes effective, then the tax imposed by chapter 1 of the Internal Revenue Code of 1954 for the taxable year or years in which such exploration expenditures were so deducted shall be recomputed. For purposes of this paragraph, such taxable year or years shall be referred to as the taxable year or years for which a recomputation is required to be made. See paragraph (f) (6) of this section for rules relating to the date on which an aggregation becomes effective or the date on which the aggregation of an additional interest to an aggregation becomes effective. See subparagraph (3) of this paragraph for rules relating to the method of recomputation of tax. The provisions of this

subparagraph may be illustrated by the following examples:

*Example (1).* In 1954, taxpayer A owned two operating mineral interests designated Nos. 1 and 2. Interest No. 1 was in the production stage prior to 1954. The first exploration expenditures with respect to interest No. 2 were made by taxpayer A in 1954 and were deducted under section 615(a) on his return for that year. In 1955, taxpayer A made his first development expenditure with respect to interest No. 2, and thereafter it was operated with interest No. 1 as a unit. Taxpayer A elected under section 614(c) (1) and (3)(B) to form an aggregation of interests Nos. 1 and 2 for 1955 and all subsequent taxable years. Taxpayer A must recompute his tax for 1954 in accordance with this paragraph.

*Example (2).* Assume the same facts as in example (1) except that, in 1957, taxpayer A acquired another operating mineral interest, designated No. 3, made his first exploration expenditures with respect to such interest in that year, and deducted such expenditures under section 615(a) on his return for that year. In 1958, taxpayer A made his first development expenditure with respect to interest No. 3. Interest No. 3 was part of the same operating unit as interests Nos. 1 and 2. Taxpayer A elected under section 614(c) (1) and (3)(B) to add interest No. 3 to his aggregation of interests Nos. 1 and 2 for 1958 and all subsequent taxable years. Taxpayer A must recompute his tax for 1957 in accordance with this paragraph.

(2) *Exceptions—*(i) *Taxable years beginning before January 1, 1958.* In the case of exploration expenditures deducted by the taxpayer with respect to an operating mineral interest for any taxable year beginning before January 1, 1958, subparagraph (1) of this paragraph shall apply only if the taxpayer has made an election under section 614(c) (1) or (2) with respect to the operating unit of which such interest is a part and such election applies to the taxable year for which such exploration expenditures were deducted. Thus, if the taxpayer does not make an election with respect to the operating unit under section 614(c) (1) or (2) and (3)(B), subparagraph (1) of this paragraph does not apply in the case of exploration expenditures deducted with respect to any operating mineral interest which is a part of such operating unit for any taxable year beginning before January 1, 1958. The provisions of this subdivision may be illustrated by the following examples:

*Example (1).* In 1956, taxpayer A acquired two operating mineral interests designated Nos. 1 and 2. Interest No. 1 was in the production stage at that time. Taxpayer A made his first exploration expenditures with respect to interest No. 2 in 1956, 1957, and 1958 and deducted such expenditures under section 615(a) on his returns for such years. In 1959, taxpayer A made his first development expenditure with respect to interest No. 2. Interests Nos. 1 and 2 were operated as a unit. Taxpayer A elected under section 614(c) (1) and (3)(A) to aggregate interests Nos. 1 and 2 for 1959 and all subsequent taxable years. Only the exploration expenditures deducted by the taxpayer for 1958 must be taken into account for purposes of applying subparagraph (1) of this paragraph.

*Example (2).* In 1954, taxpayer B owned two operating mineral interests, designated Nos. 1 and 2, which he operated as a unit. Interest No. 1 was in the production stage at that time, and interest No. 2 represented one mineral deposit in a single tract of land which was being extracted by means of two

mines. Under section 614(c) (2) and (3) (B), taxpayer B elects to treat interest No. 2 as two separate operating mineral interests, designated as Nos. 2(a) and 2(b), for 1954 and all subsequent taxable years. In 1955, taxpayer B acquired operating mineral interest No. 3. He made his first exploration expenditures with respect to interest No. 3 in 1955, 1956, and 1957 and deducted such expenditures under section 615(a) on his returns for such years. In 1958, taxpayer B made his first development expenditure with respect to interest No. 3, and thereafter it was operated with interests Nos. 1, 2(a), and 2(b) as a unit. Taxpayer B elects under section 614(c) (1) and (3) (B) to aggregate interests Nos. 1 and 3 for 1958 and all subsequent taxable years. The exploration expenditures deducted by the taxpayer for 1955, 1956, and 1957 must be taken into account for purposes of applying subparagraph (1) of this paragraph since the taxpayer has made an election under section 614(c) (2) with respect to the operating unit of which interest No. 3 is a part and such election applies to the taxable years 1955, 1956, and 1957.

(ii) *Interests formed pursuant to an election under section 614(c) (2)*. In the case of exploration expenditures deducted with respect to an operating mineral interest which the taxpayer elects to treat as more than one such interest under section 614(c) (2) and paragraph (b) of this section, subparagraph (1) of this paragraph shall not apply. Thus, if the taxpayer deducts exploration expenditures with respect to an operating mineral interest, subsequently elects to treat such interest as more than one interest under section 614(c) (2), and includes one of the newly formed interests in an aggregation under section 614(c) (1), subparagraph (1) of this paragraph does not apply in the case of the exploration expenditures deducted with respect to the interest which the taxpayer elected to treat as more than one interest. The provisions of this subdivision may be illustrated by the following examples:

*Example (1)*. In 1958, taxpayer A acquired two operating mineral interests, designated Nos. 1 and 2, which he operated as a unit. Each interest was an interest in a single mineral deposit in a single tract or parcel of land. There was a mine in the production stage on each of the two interests at that time. Taxpayer A elected under section 614(c) (1) (B) to treat interests Nos. 1 and 2 as separate properties. In 1959 and 1960, taxpayer A made exploration expenditures with respect to interest No. 2 for the purpose of extracting the mineral by means of a second mine, and he deducted such expenditures on his returns for such years. In 1961, taxpayer A made his first development expenditure with respect to a second mine on interest No. 2. Taxpayer A elected under section 614(c) (2) to treat interest No. 2 as two separate operating mineral interests, designated as Nos. 2(a) and 2(b), for 1961 and all subsequent taxable years. Interest No. 2(a) contained the producing mine and interest No. 2(b) contained the subsequently developed mine. In his return for 1961, taxpayer A also elected under section 614(c) (1) (A) to aggregate interests Nos. 1 and 2(b) for 1961 and all subsequent taxable years. The exploration expenditures deducted with respect to interest No. 2 prior to the effective date of the formation of interests Nos. 2(a) and 2(b) need not be taken into account for purposes of applying subparagraph (1) of this paragraph.

*Example (2)*. In 1954, taxpayer B owned two operating mineral interests designated

Nos. 1 and 2. Interest No. 1 was an interest in a single mineral deposit in a single tract of land which was being extracted by means of two mines. Taxpayer B elected under section 614(c) (2) and (3) (B) to treat interest No. 1 as two separate operating mineral interests, designated as Nos. 1(a) and 1(b), for 1954 and all subsequent taxable years. In 1955, 1956, and 1957, taxpayer B made exploration expenditures with respect to interest No. 2 and deducted such expenditures on his returns for such years. In 1958, taxpayer B made his first development expenditure with respect to interest No. 2, and, on his return for that year, taxpayer B elected to aggregate interests Nos. 1(a) and 2 under section 614(c) (1) for 1958 and all subsequent taxable years. The exploration expenditures deducted with respect to interest No. 2 for 1955, 1956, and 1957 shall be taken into account for purposes of applying subparagraph (1) of this paragraph since such exploration expenditures were deducted with respect to an interest to which this subdivision does not apply.

(3) *Recomputation of tax—(1) General rule*. In the case of an aggregation formed under section 614(c) (1) and paragraph (a) of this section in respect of which a recomputation of tax is required to be made under the provisions of subparagraphs (1) and (2) of this paragraph for any taxable year or years, the tax imposed by chapter 1 of the Internal Revenue Code of 1954 shall be recomputed for each such taxable year as if—

(a) The taxpayer had elected to form an aggregation for the taxable year for which the recomputation is required to be made, and

(b) Such aggregation had included all the interests included in the aggregation formed under section 614(c) (1) except those interests which the taxpayer did not own during the taxable year for which the recomputation is required to be made and those interests in respect of which the taxpayer had made no expenditures for exploration, development, or operation before or during the taxable year for which the recomputation is required to be made.

If a recomputation of tax is required to be made for any taxable year in the case of the aggregation of an additional interest to an existing aggregation under section 614(c) (1), such recomputation shall be made as if—

(c) The taxpayer had elected to form an aggregation for the taxable year for which the recomputation is required to be made, and

(d) Such aggregation had included all the interests included in the aggregation formed under section 614(c) (1) (including any interest which the taxpayer had disposed of prior to the date on which the aggregation of the additional interest becomes effective) except those interests which the taxpayer did not own during the taxable year for which the recomputation is required to be made and those interests in respect of which the taxpayer had made no expenditures for exploration, development, or operation before or during the taxable year for which the recomputation is required to be made.

For purposes of this paragraph, any aggregation which is treated as having been formed under subdivisions (a) and

(b) or under subdivisions (c) and (d) shall be referred to as the "constructed aggregated property".

(ii) *Recomputation of depletion allowance*. The taxpayer shall compute the depletion allowance with respect to the constructed aggregated property for the taxable year for which the recomputation is required to be made. In making this computation, cost depletion for such taxable year shall be computed with reference to the depletion unit for the constructed aggregated property. See paragraph (a) of § 1.611-2. Percentage depletion for such taxable year shall not exceed 50 percent of the taxable income from the constructed aggregated property computed in accordance with § 1.613-4. If a recomputation is required to be made for the same taxable year with respect to any other aggregation or aggregations formed by the taxpayer under section 614(c) (1), the depletion allowance with respect to the other constructed aggregated property or properties shall be similarly computed. If, for a taxable year in respect of which a recomputation is required, the sum of the depletion allowance or allowances as computed under this subdivision is less than the sum of the depletion allowance or allowances actually deducted for such taxable year with respect to all the properties required to be taken into account in making the computation under this subdivision, then the total depletion allowance deducted by the taxpayer for such taxable year shall be reduced by the difference. The taxable income or net operating loss of the taxpayer for such taxable year shall be adjusted to reflect such reduction for purposes of the recomputation of tax. However, if for a taxable year in respect of which a recomputation is required, the sum of the depletion allowance or allowances as computed under this subdivision exceeds the sum of the depletion allowance or allowances actually deducted for such taxable year with respect to all the properties required to be taken into account in making the computation under this subdivision, the recomputation of tax for such taxable year is disregarded for purposes of applying section 614(c) (4) (B), (C), and (D).

(iii) *Effect of recomputation with respect to items based on amount of income*. In making the recomputation of tax under this subparagraph for any taxable year, any deduction, credit, or other allowance which is based upon the adjusted gross income or taxable income of the taxpayer for such year shall be recomputed taking into account the adjustment required under subdivision (ii) of this subparagraph. For example, if a corporate taxpayer's taxable income is increased under the provisions of such subdivision, then the amount of charitable contributions which may be deducted under the limitation contained in section 170(b) (2) shall be correspondingly increased for purposes of the recomputation. Moreover, the effect that the recomputation of any deduction, credit, or other allowance for a taxable year has on the tax imposed for any other taxable year shall also be taken into account for purposes of the recomputation of tax under this subparagraph.

(iv) *Effect of recomputation with respect to a net operating loss and a net operating loss deduction.* If the recomputation of tax under this subparagraph for the taxable year for which the recomputation is required to be made results in a reduction of a net operating loss for such year, then the taxpayer shall take into account the effect of such reduction on the tax imposed by chapter 1 of the Internal Revenue Code of 1954 (or by corresponding provisions of the Internal Revenue Code of 1939) for any taxable year affected by such reduction. If the recomputation of tax for the taxable year for which the recomputation is required to be made results in an increase in taxable income as defined in section 172(b)(2) for such year, then the taxpayer shall take into account the effect of such increase on the tax imposed by chapter 1 of the Internal Revenue Code of 1954 (or by corresponding provisions of the Internal Revenue Code of 1939) for any taxable year affected by such increase. Furthermore, in making the recomputation of tax for any taxable year for which the recomputation is required to be made, the taxpayer shall take into account any change in the net operating loss deduction for such year resulting from the recomputation of tax for any other taxable year for which a recomputation is required to be made. For provisions relating to the net operating loss deduction, see section 172 and the regulations thereunder.

(v) *Determination of increase in tax.* If the taxpayer elects to form an aggregation or aggregations for a taxable year under section 614(c)(1) and if a recomputation of tax is required to be made under this paragraph for any prior taxable year or years, then the taxpayer shall compute the difference between the tax as recomputed under this subparagraph for such prior taxable year or years (and other taxable years affected by the recomputation) and the tax liability previously determined (computed without regard to section 614(c)(4)) with respect to such prior taxable year or years (and other taxable years affected by the recomputation). If the taxpayer is subsequently required to make a recomputation with respect to any taxable year or years for which he has previously made a recomputation, then the taxpayer shall compute the difference between the tax as subsequently recomputed for such taxable year or years (and other taxable years affected by the subsequent recomputation) and the tax as previously recomputed for such taxable year or years (and other taxable years affected by the subsequent recomputation). For treatment of the increase in tax resulting from the recomputation of tax under this subparagraph, see subparagraph (4) of this paragraph.

(4) *Treatment of increase in tax—(i) General rule.* If the taxpayer elects to form an aggregation or aggregations for a taxable year under section 614(c)(1) and if a recomputation of tax is required to be made for any prior taxable year or years, then the total increase in tax resulting from such recomputation determined under subparagraph (3)(v) of this

paragraph shall be taken into account in the first taxable year to which the election to form such aggregation or aggregations is applicable and in each succeeding taxable year until the full amount of such total increase in tax has been taken into account. The number of taxable years over which such total increase shall be taken into account shall be equal to the number of taxable years for which a recomputation of tax is required to be made under subparagraph (1) of this paragraph as limited by subparagraph (2) of this paragraph and for which such recomputation results in a reduction of the taxpayer's depletion allowance under subparagraph (3)(ii) of this paragraph. The amount of the increase in tax which is to be taken into account in a taxable year is determined by dividing the total increase in tax by the number of taxable years over which such total increase is to be taken into account. The tax imposed by chapter 1 of the Internal Revenue Code of 1954 for each of the taxable years over which the total increase in tax is to be taken into account shall be increased by the amount determined in accordance with the preceding sentence. However, such increase in tax for each of such taxable years shall have no effect upon the determination of the amount of any credit against the tax for any of such taxable years. For example, the amount of such increase shall not affect the computation of the limitation on the foreign tax credit under section 904. The amount of the increase in tax which is required to be taken into account by the taxpayer in a particular taxable year under section 614(c)(4)(C) shall be treated as a tax imposed with respect to such taxable years even though, without regard to section 614(c)(4) and this paragraph, such taxpayer would otherwise have no tax liability for such taxable year.

(ii) *Increase in tax not determinable as of first taxable year of aggregation.* If the recomputation of tax under subparagraph (3) of this paragraph, for any taxable year or years prior to the first taxable year to which the election to form an aggregation or aggregations under section 614(c)(1) applies, results in a reduction of any net operating loss carryover to a taxable year subsequent to such first taxable year, then the total increase in tax resulting from the recomputation is not determinable as of such first taxable year. In such case, the total increase in tax shall be taken into account in equal installments in the first taxable year for which such total increase is determinable and in each succeeding taxable year for which a portion of the increase in tax would have been taken into account under subdivision (i) of this subparagraph if the total increase had been determinable as of the first taxable year to which the election to form the aggregation or aggregations under section 614(c)(1) applies. The provisions of this subdivision may be illustrated by the following example:

*Example.* Assume that taxpayer A elects under section 614(c)(1) to form an aggregation for 1960 and all subsequent taxable years. Assume further that taxpayer A is required to recompute his tax for four prior

taxable years under subparagraphs (1) and (2) of this paragraph and that the recomputation for each of such taxable years results in a reduction of taxpayer A's depletion allowance. Under subdivision (i) of this subparagraph, the total increase in tax resulting from the recomputation is to be taken into account in equal installments in 1960, 1961, 1962, and 1963. However, if the total increase in tax is not determinable until 1961 because the recomputation for the prior taxable years results in the reduction of a net operating loss carryover to 1961, then the total increase shall be taken into account in equal installments in 1961, 1962, and 1963. In like manner, if the total increase in tax is not determinable until 1962, it shall be taken into account in equal installments in 1962 and 1963.

(iii) *Death or cessation of existence of taxpayer.* If the taxpayer dies or ceases to exist, the portion of the increase in tax determined under subparagraph (3)(v) of this paragraph which has not been taken into account under subdivision (i) or (ii) of this subparagraph for taxable years prior to the taxable year of the occurrence of such death or such cessation of existence, as the case may be, shall be taken into account for the taxable year in which such death or such cessation of existence, as the case may be, occurs.

(5) *Adjustments to basis of aggregated property.* If the taxpayer elects to form an aggregated property or properties under section 614(c)(1) for a taxable year and if a recomputation of tax is required to be made for any taxable year which results in reduction of the depletion allowance previously deducted by the taxpayer for such year, then proper adjustments shall be made with respect to the adjusted basis of such aggregated property or properties. In such a case—

(i) If the sum of the depletion allowances actually deducted with respect to the interests included in a constructed aggregated property exceeds the depletion allowance computed under subparagraph (3)(ii) of this paragraph with respect to such constructed aggregated property, the adjusted basis of the aggregated property formed under section 614(c)(1) shall be increased by such excess, and

(ii) If the depletion allowance computed under subparagraph (3)(ii) of this paragraph with respect to a constructed aggregated property exceeds the sum of the depletion allowances actually deducted with respect to the interests included in such constructed aggregated property, the adjusted basis of the aggregated property formed under section 614(c)(1) shall be reduced (but not below zero) by such excess.

However, the adjusted basis of an aggregated property formed under section 614(c)(1) may be increased only to the extent such excess would have resulted in an increase in such adjusted basis if taken into account under paragraph (a) of § 1.614-6. Thus, if depletion previously allowed with respect to the separately operating mineral interests included in the aggregation formed under section 614(c)(1) exceeds the total of the unadjusted bases of such interests by \$5,000, and if the recomputation of tax required

to be made under this paragraph results in a depletion allowance which is \$7,000 less than the depletion actually deducted with respect to such interests, then the adjusted basis of such aggregation may be increased by only \$2,000. If, with respect to the same aggregated property formed under section 614(c)(1), adjustments to adjusted basis are required under this subparagraph as a result of recomputation of tax for two or more taxable years, the total or net amount of such adjustments shall be taken into account. Any adjustment to the adjusted basis of an aggregation required by this subparagraph shall be taken into account as of the effective date of the election to form such aggregation under section 614(c)(1) and shall be effective for all purposes of subtitle A of the Internal Revenue Code of 1954. For other rules relating to the determination of the adjusted basis of an aggregated property, see paragraph (a) of § 1.614-6.

**§ 1.614-4 1939 Code treatment with respect to separate operating mineral interests in the case of oil and gas wells.**

(a) *General rule.* In the case of oil and gas wells, a taxpayer may treat under section 614(d) and this section any property as if section 614 (a) and (b) had not been enacted. For purposes of this section, the term "property" means each separate operating mineral interest owned by the taxpayer in each mineral deposit in each separate tract or parcel of land. Separate tracts or parcels of land exist not only when areas of land are separated geographically, but also when areas of land are separated by means of the execution of conveyances or leases. If the taxpayer treats any property or properties under this section, the taxpayer must treat each such property as a separate property except that the taxpayer may treat any two or more properties that are included within the same tract or parcel of land as a single property provided such treatment is consistently followed. If the taxpayer treats two or more properties as a single property under this section, such properties shall be considered as a single property for all purposes of subtitle A of the Internal Revenue Code of 1954. The taxpayer may not make more than one combination of properties within the same tract or parcel of land. Thus, if the taxpayer treats two or more properties that are included within the same tract or parcel of land as a single property, each of the remaining properties included within such tract or parcel of land shall be treated as a separate property. If the taxpayer has treated two or more properties that are included within the same tract or parcel of land as a single property and subsequently discovers or acquires an additional mineral deposit within the same tract or parcel of land, he may include his interest in such deposit with the two or more properties which are being treated as a single property or he may treat his interest in such deposit as a separate property. If the taxpayer has treated each property included within a tract or parcel of land as a separate property and subsequently discovers or

acquires an additional mineral deposit within the same tract or parcel of land, he may combine his interest in such deposit with any one of the separate properties included within the tract or parcel of land, but not with more than one of them since they cannot be validly combined with each other. The taxpayer may not combine properties which are included within different tracts or parcels of land under this section irrespective of whether such tracts or parcels of land are contiguous. The treatment of a property as a separate property or the treatment of two or more properties included within a single tract or parcel of land as a single property under this section shall be binding upon the taxpayer for the first taxable year for which such treatment is effective and for all subsequent taxable years. For provisions relating to the first taxable year for which treatment under this section becomes effective, see paragraph (d) of this section.

(b) *Treatment consistent with treatment for taxable years prior to 1954.* If the taxpayer has treated properties in a manner consistent with the rules contained in paragraph (a) of this section for taxable years to which the Internal Revenue Code of 1939 applies and if the taxpayer desires to treat such properties under section 614(d), then such properties must continue to be treated in the same manner. The provisions of this paragraph may be illustrated by the following examples:

*Example (1).* In 1950, taxpayer A owned two separate tracts of land designated No. 1 and No. 2. Each tract contained three mineral deposits. In the case of tract No. 1, taxpayer A treated the three mineral deposits as a single property. In the case of tract No. 2, taxpayer A treated the first mineral deposit as a separate property and treated the second and third mineral deposits as a single property. This treatment was consistently followed for the taxable years 1950, 1951, 1952, and 1953. Taxpayer A desires, for 1954 and subsequent taxable years, to treat the properties in tracts Nos. 1 and 2 as if section 614 (a) and (b) had not been enacted. For 1954 and subsequent taxable years, the three deposits in tract No. 1 must be treated as a single property; the first deposit in tract No. 2 must be treated as a separate property; and the second and third deposits in tract No. 2 must be treated as a single property.

*Example (2).* Assume the same facts as in example (1) except that, at the time the treatment under this section is adopted, assessment of any deficiency or credit or refund of any overpayment for the taxable years 1954 and 1955 resulting from the treatment of properties under this section is prevented by the operation of the statute of limitations. For 1956 and subsequent taxable years, the three deposits in tract No. 1 must be treated as a single property; the first deposit in tract No. 2 must be treated as a separate property; and the second and third deposits in tract No. 2 must be treated as a single property.

(c) *Bases of separate properties previously included in an aggregation under section 614(b).* If the taxpayer has made an election under section 614(b) to form an aggregation of operating mineral interests and if such taxpayer subsequently revokes such election for all taxable years for which it was made and treats the properties that are included within such aggregation under section

614(d) and this section by filing the statement required by paragraph (e) of this section, then the adjusted basis of each separate property (as defined in paragraph (a) of this section) that is a part of such aggregation shall be determined as if the taxpayer had made no election under section 614(b). However, if, at the time of the filing of the statement revoking the election under section 614(b), assessment of any deficiency or credit or refund of any overpayment, as the case may be, resulting from such revocation is prevented by the operation of any law or rule of law for any taxable year or years for which the election under section 614(b) was made, then the adjusted basis of each separate property that is a part of the aggregation shall be determined in accordance with the provisions contained in paragraph (a)(2) of § 1.614-6 as of the first day of the first taxable year for which the revocation is effective. After determining the adjusted basis of each separate property included within the aggregation, the taxpayer may treat such properties in any manner which is in accordance with paragraph (a) of this section. See, however, paragraph (b) of this section. The provisions of this paragraph may be illustrated by the following examples:

*Example (1).* Taxpayer A owns two separate tracts of land, designated No. 1 and No. 2, each of which contains three mineral deposits. The interests in the two tracts of land constitute an operating unit as defined in paragraph (c) of § 1.614-2. Taxpayer A elects under section 614(b) to form an aggregation of all the interests in the operating unit for 1954 and all subsequent taxable years. Subsequently, taxpayer A revokes such election by filing a statement in accordance with paragraph (e) of this section. Such revocation is effective for 1956 and subsequent taxable years because, at the time of the filing of the statement of revocation, assessment of any deficiency or credit or refund of any overpayment for the taxable years 1954 and 1955 resulting from such revocation is prevented by the operation of the statute of limitations. The adjusted bases of the six properties that are included within the aggregation shall be determined in accordance with paragraph (a)(2) of § 1.614-6 as of the beginning of the taxable year 1956.

*Example (2).* Assume the same facts as in example (1) and, in addition, assume that for taxable years to which the Internal Revenue Code of 1939 is applicable, taxpayer A treated the three deposits in tract No. 1 as a single property and the three deposits in tract No. 2 as a single property. After determining the adjusted basis of each of the six properties as illustrated in example (1), the adjusted bases of the three properties in tract No. 1 must be combined and the adjusted bases of the three properties in tract No. 2 must be combined since the manner in which such properties were treated for taxable years to which the Internal Revenue Code of 1939 is applicable is consistent with the rules contained in paragraph (a) of this section.

(d) *Treatment; when effective.* If a taxpayer treats any property in accordance with this section, then such treatment shall be effective for whichever of the following taxable years is the later:

(1) The latest taxable year for which an election could have been made with respect to such property under section 614(b); or

(2) The first taxable year beginning after December 31, 1953, and ending after August 16, 1954, in respect of which assessment of a deficiency or credit or refund of an overpayment, as the case may be, resulting from the treatment of such property under this section, is not prevented by the operation of any law or rule of law on the date such treatment is adopted.

(e) *Manner of adopting the treatment of properties under this section.* If the taxpayer does not make an election under section 614(b) with respect to a property within the time prescribed for making such an election, then the taxpayer shall be deemed to have treated such property under this section. In such case, the manner in which such property is treated in filing the taxpayer's income tax return for the first taxable year for which the treatment of such property is effective under paragraph (d) of this section shall establish the treatment which must be consistently followed with respect to such property for subsequent taxable years. However, if the income tax return for such first taxable year is filed prior to the first day of the first month which begins more than 90 days after the regulations under section 614 are published in the FEDERAL REGISTER as a Treasury decision, then the taxpayer may adopt the treatment provided for under this section with respect to the property by filing a statement at any time on or before the first day of such first month with the district director for the district in which the taxpayer's income tax return was filed for the first taxable year for which the treatment of such property is effective under paragraph (d) of this section. Such statement shall set forth the first taxable year for which the treatment of the property under this section is effective, shall revoke any previous elections made with respect to such property under section 614(b), shall state the manner in which such property was treated for taxable years subject to the 1939 Code, shall state the manner in which such property is to be treated under this section, and shall be accompanied by an amended return or returns if necessary.

(f) *Certain treatment under this section precludes election to aggregate under section 614(b) with respect to the same operating unit.* If the taxpayer's treatment of any properties that are included within an operating unit (as defined in paragraph (c) of § 1.614-2) under section 614(d) and this section would constitute an aggregation under section 614(b) and if such taxpayer elects, or has elected, to form an aggregation within the same operating unit under section 614(b) for any taxable year for which the treatment under section 614(d) is effective, then the election made under section 614(b) shall not apply for any such taxable year.

**§ 1.614-5 Special rules as to aggregating nonoperating mineral interests.**

(a) *Aggregating nonoperating mineral interests for taxable years beginning before January 1, 1958.* Upon proper showing to the Commissioner, a taxpayer who

owns two or more separate nonoperating mineral interests in a single tract or parcel of land, or in two or more contiguous tracts or parcels of land, shall be permitted to aggregate all such interests in each separate kind of mineral deposit and treat them as one property. Permission will be granted by the Commissioner only if the taxpayer establishes that he will sustain an undue hardship if such nonoperating mineral interests are not treated as one property. Such hardship may exist, for example, if it is impossible for the taxpayer to determine the boundaries, source, or costs of the separate interests, or if a taxpayer who owns a single royalty interest, production payment, or net profits interest cannot determine the separate deposits from which his payments will be derived. In no event shall undue hardship be deemed to exist solely by reason of tax disadvantage. The treatment of such interests as one property shall be applicable for all purposes of subtitle A of the Internal Revenue Code of 1954. In no event may nonoperating mineral interests in tracts or parcels of land which are not contiguous be treated as one property. The term "two or more contiguous tracts or parcels of land" means tracts or parcels of land which have common boundaries. Common boundaries include survey lines, public roads, or similar easements for the use of land without the existence of an intervening mineral right between the tracts or parcels of land. Tracts or parcels of land which touch only at a common corner are not contiguous. For the definition of "nonoperating mineral interests", see paragraph (g) of this section.

(b) *Manner and scope of election—*  
 (1) *Time for filing application for permission to aggregate separate nonoperating mineral interests under paragraph (a) of this section.* The application for permission to aggregate separate nonoperating mineral interests under paragraph (a) of this section shall be filed at any time on or before the first day of the first month which begins more than 90 days after the regulations under section 614 are published in the FEDERAL REGISTER as a Treasury decision. Such application shall indicate the first taxable year for which the aggregation is to be formed. If, prior to such publication of the regulations under section 614, an application has been filed, the taxpayer need file only a supplemental application containing such additional information as is necessary to comply with the requirements of subparagraph (2) of this paragraph.

(2) *Contents of application and returns under permission.* The application for permission to aggregate nonoperating mineral interests under paragraph (a) of this section shall include a complete statement of the facts upon which the taxpayer relies to show the undue hardship which would result if such an aggregation were not permitted. Such application shall also include a description of the nonoperating mineral interests owned by the taxpayer within the tract or tracts of land involved. A general description, accompanied by maps appropriately marked, which accurately circumscribes the scope of the aggrega-

tion and shows that the taxpayer is aggregating all the nonoperating mineral interests in a particular kind of mineral deposit within the tract or tracts of land involved will be sufficient. If the Commissioner grants permission, a copy of the letter granting such permission shall be filed with the district director for the district in which the taxpayer's income tax return was filed for the first taxable year for which such permission applies, and shall be accompanied by an amended return or returns if necessary.

(3) *Election; binding effect.* The election to aggregate separate nonoperating mineral interests under paragraph (a) of this section shall be binding upon the taxpayer for the first taxable year for which made and all subsequent taxable years beginning before January 1, 1958, unless consent to make a change is obtained from the Commissioner. The application for consent to make a change must set forth in detail the reason or reasons for such change. Consent to a different treatment shall not be granted where the principal purpose for such change is due to tax consequences. For rules relating to the binding effect of an election where the basis of an aggregated property in the hands of the transferee is determined by reference to the basis in the hands of the transferor, see paragraph (c) of § 1.614-6.

(4) *Aggregations under the 1939 Code.* An application for permission to aggregate nonoperating mineral interests under paragraph (a) of this section shall be submitted in accordance with the requirements of this paragraph notwithstanding the fact that the taxpayer may have aggregated such interests for taxable years to which the Internal Revenue Code of 1939 is applicable. If such interests were aggregated for taxable years to which the Internal Revenue Code of 1939 applies and the aggregation was approved by the Internal Revenue Service for such years after full consideration thereof on its merits, such approval will generally be accepted as evidence that undue hardship would result if the aggregation were not permitted.

(c) *Termination of aggregation of nonoperating mineral interests—*  
 (1) *General rule.* Any aggregation of nonoperating mineral interests formed under paragraphs (a) and (b) of this section shall not apply with respect to any taxable year beginning after December 31, 1957. Thus, if a taxpayer makes a binding election to form such an aggregation for taxable years beginning before January 1, 1958, then in order to form an aggregation with respect to any taxable year beginning after December 31, 1957, he must obtain permission in accordance with the rules prescribed in paragraphs (d) and (e) of this section.

(2) *Bases of separate nonoperating mineral interests.* If a taxpayer forms an aggregation of nonoperating mineral interests under paragraphs (a) and (b) of this section which is terminated under subparagraph (1) of this paragraph, the adjusted bases of the separate nonoperating mineral interests included in such aggregation shall be determined in accordance with paragraph (a)(2) of § 1.614-6.

(d) *Aggregating nonoperating mineral interests for taxable years beginning after December 31, 1957, or for earlier taxable years.* Upon proper showing to the Commissioner, a taxpayer who owns two or more separate nonoperating mineral interests in a single tract or parcel of land, or in two or more adjacent tracts or parcels of land, shall be permitted, under section 614(e), to form an aggregation of all of such interests in each separate kind of mineral deposit and treat such aggregation as one property. Permission shall be granted by the Commissioner only if the taxpayer establishes that a principal purpose in forming the aggregation is not the avoidance of tax. The fact that the aggregation of nonoperating mineral interests will result in a substantial reduction in tax is evidence that avoidance of tax is a principal purpose of the taxpayer. An aggregation formed under the provisions of this paragraph shall be considered as one property for all purposes of the Internal Revenue Code of 1954. In no event may nonoperating mineral interests in tracts or parcels of land which are not adjacent be aggregated and treated as one property. The term "two or more adjacent tracts or parcels of land" means tracts or parcels of land that are in reasonably close proximity to each other depending on the facts and circumstances of each case. Adjacent tracts or parcels of land do not necessarily have any common boundaries, and may be separated by intervening mineral rights. For the definition of "nonoperating mineral interests", see paragraph (g) of this section.

(e) *Manner and scope of election—*  
 (1) *Time for filing application for permission to aggregate separate nonoperating mineral interests under section 614(e).* The application for permission to aggregate separate nonoperating mineral interests under section 614(e) and paragraph (d) of this section shall be made in writing to the Commissioner of Internal Revenue, Washington 25, D.C. Such application shall be filed within 90 days after the beginning of the first taxable year beginning after December 31, 1957, for which aggregation is desired or within 90 days after the acquisition of one of the nonoperating mineral interests which is to be included in the aggregation, whichever is later. However, if the last day on which the application may be filed under this paragraph falls before the first day of the first month which begins more than 90 days after the regulations under section 614 are published in the FEDERAL REGISTER as a Treasury decision, such application may be filed at any time on or before the first day of such first month. If, prior to such publication of the regulations under section 614, an application has been filed, the taxpayer need file only a supplemental application containing such additional information as is necessary to comply with subparagraph (4) of this paragraph.

(2) *Election to apply section 614(e) retroactively.* The application for permission to aggregate separate nonoperating mineral interests under section 614(e) and paragraph (d) of this section may be filed, at the election of the tax-

payer, for any taxable year beginning before January 1, 1958, to which the Internal Revenue Code of 1954 is applicable. In such case, the application may be filed at any time on or before the first day of the first month which begins more than 90 days after the regulations under section 614 are published in the FEDERAL REGISTER as a Treasury decision. Such application shall designate the first taxable year for which the aggregation is to be formed. If, prior to such publication of regulations under section 614, an application has been filed, the taxpayer need file only a supplemental application containing such additional information as is necessary to comply with the requirements of subparagraph (4) of this paragraph.

(3) *Limitation.* If the taxpayer forms any aggregation of nonoperating mineral interests under subparagraph (2) of this paragraph, then any aggregation of nonoperating mineral interests formed under paragraphs (a) and (b) of this section shall not apply for any taxable year. The provisions of this subparagraph may be illustrated by the following example:

*Example.* In 1954, taxpayer A owns six separate nonoperating mineral interests designated No. 1 through No. 6. Interests Nos. 1 through 3 are royalty interests in contiguous tracts of land. Interests Nos. 4 through 6, which are located in an entirely different area from interests Nos. 1 through 3, are royalty interests in tracts of land which are not contiguous but which are adjacent to each other. In 1959 taxpayer A obtains permission and elects under section 614(e) and subparagraph (2) of this paragraph to form an aggregation of interests Nos. 4 through 6 for 1956 and all subsequent taxable years. Taxpayer A may not elect to form an aggregation of interests Nos. 1 through 3 under paragraphs (a) and (b) of this section for 1954 or any subsequent taxable year. If taxpayer A wishes to form an aggregation of interests Nos. 1 through 3, he must obtain permission under paragraph (d) of this section and this paragraph.

(4) *Contents of application and returns under permission.* The application for permission to aggregate nonoperating mineral interests under section 614(e) and paragraph (d) of this section shall include a complete statement of the facts upon which the taxpayer relies to show that avoidance of tax is not a principal purpose of forming the aggregation. Such application shall also include a description of the nonoperating mineral interests within the tract or tracts of land involved. A general description, accompanied by maps appropriately marked, which accurately circumscribes the scope of the aggregation and shows that the taxpayer is aggregating all the nonoperating mineral interests in a particular kind of mineral deposit within the tract or tracts of land involved will be sufficient. If the Commissioner grants permission, a copy of the letter granting such permission shall be attached to the taxpayer's income tax return for the first taxable year for which such permission applies. If the taxpayer has already filed such return, a copy of the letter of permission shall be filed with the district director for the district in which such return was filed and shall be accompanied by an amended

return or returns if necessary or, if appropriate, a claim for credit or refund.

(5) *Election; binding effect.* The election to aggregate separate nonoperating mineral interests under section 614(e) and paragraph (d) of this section shall be binding upon the taxpayer for the first taxable year for which made and for all subsequent taxable years unless consent to make a change is obtained from the Commissioner. The application for consent to make a change must set forth in detail the reason or reasons for such change. Consent to a different treatment shall not be granted where the principal purpose for such change is due to tax consequences. For rules relating to the binding effect of an election where the basis of an aggregated property in the hands of the transferee is determined by reference to the basis in the hands of the transferor, see paragraph (c) of § 1.614-6.

(6) *Aggregations under the 1939 Code.* An application for permission to aggregate nonoperating mineral interests under section 614(e) and paragraph (d) of this section shall be submitted in accordance with the requirements of this paragraph notwithstanding the fact that the taxpayer may have aggregated such interests for taxable years to which the Internal Revenue Code of 1939 is applicable. If such interests were aggregated for taxable years to which the Internal Revenue Code of 1939 applies and the aggregation was approved by the Internal Revenue Service for such years after full consideration thereof on its merits, such approval will generally be accepted as evidence that avoidance of tax is not a principal purpose of forming the aggregation.

(f) *Elections; when effective.* If the taxpayer has elected to form an aggregation under either paragraph (a) or paragraph (d) of this section, the date on which the aggregation becomes effective is the first day of the first taxable year for which the election is made; except that if any separate nonoperating mineral interest included in such aggregation was acquired after such first day, the date on which the inclusion of such interest in such aggregation becomes effective is the date of its acquisition.

(g) *Definition of nonoperating mineral interests.* For purposes of this section, "nonoperating mineral interests" includes only those interests described in section 614(a) which are not operating mineral interests within the meaning of paragraph (b) of § 1.614-2. The taxpayer who holds the operating or working rights in a mineral deposit, but is not actually conducting operations with respect to such deposit, does not have a nonoperating mineral interest in such deposit notwithstanding the fact that he intends to transfer such operating rights at a later time.

§ 1.614-6 Rules applicable to basis, holding period, and abandonment losses where mineral interests have been aggregated.

(a) *Basis of property resulting from aggregation—(1) General rule.* When a taxpayer has aggregated as one property two or more interests under section 614(b), (c), or (e), the unadjusted basis of

such aggregated property shall be the sum of the unadjusted bases of the various mineral interests aggregated. The adjusted basis of the aggregated property on the effective date of the aggregation shall be the unadjusted basis of the aggregated property, adjusted by the total of all adjustments to the bases of the several mineral interests aggregated as required by section 1016 to the effective date of aggregation. Thereafter, the adjustments to basis required by section 1016 shall apply to the total adjusted basis of the aggregated property for all purposes of subtitle A of the Internal Revenue Code of 1954.

(2) *Bases upon disposition of part of, or termination of, or change in, an aggregated property.* (i) When a taxpayer has aggregated two or more separate mineral interests as one property under section 614 (b), (c), or (e) and thereafter sells, exchanges, or otherwise disposes of part of such property, the total adjusted basis of the property as of the date of sale, exchange, or other disposition must be apportioned to determine the adjusted basis of the part disposed of and the part retained for purposes of computing gain or loss, depletion, and for all other purposes of subtitle A of the Internal Revenue Code of 1954. Such adjusted basis shall be determined by apportioning the total adjusted basis of the property between the part of the property disposed of and the part retained in the same proportion as the fair market value of each part (as of the date of sale, exchange, or other disposition) bears to the total fair market value of the property as of such date. For determining gain or loss on the sale or exchange of any part of the aggregated property, the adjusted basis of the aggregated property (from which the adjusted basis of the part is determined) shall not be reduced below zero.

(ii) If, for any taxable year after the first taxable year for which an aggregation under section 614 (b), (c), or (e) is effective,

(a) Any such aggregation is terminated for any reason, or

(b) The treatment of any mineral interests in any such aggregation is changed after obtaining the consent of the Commissioner,

then the adjusted basis of the aggregated property as of the first day of the first taxable year for which such termination or change is effective shall be apportioned to determine the adjusted bases of the resultant separate mineral interests, as of such first day, for purposes of computing gain or loss, depletion, and for all other purposes of subtitle A of the Internal Revenue Code of 1954. The adjusted bases of such separate mineral interests shall be determined by apportion-

ing the adjusted basis of the aggregated property (as of the first day of the first taxable year for which such termination or change is effective) between or among such interests in the same proportion as the fair market value of each such interest (as of such first day) bears to the total fair market value of the aggregated property as of such first day. For the purpose of determining the adjusted bases of the separate mineral interests, the adjusted basis of the aggregated property (from which the adjusted basis of each separate mineral interest is determined) shall not be reduced below zero.

(3) The application of subparagraphs (1) and (2) of this paragraph may be illustrated by the following examples:

*Example (1).* A taxpayer owning three operating mineral interests, designated Nos. 1, 2, and 3, within a single operating unit, properly elects to aggregate such properties under section 614(b) for the calendar year 1954 in his income tax return filed on April 15, 1955. The unadjusted bases and adjustments under section 1016 for depletion

$$\$7,000 \text{ (adjusted basis of aggregated property)} \times \frac{\$15,000}{\$25,000} = \$4,200 \text{ (adjusted basis of portion sold)}$$

Therefore, the gain on this sale of the portion sold is \$10,800 (\$15,000 - \$4,200). The adjusted basis of the property retained is \$2,800 (\$7,000 - \$4,200).

*Example (3).* Assume the same facts as in example (2), except that instead of selling, the taxpayer subleases one of the

$$\$7,000 \text{ (adjusted basis of aggregated property)} \times \frac{\$15,000 \text{ (FMV of portion transferred)}}{\$25,000 \text{ (FMV of aggregated property)}}$$

*Example (4).* In 1953, a taxpayer owned mineral interests Nos. 1, 2, and 3 which he operated as a unit. He owned no other operating interests during that year. The unadjusted bases of these properties were \$10,000, \$15,000, and \$20,000, respectively, and depletion allowed through December 31, 1953, was \$5,000 with respect to each property. The taxpayer operated these properties during the year 1954 and, in addition, operated as part of the unit mineral interest No. 4 which he acquired on July 1, 1954, on which date he made the first exploration expenditure with respect thereto. He paid \$20,000 for No. 4. In his return for the calendar year 1954, the taxpayer elected under section 614(b) to aggregate all of these mineral interests. The taxpayer must compute cost depletion for the calendar year 1954 on the basis of an aggregated property with an adjusted basis of \$30,000 (\$45,000 - \$15,000) for the period from January 1 to June 30, and with an adjusted basis of \$50,000 (less depletion for the first six months) for the period from July 1 to December 31. If applicable, the taxpayer must compute percentage depletion on the basis of gross income and taxable income from the aggregated property for the entire year, including the gross income and deductions with respect to operating mineral interest No. 4 for the period from July 1 to December 31. If a portion of the aggregated property is sold during the first six

through December 31, 1953, in respect of such properties are as follows:

	Unad-justed basis	Adjust-ments under Section 1016
No. 1	\$25,000	\$27,000
No. 2	18,000	10,000
No. 3	15,000	4,000
Total	58,000	41,000

The adjusted basis of the aggregated property as of January 1, 1954, is \$17,000 (\$58,000 - \$41,000).

*Example (2).* Assume the same facts as in example (1), except that a portion of the aggregated property is sold on June 1, 1956, for \$15,000 which is also the fair market value of such portion on the date of sale. In order to determine the gain or loss from this sale as well as the adjusted basis of the retained property, an apportionment must be made. The aggregated property had a fair market value of \$25,000 on the date of sale. From January 1, 1954, through May 31, 1956, \$10,000 of depletion has been allowed with respect to the aggregated property. The adjusted basis of the portion sold is determined as follows:

leases making up the aggregated property, retaining a one-eighth royalty interest therein. The fair market value of such lease is \$15,000 on the date of the sublease. The adjusted basis of such royalty interest is \$4,200 which is computed as follows:

months, its adjusted basis must be determined at the time of sale with an adjustment for depletion to the date of sale. If percentage depletion is applicable, it must be allocated on an equitable basis to the periods prior and subsequent to the date of sale in order to determine the adjustment for depletion to the date of sale.

(4) *Basis for gain and loss where mineral interests acquired before March 1, 1913, are included in an aggregation.* Where mineral interests acquired before March 1, 1913, are included in an aggregation under section 614 (b), (c), or (e), the aggregated property has two bases, one for the determination of gain and another for the determination of loss upon the disposition of the whole or a part of the aggregated property. For the purpose of determining gain, the adjusted basis of the aggregated property on the effective date of aggregation shall be the sum of—

(i) The unadjusted bases of those mineral interests acquired on or after March 1, 1913, plus

(ii) The cost of any interest acquired before March 1, 1913 (adjusted for the period before March 1, 1913), or the fair market value of such interest as of March 1, 1913, whichever is greater,

and such sum shall be adjusted by the total of all adjustments to the bases of the several mineral interests aggregated as required by section 1016 to the effective date of aggregation. For the purpose of determining loss, the adjusted basis of the aggregated property on the effective date of aggregation shall be the sum of—

(iii) The unadjusted bases of those mineral interests acquired on or after March 1, 1913, plus

(iv) The cost of those interests acquired before March 1, 1913, adjusted for the period before March 1, 1913,

and such sum shall be adjusted by the total of all adjustments to the bases of the several mineral interests aggregated as required by section 1016 to the effective date of aggregation. Thereafter, the adjustments to basis required by section 1016 shall apply to the total adjusted basis of the aggregated property for all purposes of the Internal Revenue Code of 1954. Upon disposition of a part of the aggregated property or upon termination of the aggregation for any reason, or upon change in the treatment of any mineral interests in the aggregation with consent of the Commissioner, the adjusted basis for determining gain and the adjusted basis for determining loss with respect to each resultant part of the aggregated property shall be determined in accordance with subparagraph (2) of this paragraph. The provisions of this subparagraph may be illustrated by the following examples:

*Example (1).* At the close of 1953 a taxpayer owned two operating mineral interests designated as Nos. 1 and 2 in the same operating unit. Operating mineral interest No. 1 was acquired by the taxpayer before March 1, 1913, and on such date its basis with reference to its fair market value was \$50,000 and its adjusted basis with reference to its cost was \$44,000. The unadjusted basis of operating mineral interest No. 2, acquired after March 1, 1913, was \$30,000. Adjustments under section 1016 for depletion from March 1, 1913, through December 31, 1953, were \$37,000 for operating mineral interest No. 1 and \$20,000 for operating mineral interest No. 2. Assume that the taxpayer elected for the taxable year 1954 to aggregate operating mineral interests Nos. 1 and 2. The adjusted basis of the aggregated property as of January 1, 1954, for the purpose of determining gain would be \$23,000 (\$50,000 plus \$30,000) minus (\$37,000 plus \$20,000). For the purpose of determining loss, the adjusted basis would be \$17,000 (\$44,000 plus \$30,000) minus (\$37,000 plus \$20,000).

*Example (2).* Assume the same facts as in example (1) and further assume that for the taxable years 1954 and 1955, the taxpayer was allowed \$5,000 of depletion on the aggregated property, that on January 1, 1956, he sold a portion of the aggregated property for \$20,000, and that, as of January 1, 1956, the aggregated property had a fair market value of \$24,000. At the time of sale, the adjusted basis of the aggregated property for the purpose of determining gain was \$18,000 (\$23,000—\$5,000); and the adjusted basis for the purpose of determining loss was \$12,000 (\$17,000—\$5,000). The adjusted basis of the portion sold would be computed as follows:

$$\frac{\$20,000 \text{ (FMV of portion sold)}}{\$24,000 \text{ (FMV of aggregated property)}} \times \$18,000 \text{ (adjusted basis for gain)} = \$15,000 \text{ (adjusted basis of portion sold)}$$

Taxpayer's gain would then be computed as follows:

\$20,000 amount received for portion sold  
Less: 15,000 adjusted basis of portion sold  
\$5,000 gain on portion sold

The adjusted basis of the portion retained as of January 1, 1956, for the purpose of de-

termining gain is \$3,000 (\$18,000—\$15,000). For the purpose of determining loss, the adjusted basis is \$2,000 (\$12,000—\$10,000).

*Example (3).* Assume the same facts as in example (2), except that a portion of the aggregated property was sold for \$5,000 and that the fair market value of the aggregated property at the time of sale was \$10,000. The adjusted basis of the portion sold would be computed as follows:

$$\frac{\$5,000 \text{ (FMV of portion sold)}}{\$10,000 \text{ (FMV of aggregated property)}} \times \$12,000 \text{ (adjusted basis for loss)} = \$6,000 \text{ (adjusted basis of portion sold)}$$

Taxpayer's loss would then be computed as follows:

\$5,000 amount received for portion sold  
Less: 6,000 adjusted basis of portion sold  
(1,000) loss on portion sold

(b) *Holding period of aggregated properties.* Where a taxpayer sells or exchanges either a part or all of an aggregated property which includes part or all of a mineral interest which the taxpayer has held for six months or less, the sales price and adjusted basis attributable to the interest sold must be apportioned in proportion to the relative fair market values as of the date of sale to determine the amount of income represented by the sale of property held for six months or less. The application of

this rule may be illustrated by the following example:

*Example.* Taxpayer A owns operating mineral interests Nos. 1, 2, and 3. He acquired interests Nos. 1 and 2 in 1953 but purchased and made development expenditures on interest No. 3 on December 1, 1954. In his return for the taxable year 1954, taxpayer A elects to aggregate interests Nos. 1, 2, and 3 which are operated as a unit. On May 1, 1955, taxpayer A sells the north half of the aggregated property which includes portions of interests Nos. 1, 2, and 3. The sales price of the north half was \$80,000; the adjusted basis of the aggregated property as of the date of sale was \$20,000; and the fair market value of the aggregated property as of the date of sale was \$100,000. The adjusted basis applicable to the north half is computed as follows:

$$\frac{\$80,000 \text{ (FMV of portion sold)}}{\$100,000 \text{ (FMV of aggregated property)}} \times \$20,000 \text{ (adjusted basis of aggregated property)} = \$16,000 \text{ (adjusted basis of portion sold)}$$

The total gain on the sale is \$64,000 (\$80,000—\$16,000).

The gain attributable to the sale of the portion held for six months or less is computed as follows (assuming that the fair market value of the portion of No. 3 included in the sale as of the date of sale was \$30,000):

$$\frac{\$30,000 \text{ (FMV of portion of No. 3 sold)}}{\$80,000 \text{ (FMV of north half)}} \times \$16,000 \text{ (adjusted basis of north half)} = \$6,000 \text{ (adjusted basis of portion of No. 3 sold)}$$

The gain on the portion of No. 3 sold is \$24,000 (\$30,000—\$6,000).

(c) *Acquisition of property with transferor's basis.* If a separate property or an aggregated property is acquired in a transaction in which the basis of such property in the hands of the taxpayer is determined by reference to the basis of such property in the hands of a transferor, then the election of such transferor as to the treatment of such separate or aggregated property shall be binding upon the taxpayer for all taxable years ending after the transfer unless the aggregation terminates, or unless consent to make a change is obtained under paragraph (d) (4) of § 1.614-2, paragraph (f) (7) of § 1.614-3, or paragraph (b) (3) or (e) (5) of § 1.614-5, whichever is applicable.

(d) *Abandonment and casualty losses.* In the case of mineral interests which are aggregated as one property, no losses resulting from worthlessness or abandonment are allowable until all the mineral rights in the entire aggregated property are proven to be worthless or until the entire aggregated property is disposed of or abandoned. Casualty losses are allowable in accordance with the rules applicable to casualty losses in general.

For rules applicable to losses in general, see section 165 and the regulations thereunder.

CHARLES I. FOX,  
Acting Commissioner  
of Internal Revenue.

Approved: January 5, 1961.

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

[F.R. Doc. 61-168; Filed, Jan. 9, 1961; 8:51 a.m.]

## Title 14—AERONAUTICS AND SPACE

### Chapter III—Federal Aviation Agency

#### SUBCHAPTER C—AIRCRAFT REGULATIONS

[Reg. Docket No. 546; Amdt. 241]

#### PART 507—AIRWORTHINESS DIRECTIVES

##### Graviner Fire Extinguisher Cartridges

A proposal to amend Part 507 of the regulations of the Administrator to in-

clude an airworthiness directive requiring inspection of Graviner fire extinguisher cartridges and replacement of defective cartridges was published in 25 F.R. 10433.

Interested persons have been afforded an opportunity to participate in the making of the amendment. The only objection received involved the 200-hour inspection period as being too severe. Inasmuch as experience has shown since the directive was first proposed that the 200-hour check is more frequent than necessary, the directive is being revised to extend the period between inspections to 550 hours' time in service. Since this change is in line with the objection received and imposes no additional burden on any person, further notice and public procedure hereon are unnecessary and the amendment will become effective 30 days after date of publication in the FEDERAL REGISTER.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (25 F.R. 6489), § 507.10(a) of Part 507 (14 CFR Part 507), is hereby amended by adding the following new airworthiness directive:

**GRAVINER.** Applies to aircraft equipped with automatic fire extinguisher cartridge Mark 2-A.716, A.717, A.718, A.719. Compliance required as indicated.

As a result of instances of the igniter wire in Mark 2 cartridges becoming corroded in service, a continuity inspection of the cartridge circuits using a safety ohmmeter which restricts the current used to 13 milliamperes must be made within the next 550 hours' time in service after the effective date of this directive and at intervals not exceeding 550 hours' time in service thereafter. A resistance reading of between 5 and 6 ohms will indicate a serviceable fuse wire. All defective Mark 2 cartridges must be replaced with either serviceable Mark 2 cartridges or with Mark 3 cartridges which have an improved fuse wire. When Mark 2 cartridges are installed, the inspections specified above must continue, but when Mark 3 cartridges are installed, the inspections are no longer required.

(Graviner Technical Notice No. 2 covers this subject.)

This amendment shall become effective February 9, 1961.

(Sec. 313(a), 601, 603; 72 Stat. 752, 775, 776; 49 U.S.C. 1354(a), 1421, 1423)

Issued in Washington, D.C., on January 3, 1961.

GEORGE C. PRILL,  
Acting Director,  
Bureau of Flight Standards.

[F.R. Doc. 61-127; Filed, Jan. 9, 1961; 8:45 a.m.]

## Title 21—FOOD AND DRUGS

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

#### SUBCHAPTER A—GENERAL

#### PART 8—COLOR ADDITIVES

#### PART 9—COLOR CERTIFICATION

#### Relisting FD&C Red No. 1 as Ext D&C Red No. 15

The transitional color additive regulations published in the FEDERAL REGISTER

of October 12, 1960 (25 F.R. 9759), listed, among others, under § 8.501(a) *Color additives provisionally listed for food, drug, and cosmetic use*, "FD&C Red No. 1 (§ 9.60 of this chapter)." This provisional listing was terminated by order published in the FEDERAL REGISTER November 26, 1960 (25 F.R. 11214).

The Toilet Goods Association and others have petitioned the Commissioner to provisionally relist this color additive for use in externally applied drugs and cosmetics. The pharmacological studies on which the delisting order was based involved the ingestion of the color additive in the daily diet of test animals. The Commissioner does not find from facts now before him that the protection of the public health requires the continued prohibition against using this color additive in externally applied drugs and cosmetics.

The specifications formerly applied to FD&C Red No. 1 (21 CFR 9.60), are now applied to Ext D&C Red No. 15, and this color is listed as one that may be certified. Therefore: *It is ordered*, Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act, as amended (sec. 203(b)(2), Public Law 86-618; 74 Stat. 405; 21 U.S.C., note under 376), that the provisional color additive regulations be amended as follows:

#### § 8.501 Provisional lists of color additives.

1. In § 8.501 *Provisional lists of color additives*, paragraph (c) is amended by adding thereto the item "Ext D&C Red No. 15 (§ 9.354 of this chapter)" immediately following Ext D&C Red No. 14 (§ 9.353 of this chapter).

2. Part 9 is amended by adding thereto the following new section:

#### § 9.354 External D&C Red No. 15.

Disodium salts of a mixture of 1-alkylphenylazo-2-naphthol-3,6-disulfonic acids, of which the mixture of amines obtained by reduction of the dye shall have the following composition:

1-Amino-2,4,5-trimethylbenzene, not less than 35 percent and not more than 45 percent.

1-Amino-2,4-dimethylbenzene, not less than 30 percent and not more than 40 percent.

1-Amino-2,5-dimethylbenzene, not less than 10 percent and not more than 20 percent.

1-Amino-2,6-dimethylbenzene, not less than 4 percent and not more than 12 percent.

1-Amino-2-ethylbenzene and 1-amino-4-ethylbenzene, total not more than 5 percent.

1-Amino-2,3-dimethylbenzene and 1-amino-3,4-dimethylbenzene, total not more than 4 percent.

1-Amino-2,3,4,6-tetramethylbenzene, not more than 3 percent.

1-Amino-2,4,6-trimethylbenzene and amino-methylethylbenzenes, total not more than 0.4 percent.

Aniline, toluidines, and 1-amino-2,3,4-trimethylbenzene, not more than 1 percent of any individual amine and not more than 1.5 percent total of such amines.

Volatile matter (at 135° C.), not more than 10.0 percent.

Water-insoluble matter, not more than 0.5 percent.

Ether extracts, not more than 0.2 percent.

Uncombined intermeidates, not more than 0.2 percent.

Chlorides and sulfates of sodium, not more than 6.0 percent.

Mixed oxides, not more than 1.0 percent.

Lower sulfonated dyes, not more than 2.0 percent.

Pure dye, not less than 85.0 percent.

Certificates issued heretofore for the color additive FD&C Red No. 1 and canceled by order (25 F.R. 11214) may be reissued for Ext D&C Red No. 15 (§ 9.354 of this chapter).

*Effective date.* This order shall be effective upon publication in the FEDERAL REGISTER. Notice and public procedure are not necessary prerequisites to the promulgation of this order, because section 203(d)(2) of Public Law 86-618 so provides.

(Title II, Public Law 86-618; 74 Stat. 404 et seq.; 21 U.S.C., note under 376)

Dated: January 5, 1961.

[SEAL] JOHN L. HARVEY,  
Deputy Commissioner of  
Food and Drugs.

[F.R. Doc. 61-142; Filed, Jan. 9, 1961; 8:47 a.m.]

#### SUBCHAPTER B—FOOD AND FOOD PRODUCTS

#### PART 121—FOOD ADDITIVES

#### Subpart D—Food Additives Permitted in Food for Human Consumption

#### POLYSORBATE 80 (POLYOXYETHYLENE (20) SORBITAN MONOOLEATE)

The Commissioner of Food and Drugs, having evaluated the data submitted in a petition filed by National Pickle Packers Association, 202 South Marion Street, Oak Park, Illinois, and other relevant material, has concluded that the following amendment to the food additive regulations should issue in conformance with section 409 of the Federal Food, Drug, and Cosmetic Act, with respect to the food additive polysorbate 80 (polyoxyethylene (20) sorbitan monooleate) as a solubilizing and dispersing agent in pickles and pickle products. Therefore, pursuant to the provisions of the act (sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1)), and under the authority delegated to the Commissioner by the Secretary of Health, Education, and Welfare (25 F.R. 8625), § 121.1009 of the food additive regulations (21 CFR 121.1009; 25 F.R. 7100, 12178) is amended as set forth below:

Section 121.1009(c) is amended by adding thereto a new subparagraph (3), reading as follows:

§ 121.1009 Polysorbate 80 (polyoxyethylene (20) sorbitan monooleate).

\* \* \* \* \*

(3) In pickles and pickle products as a solubilizing and dispersing agent, whereby the maximum amount of the additive does not exceed 500 parts per million (0.05 percent).

Any person who will be adversely affected by the foregoing order may at any time prior to the thirtieth day from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington 25, D.C., written objections thereto. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof. All documents shall be filed in quintuplicate.

**Effective date.** This order shall be effective on the date of its publication in the FEDERAL REGISTER.

(Sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1))

Dated: December 30, 1960.

[SEAL] JOHN L. HARVEY,  
Deputy Commissioner of  
Food and Drugs.

[F.R. Doc. 61-135; Filed, Jan. 9, 1961; 8:46 a.m.]

## Title 7—AGRICULTURE

Chapter I—Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture

PART 51—FRESH FRUITS, VEGETABLES AND OTHER PRODUCTS (INSPECTION, CERTIFICATION AND STANDARDS)

Subpart—U.S. Standards for Grades of Florida Grapefruit<sup>1</sup>

U.S. No. 1 BRONZE

On December 1, 1960, a notice of proposed rule making was published in the FEDERAL REGISTER (25 F.R. 12298) regarding a proposed amendment to § 51.754 of United States Standards for Grades of Florida Grapefruit (7 CFR §§ 51.750 to 51.783).

After consideration of all relevant matters presented, including the proposal set forth in the aforesaid notice, § 51.754, as amended, of the United States Standards for Grades of Florida Grapefruit is 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).

<sup>1</sup>Packing of the product in conformity with the requirements 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.

Section 51.754 as amended, follows:

§ 51.754 U.S. No. 1 Bronze.

The requirements of this grade are the same as for U.S. No. 1 except that all fruits must show some discoloration. More than 30 percent, by count, of the fruits shall have more than one-third of the surface, in the aggregate, affected by discoloration; the predominating discoloration on these fruits shall be of rust mite type. (See § 51.761.)

It is hereby found and determined that good cause exists for not postponing the effective date of this amendment beyond the date of publication in the FEDERAL REGISTER (5 U.S.C. 1003(c)); in that: (1) The harvest season for grapefruit is in progress and it is in the best interest of the public and the industry that the amendment be placed in effect at the earliest possible date; (2) no special preparation for compliance with the standards as amended, on the part of the citrus industry is required; and (3) notice of proposed rule making was published in the FEDERAL REGISTER December 1, 1960.

Dated: January 5, 1961, to become effective upon publication in the FEDERAL REGISTER.

ROY W. LENNARTSON,  
Deputy Administrator,  
Marketing Service.

[F.R. Doc. 61-164; Filed, Jan. 9, 1961; 8:51 a.m.]

PART 51—FRESH FRUITS, VEGETABLES AND OTHER PRODUCTS (INSPECTION, CERTIFICATION AND STANDARDS)

Subpart—United States Standards for Grades of Florida Oranges and Tangelos<sup>1</sup>

U.S. No. 1 BRONZE

On December 1, 1960, a notice of proposed rule making was published in the FEDERAL REGISTER (25 F.R. 12299) regarding a proposed amendment to § 51.1145 of United States Standards for Grades of Florida Oranges and Tangelos (7 CFR §§ 51.1140 to 51.1178).

After consideration of all relevant matters presented, including the proposal set forth in the aforesaid notice, § 51.1145, as amended, of the United States Standards for Grades of Florida Oranges and Tangelos is 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).

As amended, § 51.1145 is set forth below:

§ 51.1145 U.S. No. 1 Bronze.

The requirements of this grade are the same as for U.S. No. 1 except that all fruits must show some discoloration. More than 30 percent, by count, of the fruits shall have more than one-third of the surface, in the aggregate, affected by discoloration; the predominating dis-

coloration on these fruits shall be of rust mite type. (See § 51.1152.)

(a) If any lot of U.S. No. 1 Bronze fruit also meets the internal specifications of "U.S. Grade AA Juice (Double A)" or "U.S. Grade A Juice" it may be so specified in accordance with the facts. (See §§ 51.1175-51.1178.)

It is hereby found and determined that good cause exists for not postponing the effective date of this amendment beyond the date of publication in the FEDERAL REGISTER (5 U.S.C. 1003(c)); in that: (1) The harvest season for oranges and tangelos is in progress and it is in the best interest of the public and the industry that the amendment be placed in effect at the earliest possible date; (2) no special preparation for compliance with the standards as amended, on the part of the citrus industry is required; and (3) notice of proposed rule making was published in the FEDERAL REGISTER December 1, 1960.

Dated: January 5, 1961, to become effective upon publication in the FEDERAL REGISTER.

ROY W. LENNARTSON,  
Deputy Administrator,  
Marketing Service.

[F.R. Doc. 61-165; Filed, Jan. 9, 1961; 8:51 a.m.]

## Title 25—INDIANS

Chapter I—Bureau of Indian Affairs, Department of the Interior

SUBCHAPTER P—MINING

PART 171—LEASING OF TRIBAL LANDS FOR MINING

PART 174—LEASING OF RESTRICTED LANDS OF MEMBERS OF FIVE CIVILIZED TRIBES, OKLAHOMA, FOR MINING

PART 175—LEASING OF OSAGE RESERVATION LANDS, OKLAHOMA, FOR MINING, EXCEPT OIL AND GAS

PART 176—LEAD AND ZINC MINING OPERATIONS AND LEASES, QUAPAW AGENCY

Miscellaneous Amendments

On page 833 of the FEDERAL REGISTER of October 14, 1959, a notice of intention to amend §§ 171.6, 174.15, 175.4 and 176.13 of Title 25, Code of Federal Regulations, was published. The purpose of the amendments is to allow a reduced bond coverage when issuing permits and leases for mining minerals other than oil and gas if the Secretary of the Interior or his authorized representative believes that the interests of the Indians are adequately protected. Parts 172 and 173 are amended by reference, because the applicable sections refer to the section on bonds in Part 171.

Interested persons were given 30 days from the date of publication of the notice

in the FEDERAL REGISTER as an opportunity to submit their views, data, and arguments concerning the proposed amendments to the Commissioner of Indian Affairs. One written communication favoring the amendments to §§ 171.6 and 174.15, but suggesting an added phrase, was received within the specified period. The suggestion, that the consent of the Indian landowner be obtained before allowing reduced bond coverage, was accepted after discussion and careful consideration. As a result, the phrase "with the consent of the Indian landowner" has been inserted immediately after the words "the Secretary of the Interior or his authorized representative" in §§ 171.6(a), 174.15(a), 175.4 and 176.13.

The proposed amendments are hereby adopted as so changed and are set forth below. These amended regulations shall become effective at the beginning of the 30th calendar day following the date of the publication in the FEDERAL REGISTER.

ELMER F. BENNETT,

Acting Secretary of the Interior.

JANUARY 3, 1961.

1. Section 171.6(a) is amended to read as follows:

§ 171.6 Bonds.

(a) Lessee shall furnish with each lease a bond (Form 5-154b), and an assignee of a lease shall furnish with each assignment a bond (Form 5-154m), with an acceptable company authorized to act as sole surety, or with two or more personal sureties and a deposit as collateral security of any public-debt obligations of the United States guaranteed as to principal and interest by the United States, equal to the full amount of such bonds, or other collateral satisfactory to the Secretary of the Interior, or show ownership of unencumbered real estate of the value equal to twice the amount of the bonds. Lessee may file a bond on Form 5-154a without sureties and a deposit as collateral security of Government bonds equal in value to the full amount of the bond. Lease bonds shall not be less than the following amounts:

For less than 80 acres.....	\$1,000
For 80 acres and less than 120 acres...	1,500
For 120 acres and not more than 160 acres.....	2,000
For each additional 40 acres, or part thereof, above 160 acres.....	500

*Provided*, That for leases for minerals other than oil and gas the Secretary of the Interior or his authorized representative with the consent of the Indian landowner may authorize a bond for a lesser amount if, in his opinion, the circumstances warrant and the interests of the Indian landowners are fully protected: *Provided further*, That a lessee may file one bond (Form 5-154f), in the sum of \$15,000 for all leases of minerals, in any one State and which may also include leases on that part of an Indian reservation extending into States contiguous thereto, to which the lessee may become a party: *And provided further*, That the total acreage covered by the bond shall not exceed 10,240 acres.

2. Section 174.15(a) is amended to read as follows:

§ 174.15 Bonds.

(a) Lessee shall furnish with each mining lease a bond (Form 5-154b), and an assignee of a lease shall furnish with each assignment a bond (Form 5-154m), with an acceptable company authorized to act as sole surety, or with two or more personal sureties and a deposit as collateral security of any public-debt obligations of the United States guaranteed as to principal and interest by the United States, equal to the full amount of such bonds, or other collateral satisfactory to the Secretary of the Interior, or show ownership of unencumbered real estate of the value equal to twice the amount of the bonds. Lessee may file a bond on Form 5-154a without sureties and a deposit as collateral security of Government bonds equal in value to the full amount of the bond. Lease bonds, except as provided in paragraph (c) of this section, shall not be less than the following amounts:

For less than 80 acres.....	\$1,000
For 80 acres and less than 120 acres...	1,500
For 120 acres and not more than 160 acres.....	2,000
For each additional 40 acres, or part thereof above 160 acres.....	500

*Provided*, That for leases for minerals other than oil and gas the Secretary of the Interior or his authorized representative with the consent of the Indian landowner may authorize a bond for a lesser amount if, in his opinion, the circumstances warrant and the interests of the Indian landowners are fully protected: *Provided further*, That a lessee may file a bond (Form 5-154f), in the sum of \$15,000 for all leases of minerals up to 10,240 acres under the jurisdiction of the officer in charge of the Five Civilized Tribes Agency.

3. Section 175.4 is amended to read as follows:

§ 175.4 Bonds.

Lessee shall furnish with each lease at the time it is filed with the officer in charge an acceptable bond not less than the following amounts:

For less than 80 acres.....	\$1,000
For 80 acres and less than 120 acres...	1,500
For 120 acres and not more than 160 acres.....	2,000
For each additional 40 acres, or part thereof above 160 acres.....	500

*Provided*, That for leases for minerals other than oil and gas the Secretary of the Interior or his authorized representative with the consent of the Indian landowner may authorize a bond for a lesser amount if, in his opinion, the circumstances warrant and the interests of the Indian landowners are fully protected: *Provided further*, That the lessee shall be allowed to file bond, Form S<sup>1</sup> covering all leases to which he or they are or may become parties instead of a separate bond in each case, such bond to be in the penal sum of \$15,000. The right is reserved to change the amount of the bond in any particular case, or to require

<sup>1</sup> For further information concerning form, see § 175.24.

a new bond in the discretion of the Secretary of the Interior.

4. Section 176.13 is amended to read as follows:

§ 176.13 Bond.

Every mineral lease made and entered into under the regulations in this part, by an Indian or by the superintendent as his representative or in his behalf, must be accompanied by a surety bond, executed by the lessee and by a responsible surety company or two or more satisfactory sureties, guaranteeing the payment of all deferred installments of bonus and the payment of all specified royalties and rentals and the performance of all covenants and agreements undertaken by the lessee. Such bonds, unless authorized by the Secretary of the Interior or his authorized representative, with the consent of the Indian landowner, shall be not less than the following amounts:

For less than 80 acres.....	\$2,500
For 80 acres and less than 120 acres...	3,500
For 120 acres or more.....	5,000

*Provided, however*, That the lessee may, in lieu of such surety bond and upon execution of a proper penal bond to the United States in the sum prescribed and a proper power of attorney to the Secretary of the Interior, submit therewith United States bonds or notes in the aggregate sum prescribed as security for the carrying out of the terms, conditions, and provisions of the lease: *Provided further*, That a lessee may file in lieu of such individual lease bonds, one bond in a sum to be fixed by the Secretary of the Interior covering all leases to which he is or may become a party. The right is specifically reserved to the Secretary of the Interior to require an increase of the amount of any bond above the sum named in any particular case where he deems it necessary to require such increased bond.

[F.R. Doc. 61-128; Filed, Jan. 9, 1961; 8:45 a.m.]

## Title 42—PUBLIC HEALTH

### Chapter I—Public Health Service, Department of Health, Education, and Welfare

#### PART 21—COMMISSIONED OFFICERS

##### After Twenty Years of Service

1. Subpart J of Part 21, Title 42, Code of Federal Regulations is amended by adding at the beginning thereof the following new center heading and sections:

##### AFTER TWENTY YEARS OF SERVICE

Sec.	
21.165	Involuntary retirement of officers with 20 years of service.
21.166	Appointment of retirement boards.
21.167	Recommendations of boards.
21.168	Action by the Surgeon General or the Secretary.
21.169	Relationship of §§ 21.165-21.166 to disciplinary procedures.

AUTHORITY: §§ 21.165 to 21.169 issued under sec. 215, 58 Stat. 690, as amended; 42 U.S.C. 216. Interpret or apply sec. 211, 58 Stat. 688, as amended; 42 U.S.C. 212.

**AFTER TWENTY YEARS OF SERVICE**

**§ 21.165 Involuntary retirement of officers with 20 years of service.**

The Surgeon General may recommend to the Secretary the retirement of any officer who has completed 20 or more but less than 30 years of active service as defined in section 211(d) of the Act if the Surgeon General after consideration of the recommendation of a board pursuant to § 21.168, determines that the retirement of an officer would be in the best interests of the Service for one or more of the following reasons:

(a) An officer's performance of duty is at a level below that expected of an officer of his grade in his category;

(b) An officer is not suited for continued active service for one or more of the following or similar causes:

(1) Conduct contrary to laws, regulations, or administrative directives applicable to commissioned officers,

(2) Intentional omission or misrepresentation of facts in official statements, either oral or written,

(3) Act of intemperance and/or personal misconduct to the discredit of the Service.

**§ 21.166 Appointment of retirement boards.**

The Surgeon General may from time to time appoint boards to review, in accordance with procedures which he shall prescribe, the records of such officers as the Surgeon General may submit to such boards and to recommend to him in accordance with their determination based on the records, that such officers be continued on active duty or be retired. Such boards shall consist of five or more officers at least two of whom shall, insofar as practicable, be of the same professional category as the officer or officers whose records are submitted to them for consideration.

**§ 21.167 Recommendations of boards.**

The recommendations of the boards appointed pursuant to § 21.166 shall be based on material contained in the records submitted to them for review or on other material which the boards may have added to the records to supplement and clarify previous notations in the records. If the recommendation of a board is not unanimous, such fact shall be so indicated in the recommendation, and those members of the board who disagree with the recommendations of the majority may submit a separate report or reports and their recommendations.

**§ 21.168 Action by the Surgeon General or the Secretary.**

If a board recommends that an officer be retained on active duty, or if a board recommends that an officer be retired and the Surgeon General does not approve, such officer shall be retained on active duty until such time as his record may again be referred to a board under § 21.166 or he may be separated or retired under other provisions of law. If a board recommends that an officer be retired and the Surgeon General ap-

proves, he may recommend to the Secretary that the officer be retired. If the Secretary approves the recommendation of the Surgeon General, the officer shall be retired on the first day of any month thereafter as the Surgeon General shall direct.

**§ 21.169 Relationship of §§ 21.165—21.166 to disciplinary procedures.**

The provisions of §§ 21.165—21.166 shall in no way conflict with or prejudice disciplinary procedures under §§ 21.269—21.322.

[SEAL]

L. E. BURNEY,  
Surgeon General.

Approved: December 30, 1960.

EDWARD FOSS WILSON,  
Acting Secretary.

[F.R. Doc. 61-150; Filed, Jan. 9, 1961; 8:49 a.m.]

**Title 43—PUBLIC LANDS:  
INTERIOR**

**Chapter I—Bureau of Land Management, Department of the Interior**

**APPENDIX—PUBLIC LAND ORDERS**

[Public Land Order 2249]

[Washington 02621]

**WASHINGTON**

**Establishing San Juan National Wildlife Refuge; Enlarging Jones Island National Wildlife Refuge; Partly Revoking Executive Orders of July 9, 1875, and July 15, 1875**

By virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952, it is ordered as follows:

1. Subject to valid existing rights, the following-described public lands are hereby withdrawn from all forms of appropriation under the public land laws, including the mining but not the mineral leasing laws, and reserved under jurisdiction of the Bureau of Sport Fisheries and Wildlife, United States Fish and Wildlife Service, as follows:

a. As the San Juan National Wildlife Refuge

**WILLAMETTE MERIDIAN**

- T. 34 N., R. 1 E.,  
Sec. 8, lots 1 and 2 (Williamson Rocks).
- T. 34 N., R. 1 W.,  
Secs. 28 and 29 (Colville Island) (Unsurveyed).
- T. 35 N., R. 1 W.,  
Sec. 36 (Bird Rocks) (Unsurveyed).
- T. 35 N., R. 2 W.,  
Sec. 17, lot 1 (Turn Island);  
Sec. 18, lot 10 (Turn Island).
- T. 37 N., R. 3 W.,  
Sec. 1 (Bare Island) (Unsurveyed).

Aggregating approximately 52 acres.

b. As an addition to Jones Island Migratory Bird Refuge established by Executive Order No. 7594 of March 30, 1937, the name of which was changed to Jones Island National Wildlife Refuge by Proclamation No. 2416 of July 25, 1940:

(Washington 03723)

WILLAMETTE MERIDIAN

JONES ISLAND

T. 36 N., R. 3 W.,  
Sec. 10, Tract B;  
Sec. 11, Tract A;  
Sec. 14, Tract C.

Aggregating 9.02 acres.

2. The Executive Orders of July 15, 1875, and July 9, 1875, reserving certain lands for lighthouse purposes, are hereby revoked so far as they affect Turn Island and Jones Island, respectively.

FRED A. SEATON,  
Secretary of the Interior.

DECEMBER 24, 1960.

[F.R. Doc. 61-130; Filed, Jan. 9, 1961; 8:45 a.m.]

**Title 47—TELECOMMUNICATION**

**Chapter I—Federal Communications Commission**

**PART 21—DOMESTIC PUBLIC RADIO SERVICES (OTHER THAN MARITIME MOBILE)**

**Frequencies; Message Center Locations**

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 4th day of January 1961;

The Commission having under consideration the need for clarification of rule § 21.513 which prescribes the location of message centers for radio systems in the Domestic Public Land Mobile Radio Service and the need for providing for operation of repeater stations on frequencies, below the microwave spectrum, in such service; and

It appearing, that amendment of rule § 21.513 is desirable to more clearly set forth Commission policy and thereby minimize the number of requests for interpretation of said rule; and

It further appearing, that a need exists to provide suitable frequencies for repeater stations to relay mobile station transmissions back to the associated base station message centers when the mobile units are within talk-out range of the base station but beyond talk-back range; and

It further appearing, that, although § 21.517 of the rules provides that a base station may be used to perform the added functions of a repeater station, such arrangement is not always operationally feasible, particularly in a radio system consisting of two or more operationally integrated base stations; and

It further appearing, that the only frequencies designated for assignment to repeater stations under Subpart G of Part 21 of the rules are in the 72-76 Mc and 2110-2200 Mc bands, the former not being assignable in many areas because of possible interference to television reception on channels 4 and 5, and the latter being generally not feasible because equipment for the microwave region of the spectrum is considerably

more costly than for the sub-microwave frequencies; and

It further appearing, that the frequency bands 454.000-454.375 Mc and 459.000-459.375 Mc are presently designated, respectively, for assignment to base and mobile stations of miscellaneous common carriers and that, on April 20, 1960, in Docket No. 13348, the Commission amended § 21.501(i) of the rules to permit, under certain conditions, use of the 454.000-454.375 Mc band by control stations, but did not otherwise designate a use for the paired block of mobile frequencies in the 459.000-459.375 Mc band; and

It further appearing, that it is feasible to permit use of the 459.000-459.375 Mc band by repeater stations under the same conditions as are applicable to control stations in the 454.000-454.375 Mc band, and that no adverse results are expected to flow from making such rule changes; and

It further appearing, that there is good cause for making such rule changes which effect a relaxation of present restrictions which would otherwise require discontinuance, on April 1, 1961, of operation of repeater stations now authorized to operate in the 459.000-459.375 Mc band under rule waivers, and because it is necessary that such changes be made effective at the earliest practicable date, proposed rule-making procedure, pursuant to the provisions of section 4(a) of the Administrative Procedure Act, is impracticable, unnecessary and contrary to the public interest;

It is ordered, That, pursuant to section 4(i) and section 303(r) of the Communications Act of 1934, as amended, § 21.501(i) and § 21.513 of the Commission's rules and regulations are amended, as shown below effective January 16, 1961.

(Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interprets or applies sec. 303, 48 Stat. 1082, as amended; 47 U.S.C. 303.)

Released: January 5, 1961.

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

1. Section 21.501 is amended by revising paragraph (i) to read as follows:

§ 21.501 Frequencies.

(1) In lieu of a wireline circuit for control of a specific base station transmitter from its required control point, or in lieu of wirelines for an audio circuit to a base station control point from a remotely located fixed receiver used for reception of mobile station transmissions, a single control and repeater station may be authorized to miscellaneous common carriers upon the frequencies indicated below: *Provided*, That:

(1) The control station, and the base station controlled thereby, are located over 50 airline miles from the nearest geographical boundary of the nearest urbanized area having a population over 300,000 (as determined and defined in the most recent census reports of the U.S. Bureau of the Census).

(2) The repeater station, and the point to which its transmissions are directed, are located over 50 airline miles from the nearest geographical boundary of the nearest urbanized area having a population over 300,000 (as determined and defined in the most recent census reports of the U.S. Bureau of the Census).

(3) The effective radiated power of the control or repeater station does not exceed 150 watts.

(4) The use of the frequencies by a control or repeater station will not cause harmful interference to any other station authorized to use such frequencies and shall be on a secondary basis to the provision of mobile and rural radio service by other classes of stations. (See also footnote 11 to paragraph (c) of this section.)

(5) Series or multiple tandem operation of more than one control or repeater station is not involved.

Control station frequencies (Mc):	Repeater station frequencies (Mc)
454.05	459.05
454.10	459.10
454.15	459.15
454.20	459.20
454.25	459.25
454.30	459.30
454.35	459.35

2. Section 21.513 is amended to read as follows:

§ 21.513 Location of message center.

Within the service area encompassed by the field strength contour of each base station as defined in § 21.504, there shall be at least one message center so located that the major portion of subscribers' local exchange landline telephone calls, which originate or terminate in such area in conjunction with messages transmitted or received by said station, cost no more per call than the local message single unit rate. In cases where the control point of a base station is not so located, a public foreign exchange telephone circuit shall be provided to afford service so that a radio service subscriber may communicate between such points at a cost per call not in excess of the local message single unit rate.

[F.R. Doc. 61-160; Filed, Jan. 9, 1961; 8:50 a.m.]

PART 21—DOMESTIC PUBLIC RADIO SERVICES (OTHER THAN MARITIME MOBILE)

Transmitter Type Acceptance Requirements

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 4th day of January 1961;

The Commission having under consideration the requirements of § 21.120 of Part 21 of its rules, that all radio transmitters in use in the Domestic Public Radio Services be "type accepted"; and

It appearing, that §§ 21.501(g), 21.601(b) and 21.701(a) of the Commission's rules prohibit the authorization of new stations in the 890-940 Mc band, but per-

mit the continued operation of such facilities presently authorized, with certain conditions and restrictions; and

It further appearing, that common carriers presently authorized to operate in this band have certain transmitters which have not been type accepted but which continue to operate satisfactorily and render needed public communication service; and

It further appearing, that enforcement of this "type acceptance" rule with respect to the 890-940 Mc band would disrupt such service and would occasion costs to the carriers concerned which would not appear to be in the public interest in view of the limited use of such equipment; and

It further appearing, that no adverse impact would result if the "type acceptance" rule were amended to exempt such transmitters from its requirements; and

It further appearing, that since there is good cause for making such rule changes, which effect a relaxation of present requirements, and since it is desirable that such changes be made effective at the earliest practicable date, proposed rule-making procedure pursuant to the provisions of section 4(a) of the Administrative Procedure Act is impracticable, unnecessary and contrary to the public interest;

It is ordered, That pursuant to sections 4(i) and 303(r) of the Communications Act of 1934, as amended, § 21.120 of the rules is amended, as shown below, effective January 16, 1961.

(Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interprets or applies sec. 303, 48 Stat. 1082, as amended; 47 U.S.C. 303)

Released: January 5, 1961

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

1. Section 21.120 is amended by adding paragraph (d) as follows:

§ 21.120 Type acceptance of transmitters.

(d) A transmitter presently shown on an instrument of authorization, which operates on an assigned frequency in the 890-940 Mc band and has not been type accepted, may continue to be used by the licensee without type acceptance provided such transmitter continues otherwise to comply with the applicable rules and regulations of the Commission.

[F.R. Doc. 61-161; Filed, Jan. 9, 1961; 8:50 a.m.]

Title 49—TRANSPORTATION

Chapter I—Interstate Commerce Commission

PART 120—ANNUAL, SPECIAL OR PERIODICAL REPORTS

Annual Reports of Refrigerator Car Lines Owned or Controlled by Railroad Companies

At a session of the Interstate Commerce Commission, Division 2, held at

its office in Washington, D.C., on the 21st day of November A.D. 1960.

The matter of annual reports of refrigerator car lines owned or controlled by railroad companies being under further consideration, and the changes to be made by this order being minor changes in the data to be furnished, rule-making procedures under section 4 (a) of the Administrative Procedure Act, 5 U.S.C. 1003, being deemed unnecessary:

It is ordered, That § 120.70 of the order of January 22, 1960, in the matter of Annual Report Form B-1 (Refrigerator Car Lines Owned or Controlled by Railroad Companies), be, and it is hereby, modified and amended with respect to annual reports for the year ended December 31, 1960, and subsequent years, to read as shown below.

It is further ordered, That § 120.70 be, and it is hereby, modified and amended, to read as follows:

**§ 120.70 Annual reports of refrigerator car lines owned or controlled by railroad companies.**

Commencing with reports for the year ended December 31, 1960, and thereafter until further order, all refrigerator car lines which are operated in interstate commerce subject to the provisions of section 20(6) of the Interstate Commerce Act, 49 U.S.C. 20, and which are owned or controlled by railroad companies, are required to file annual reports in accordance with Annual Report Form B-1 (Annual Reports of Refrigerator Car Lines Owned or Controlled by Railroad Companies), which is attached to and made a part of this section.<sup>1</sup> Such report shall be filed in duplicate in the Bureau of Transport Economics and Statistics, Interstate Commerce Commission, Washington 25, D.C., by March 31 of the year following the year to which it relates.

(Sec. 12, 24 Stat. 383, as amended; 49 U.S.C. 12. Interpret or apply sec. 20, 24 Stat. 386, as amended; 49 U.S.C. 20)

And it is further ordered, That copies of this order and of Annual Report Form B-1 shall be served upon all refrigerator car lines subject to section 20(6) of the Interstate Commerce Act, owned or controlled by railroad companies, and upon every trustee, receiver, executor, administrator, or assignee of any such car line, and that notice of this order shall be given to the general public by depositing a copy in the office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the FEDERAL REGISTER.

By the Commission, Division 2.

[SEAL]

HAROLD D. McCoy,  
Secretary.

[F.R. Doc. 61-141; Filed, Jan. 9, 1961; 8:47 a.m.]

<sup>1</sup> Filed as part of original document.

## 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

##### Mattamuskeet National Wildlife Refuge, North Carolina

The following special regulation is issued.

**§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.**

**NORTH CAROLINA**

**MATTAMUSKEET NATIONAL WILDLIFE REFUGE**

Sport fishing on the Mattamuskeet National Wildlife Refuge, North Carolina, is permissible only under the following conditions:

(a) Species permitted to be taken: as prescribed by State regulations.

(b) Open season: January 8, 1961, through the day just preceding the opening day of the 1961 North Carolina migratory waterfowl hunting season.

(c) Daily creel limits: As prescribed by State regulations.

(d) Methods of fishing:  
(1) Tackle: Hook and line, using natural or artificial lures.

(2) Guides: Persons may employ guides while fishing on the area.

(3) Boats: Boats without motors, and boats with outboard motors may be used, except that the size of outboard motors may be restricted by the officer in charge and certain spawning areas will be closed to the use of motor boats as suitably posted.

(e) Description of areas open to fishing:

Fishing is permitted in accordance with (a) above on the posted area which comprises approximately 40,000 acres and 80 percent of the total refuge and which is described as follows:

Entire refuge water area including canals and ditches in Hyde County, and Swanquarter, Fairfield and Lake Landing Townships.

(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, except that a valid current North Carolina State fishing license, if required by State regulations, shall serve as a permit.

(3) The provisions of this special regulation are effective January 8, 1961, through the day just preceding the open-

ing day of the 1961 North Carolina migratory waterfowl hunting season.

(4) Points of entry and routes of travel shall be as designated and suitably posted by the refuge officer in charge.

WALTER A. GRESH,  
Regional Director, Bureau of  
Sport Fisheries and Wildlife.

JANUARY 3, 1961.

[F.R. Doc. 61-143; Filed, Jan. 9, 1961; 8:48 a.m.]

#### PART 33—SPORT FISHING

##### Reelfoot National Wildlife Refuge, Tennessee

The following special regulation is issued.

**§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.**

**TENNESSEE**

**REELFOOT NATIONAL WILDLIFE REFUGE**

Sport fishing on the Reelfoot National Wildlife Refuge, Tennessee, is permissible only under the following conditions:

(a) Species permitted to be taken: As prescribed by State regulations.

(b) Open season: January 9, 1961, through October 23, 1961.

(c) Daily creel limits: As prescribed by State regulations.

(d) Methods of fishing:  
(1) Tackle: As prescribed by State regulations.

(2) Boats: Boats with outboard motors, and inboard motors of not more than six (6) horsepower may be used.

(e) Description of areas open to fishing:

Fishing is permitted in accordance with (a) above on the posted area which comprises approximately 9,092 acres and 92 percent of the total refuge and which is described as follows:

Entire refuge area lying within the State of Tennessee.

(f) Other provisions:

(1) The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuges 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 9, 1961, through October 23, 1961.

(4) Persons must follow such routes of travel as are designated by posting by the officer-in-charge.

WALTER A. GRESH,  
Regional Director, Bureau of  
Sport Fisheries and Wildlife.

JANUARY 3, 1961.

[F.R. Doc. 61-144; Filed, Jan. 9, 1961; 8:48 a.m.]

# Proposed Rule Making

## DEPARTMENT OF THE INTERIOR

Bureau of Mines

[ 30 CFR Part 33 ]

[Bureau of Mines Schedule 25B]

### DUST COLLECTORS FOR USE IN CONNECTION WITH ROCK DRILLING IN COAL MINES

#### Requirements for Drilling Tests

Pursuant to section 4(a) of the Administrative Procedure Act (60 Stat. 238; 5 U.S.C. 1003), notice is hereby given that under authority contained in sec. 5, 36 Stat. 370, as amended, and sec. 212(a), 66 Stat. 709; 30 U.S.C. 7, 482(a), it is proposed to amend the regulations contained in §§ 33.32, 33.33, and 33.34 of Part 33, Title 30, Code of Federal Regulations, pertaining to drilling requirements, as set forth below.

The purpose of the amendment is to equalize performance requirements for combination units having single or multiple drilling heads.

In accordance with the policy of the Department of the Interior interested persons may submit written comments, suggestions, or objections with respect to the proposed changes to the Director, Bureau of Mines, Washington 25, D.C., within 30 days after the date of publication in the FEDERAL REGISTER.

JAMES WESTFIELD,  
*Acting Director.*

Approved: January 4, 1961.

ELMER F. BENNETT,  
*Under Secretary of the Interior.*

The following changes are confined to §§ 33.32, 33.33, and 33.34, as indicated.

1. In paragraph (c) of § 33.32 the word "operator" in the third and fourth lines would be changed to operator(s), indicating one or more.

2. In paragraph (a) of § 33.33 after the word "samples," at the end of the fourth line, the words "collected at each drill operator's position" would be inserted, and in the last line of the paragraph the numeral "10" would be deleted.

As amended, paragraph (a) of § 33.33 would read as follows:

(a) The concentration of dust determined by the control sample shall be subtracted from the average concentration of dust determined by the test samples collected at each drill operator's position, and the difference shall be designated as the net concentration of airborne dust. Calculations of the average concentration of dust determined from the test samples shall be based upon the results of not less than 80 percent of each set of test samples.

3. Paragraph (a) of § 33.34 would be revised to read as follows:

(a) A drilling test shall consist of drilling a set of 10 test holes, without undue delay, under specified operating conditions. When the test involves the control of dust from more than one drill, all the drills shall be used in the intended manner to complete the set of test holes.

[F.R. Doc. 61-167; Filed, Jan. 9, 1961; 8:51 a.m.]

## Fish and Wildlife Service

[ 50 CFR Part 32 ]

### REVISION OF OPEN HUNTING AREAS

#### Fallon National Wildlife Refuge et al.

Notice is hereby given that pursuant to the authority contained in section 10 of the Migratory Bird Conservation Act of February 18, 1929 (45 Stat. 1224; 16 U.S.C. 715i), it is proposed to amend Part 32, Chapter 1, Title 50, Code of Federal Regulations, by deleting the Seney National Wildlife Refuge, Michigan, as an area open to upland game hunting under § 32.21, and by deleting the Fallon National Wildlife Refuge and the Stillwater Wildlife Management Area as areas open to big-game hunting under § 32.31.

Upland game hunting on Seney National Wildlife Refuge, Michigan, was authorized in order to permit the taking of coyotes. Since these animals are not protected by State law or regulation, and their control on the refuge may be effected under other regulations, this authority for hunting upland game is not required. Big-game hunting opportunity is so limited on Fallon National Wildlife Refuge, Nevada, and Stillwater Wildlife Management Area, Nevada, that hunting may no longer be permitted.

Interested persons may submit written comments, suggestions, or objections with respect to the proposed regulation to the Director, Bureau of Sport Fisheries and Wildlife, Washington 25, D.C., within thirty days of the date of publication of this notice in the FEDERAL REGISTER.

ELMER F. BENNETT,  
*Under Secretary of the Interior.*

JANUARY 4, 1961.

[F.R. Doc. 61-166; Filed, Jan. 9, 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 Johnson and Johnson, 4949 West Sixty-fifth Street, Chicago 38, Illinois, proposing the issuance of a regulation permitting the safe use of polyvinyl alcohol insolubilized by a carboxy vinyl polymer as a binder for milk filters.

Dated: January 3, 1961.

[SEAL] J. K. KIRK,  
*Assistant to the Commissioner  
of Food and Drugs.*

[F.R. Doc. 61-145; Filed, Jan. 9, 1961; 8:48 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 Shell Chemical Company, 50 West Fiftieth Street, New York 20, New York, proposing the issuance of a regulation to provide for the safe use in animal feed of ethyl alcohol containing certain denaturants for increasing weight gains and improving feed efficiency.

Dated: January 3, 1961.

[SEAL] J. K. KIRK,  
*Assistant to the Commissioner  
of Food and Drugs.*

[F.R. Doc. 61-146; Filed, Jan. 9, 1961; 8:48 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 Monsanto Chemical Company, Springfield, Massachusetts, proposing the issuance of a regulation to permit the safe use of styrene-methyl acrylate and styrene maleic anhydride polymers for coating paper and other food-packaging, processing, or holding materials which come into contact with foods.

Dated: January 3, 1961.

[SEAL] J. K. KIRK,  
*Assistant to the Commissioner  
of Food and Drugs.*

[F.R. Doc. 61-147; Filed, Jan. 9, 1961; 8:48 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 the Nestle Company, Inc., 100 Bloomingdale Road, White Plains, New York, proposing the issuance of a regulation to establish a tolerance of 10 parts per million (0.0010 percent) of trichloroethylene for residues in instant decaffeinated coffee.

Dated: January 3, 1961.

[SEAL] J. K. KIRK,  
Assistant to the Commissioner  
of Food and Drugs.

[F.R. Doc. 61-148; Filed, Jan. 9, 1961;  
8:48 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 The Glidden Company, 900 Union Commerce Building, Cleveland 14, Ohio, proposing the issuance of an amendment to § 121.1004 of the food additive regulations to provide for the safe use of molecular distillation as an optional step in the manufacture of glycerol lactostearate and mono- and diglycerides.

Dated: January 3, 1961.

[SEAL] J. K. KIRK,  
Assistant to the Commissioner  
of Food and Drugs.

[F.R. Doc. 61-149; Filed, Jan. 9, 1961;  
8:49 a.m.]

FEDERAL AVIATION AGENCY

Bureau of Flight Standards

[ 14 CFR Part 507 ]

[Regulatory Docket No. 534]

AIRWORTHINESS DIRECTIVES

Notice of Proposed Rule Making

Pursuant to the authority delegated to me by the Administrator (14 CFR Part 405), a Notice of Proposed Rule Making to amend Part 507 of the regulations of the Administrator to include an airworthiness directive applying to inspection and retirement of Vickers Viscount 745D aircraft fuselage components, was published in 25 F.R. 9955. Subsequent to issuance of the proposal, which was based on the manufacturer's new Preliminary Technical Leaflet No. 221 applicable to 745D aircraft, it was learned that the manufacturer had also issued a similar Preliminary Technical Leaflet No. 94 for Model 810 aircraft.

Accordingly the proposed directive has been rewritten to consolidate in one document the provisions applicable to both models. Airworthiness directives 57-16-5 and 57-18-2 (Amendment 3, 23 F.R. 438), 58-1-8 (Amendment 4, 23 F.R. 1109), 58-5-2 paragraph C (Amendment 6, 23 F.R. 2568 as revised by Amendment 11, 23 F.R. 7482), 58-5-2 E (Amendment

6, 23 F.R. 2568), 58-7-4 (Amendment 7, 23 F.R. 3586) and 58-10-5 (Amendment 8, 23 F.R. 4725 as revised by Amendment 13, 23 F.R. 9632) will be superseded by the new directive.

In addition, the objection received to the original proposal that it did not permit operators to take advantage of the reduced cabin pressure provisions of the Preliminary Technical Leaflet, has been considered a reasonable one and references to Table 1 have been deleted to provide operators this alternative.

As a result of the substantive changes made, this proposal will replace the Notice of Proposed Rule Making, 25 F.R. 9955, which is hereby withdrawn.

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 9, 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. This 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:

VICKERS. Applies to all Viscount Model 745D and 810 Series aircraft.

Compliance required as indicated, unless already accomplished.

Vickers-Armstrongs has issued PTL's No. 221 (700 Series) and No. 94 (800/810 Series) to make available in single documents the respective approved life of Viscount fuselage components and the inspections and modifications necessary on the fuselage to attain the approved life. Compliance with the provisions of PTL 221 (for Model 745D) and PTL 94 (for Model 810) aircraft is required, as outlined below.

This AD consolidates information previously contained in AD's 57-16-5, 57-18-2, 58-1-8, 58-5-2(c), 58-5-2(e), 58-7-4, and 58-10-5. In addition, certain new fuselage areas, paragraphs (a)(1), (d)(1), (e)(2) through (8), (f)(1) and (2), and (g) are subject to inspection and possible modification in accordance with the noted sections of the applicable PTL's.

(a) Cockpit Pressure Floor—Section 2.

(1) Floor Beam at Station 47—Incorporation of Mod. D.2733 (745D aircraft) or Mod. FGJ1231 (810 aircraft) required as indicated in PTL's 221 and 94 respectively.

(2) Catenary Floor—Compliance required as indicated in PTL 221 or 94, as applicable, with initial inspection required no later than 30 days after the effective date.

(3) Stiffener Attachment—Compliance required as indicated in PTL 221 or 94, as applicable, with initial inspection required no later than 30 days after the effective date.

(4) Flooring Forward of Station 20—Compliance required as indicated in PTL 221 or 94, as applicable, with initial inspection required no later than 30 days after the effective date for aircraft having accumulated 3,000 or more flights.

(b) Pressure Bulkheads—Section 3.

(1) Front Bulkhead, Station 24—Compliance required as indicated in PTL 221 or 94, as applicable, with initial inspection required no later than 30 days after the effective date for aircraft having accumulated 8,000 or more flights.

(2) Rear Bulkhead, Station 761—Compliance required as indicated in PTL 221.

(c) Entrance Door—Section 4 (745D aircraft).

(1) Front and Rear, Inner Angle—Compliance required as indicated in PTL 221 with initial inspection required no later than 30 days after the effective date for aircraft having accumulated 2,000 or more flights.

(2) Shear Cleat Attachment to Fuselage Skin, Station 132—Same as (c)(1).

(3) Front and Rear, Main Surround Members—Compliance required as indicated in PTL 221.

(d) Freight Doors—Section 5 (745D) or Section 4 (810).

(1) Surround Structure—Compliance required as indicated in PTL 221 or 94, as applicable, with initial inspection required no later than 30 days after the effective date for aircraft having accumulated 9,000 or more flights.

(e) Frames—Section 6 (745D) or Section 5 (810).

(1) Fuselage Spar Frame, Station 414—Compliance required as indicated in PTL 221, with initial inspection required no later than 30 days after the effective date. Incorporation of Modifications D.1947(a) and D.2103 required no later than 90 days after the effective date for aircraft having accumulated 2,000 or more flights.

(2) Trailing Edge Frame, Station 455—Compliance required as indicated in PTL 221 with initial inspection required no later than 30 days after the effective date for aircraft having accumulated 9,000 or more flights.

(3) Fuselage Spar Frame, Station 460—Compliance required as indicated in PTL 94, with initial inspection required no later than 30 days after the effective date. Incorporation of Modifications F.178 and F.366 required no later than 90 days after the effective date for aircraft having accumulated 2,000 or more flights.

(4) Trailing Edge Frame, Station 501-234—Compliance required as indicated in PTL 94, with initial inspection required no later than 30 days after the effective date for aircraft having accumulated 3,000 or more flights.

(5) Underfloor Freight Hold, Port Side Frames—Compliance required as indicated in PTL 94, with initial inspection required no later than 30 days after the effective date for aircraft having accumulated 2,000 or more flights.

(6) Sledge Type Cleat Fitted Frames—Incorporation of Modification FG.869 required as indicated in PTL 94.

(f) Skin—Section 7 (745D) or Section 6 (810).

(1) Fuselage Skin Seam Joints—Compliance required as indicated in PTL 221 or 94, as applicable, with incorporation of Modification D.2597 (a), (b), and (c) (745D aircraft) or Modifications FG.1005 and FG.1454 (810 aircraft) required no later than 180 days after the effective date for aircraft having accumulated 12,500 or more flights at 6.5 p.s.i., or 19,000 or more flights at 5.5 p.s.i. or 35,000 or more flights at 4.5 p.s.i.

(2) Fuselage Skin Overlap Joints—Compliance required as indicated in PTL 221 or 94, as applicable, with incorporation of Modification D.2990 (a) or (b) (745D aircraft) or Modification FG.1783 (810 aircraft) required no later than 180 days after the effective date

## PROPOSED RULE MAKING

for aircraft having accumulated 11,000 or more flights at 6.5 p.s.i., or 16,000 or more flights at 5.5 p.s.i., or 30,000 or more flights at 4.5 p.s.i.

(g) *Miscellaneous Skin Cutouts—Section 8 (745D) or Section 7 (810).*

Compliance required as indicated in PTL 221 or 94, as applicable, with initial inspection required no later than 30 days after the effective date for aircraft having accumulated 9,000 or more flights.

(Vickers-Armstrongs PTL 221 (700 Series) and PTL 94 (800/810 Series) cover this subject.)

This supersedes AD's 57-16-5 and 57-18-2 Amendment 3, 23 F.R. 433; 58-1-8 Amendment 4, 23 F.R. 1109; 58-5-2 C. Amendment 6, 23 F.R. 2568 as revised by Amendment 11, 23 F.R. 7482; 58-5-2 E. Amendment 6, 23 F.R. 2568; 58-7-4 Amendment 7, 23 F.R. 3586; and 58-10-5 Amendment 8, 23 F.R. 4725 as revised by Amendment 13, 23 F.R. 9632.

Issued in Washington, D.C., on January 3, 1961.

GEORGE C. PRILL,  
Acting Director,  
Bureau of Flight Standards.

[F.R. Doc. 61-126; Filed, Jan. 9, 1961;  
8:45 a.m.]

## INTERSTATE COMMERCE COMMISSION

[ 49 CFR Part 10 ]

[No. 32153]

### UNIFORM SYSTEM OF ACCOUNTS FOR RAILROAD COMPANIES

#### Revenue From Water Transfer of Pas- sengers and Other Water Transfer Service

DECEMBER 28, 1960.

Notice is hereby given that the Interstate Commerce Commission has under consideration amendment of the Uniform System of Accounts applicable to railroads canceling the texts of operating-revenue accounts § 10.113, Water Transfers-Freight; § 10.114, Water

Transfers-Passenger; § 10.115, Water Transfers-Vehicles and Livestock; and § 10.116; Water Transfers-Other. At the same time, one new revenue account will be prescribed to provide that revenues from water transfers previously includible in those four accounts shall be includible in the new account.

*Explanatory statement.* Water transfer consists of movement of passengers and commodities by ferriage and lighterage; also towing at terminals; principally New York harbor and other eastern seaports on the basis of tariff rates for local service. The amount of annual revenue collected by carriers performing such service is a relatively small part of their total operating revenues, usually less than one-half of one percent, and is not of sufficient size and importance to call for use of four separate primary revenue accounts in which to disclose the proceeds from these operations. Therefore, it is proposed to amend the requirements and permit carriers to use a single account for the aggregate revenues from water transfers. The amended requirements are set forth in detail in the sheet attached hereto and made a part of this notice.

Interested persons may submit on or before March 1, 1961, data, views, and comments in writing concerning the amendments proposed herein in the uniform system of accounts, and may request oral argument or public hearing. An original and 3 copies should be filed of such responses.

Unless otherwise ordered after consideration of such responses as may be received amendment of the uniform system of accounts set forth below designated "Amendments to the Uniform System of Accounts Applicable to Revenue from Water Transfers" shall be effective on April 1, 1961, but carriers may apply amendments retroactively to January 1, 1961.

Notice of this rule will be given to railroads hereby affected and to the general public by depositing a copy thereof in the office of the Secretary of the Commission at Washington, D.C. and by filing a copy with the Director, Office of the Federal Register.

(Sec. 20, 24 Stat. 386, as amended. 49 U.S.C. 20)

By the Commission, Division 2.

[SEAL] HAROLD D. MCCOY,  
Secretary.

In 49 CFR Part 10; amend §§ 10.113, 10.114, 10.115, and 10.116, in the following particulars.

*Item No. 1.* Cancel the following section numbers, titles, texts, and the notes thereto:

- § 10.113 Water transfers-freight.
- § 10.114 Water transfers-passenger.
- § 10.115 Water transfers-vehicles and livestock.
- § 10.116 Water transfers-other.

*Item No. 2.* Add the following new section number, title, texts, and note to the section, in substitution for the four above-cancelled sections:

#### § 10.113 Water transfers.

This account shall include the revenue from the transfer by water (ferriage, lighterage, and floatage) of passengers, freight, vehicles and livestock, upon the basis of lawful local tariff rates.

This account also shall include revenue from water transfers of other traffic, such as the revenue from towing beyond lighterage limits and all other towing for which an extra charge is made; insurance of freight afloat when billed out at other than cost; storage of freight afloat; grain overage in boats; pumping performed for outside parties; and from other similar sources.

To this account shall be charged amounts payable to other companies or individuals for extra lighterage, extra towing, and for all other service when such payments represent revenue collected and credited to this account and not a direct expense.

*NOTE:* No revenue shall be included in this account for water transfers of passengers or shipments upon the basis of arbitrates out of rates for transportation involving rail line haul.

[F.R. Doc. 61-140; Filed, Jan. 9, 1961;  
8:47 a.m.]

# Notices

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### STOCKTON LIVESTOCK AUCTION YARDS ET AL.

##### Proposed Posting of Stockyards

The Chief of the Rates and Registration Branch, Packers and Stockyards Division, Agricultural Marketing Service, United States Department of Agriculture, has information that the livestock markets named below are stockyards as defined in section 302 of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 202), and should be made subject to the provisions of the act.

Stockton Livestock Auction Yards, French Camp, Calif.  
Stilwell Community Sale, Stilwell, Kans.  
Tri-County Livestock Sales Co., Blackduck, Minn.  
Brite and Tatum Livestock Company, Inc., Elizabeth City, N.C.  
Cornwell & Ochsner Community Sale, Yukon, Okla.  
Avondale Livestock Sales Co., Avondale, Pa.  
Johnson County Commission Sales, Cleburne, Tex.  
Cleveland Commission Co., Raywood, Tex.  
Farmers & Ranchers Livestock Commission, Tyler, Tex.  
Beaver Bay Livestock, Inc., Beaver Dam, Wis.

Notice is hereby given, therefore, that the said Chief, pursuant to authority delegated under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 et seq.), proposes to issue a rule designating the stockyards named above as posted stockyards subject to the provisions of the act, as provided in section 302 thereof.

Any person who wishes to submit written data, views, or arguments concerning the proposed rule may do so by filing them with the Chief, Rates and Registration Branch, Packers and Stockyards Division, Agricultural Marketing Service, United States Department of Agriculture, Washington 25, D.C., within 15 days after publication hereof in the FEDERAL REGISTER.

Done at Washington, D.C., this 30th day of December 1960.

K. A. POTTER,  
*Acting Chief, Rates and Registration Branch, Packers and Stockyards Division, Agricultural Marketing Service.*

[F.R. Doc. 61-136; Filed, Jan. 9, 1961; 8:46 a.m.]

#### FOSSTON LIVESTOCK SALES ET AL.

##### Proposed Posting of Stockyards

The Chief of the Rates and Registration Branch, Packers and Stockyards Division, Agricultural Marketing Service, United States Department of Agriculture, has information that the livestock markets named below are stock-

yards as defined in section 302 of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 202), and should be made subject to the provisions of the act.

Fosston Livestock Sales, Fosston, Minn.  
Crosby's Livestock Commission Sales, Whiting, Vt.

Notice is hereby given, therefore, that the said Chief, pursuant to authority delegated under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 et seq.), proposes to issue a rule designating the stockyards named above as posted stockyards subject to the provisions of the act, as provided in section 302 thereof.

Any person who wishes to submit written data, views, or arguments concerning the proposed rule may do so by filing them with the Chief, Rates and Registration Branch, Packers and Stockyards Division, Agricultural Marketing Service, United States Department of Agriculture, Washington 25, D.C., within 15 days after publication hereof in the FEDERAL REGISTER.

Done at Washington, D.C., this 4th day of January 1961.

K. A. POTTER,  
*Acting Chief, Rates and Registration Branch, Packers and Stockyards Division, Agricultural Marketing Service.*

[F.R. Doc. 61-137; Filed, Jan. 9, 1961; 8:46 a.m.]

#### WHEELERSBURG LIVE STOCK SALES COMPANY, ET AL.

##### Deposting of Stockyards

It has been ascertained, and notice is hereby given, that the stockyards named herein, originally posted on the respective dates specified below as being subject to the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 et seq.), no longer come within the definition of a stockyard under said act for the reason that they are no longer being conducted or operated as public markets, and are, therefore, no longer subject to the provisions of the act.

##### Name and Location of Stockyard and Date of Posting

Wheelersburg Live Stock Sales Co., Wheelersburg, Ohio; May 28, 1959.  
Hankinson Sale Barn, Hankinson, N. Dak.; May 20, 1959.

Notice or other public procedure has not preceded promulgation of the foregoing rule since it is found that the giving of such notice would prevent the due and timely administration of the Packers and Stockyards Act and would, therefore, be impracticable and contrary to the public interest. There is no legal warrant or justification for not depositing promptly a stockyard which is no longer within the definition of that term contained in said act.

The foregoing is in the nature of a rule granting an exemption or relieving a restriction and, therefore, may be made effective in less than 30 days after publication in the FEDERAL REGISTER. This notice shall become effective upon publication in the FEDERAL REGISTER.

(42 Stat. 159, as amended and supplemented; 7 U.S.C. 181 et seq.)

Done at Washington, D.C., this 4th day of January 1961.

K. A. POTTER,  
*Acting Chief, Rates and Registration Branch, Packers and Stockyards Division, Agricultural Marketing Service.*

[F.R. Doc. 61-138; Filed, Jan. 9, 1961; 8:46 a.m.]

## FEDERAL COMMUNICATIONS COMMISSION

[Docket Nos. 13861, 13862; FCC 61M-14]

### ALERT

#### Order After Prehearing Conference

In re applications of Gordon Evans, d/b as Alert, 1145 Bishop Street, Honolulu, Hawaii: For construction permit to establish a one-way signaling common carrier station in the Domestic Public Land Mobile Radio Service in Honolulu, Hawaii (KUA218), Docket No. 13861, File No. 2796-C2-P-60; for construction permit to establish a new two-way common carrier station in the Domestic Public Land Mobile Radio Service in Honolulu, Hawaii (KUA219), Docket No. 13862, File No. 2797-C2-P-60.

The Hearing Examiner having under consideration the proceedings during prehearing conference in the above-entitled matter held December 22, 1960;

It appearing, that the applicant requested a continuance of the hearing until May 1, 1961, in order to prepare his case; that all parties agreed to this request and provided assurance to the Examiner on the record that the delay will be productive of better preparation which should save actual hearing time and that it does not appear that any significant population would be unduly deprived of its only service as a result of such continuance;

It is ordered, This 4th day of January 1961, that the hearing scheduled to commence January 16, 1961, at the Commission's offices, Washington, D.C. is hereby rescheduled to commence 10:00 a.m., Monday, May 1, 1961, at the same place;

It is ordered further, That the agreements reached on the record during prehearing conferences are hereby incorporated herein by reference; that all exhibits are to be exchanged by March 24, 1961, with copies of each to be provided the Examiner; and that depositions are to be taken sufficiently in advance so