

1. Section 121.2519(d)(3) is amended by revising the item "Polyoxyethylene (1.5-15 mols) alkyl (C<sub>8</sub>, C<sub>9</sub>, or C<sub>10</sub>) phenol" to read as follows and by realphabetizing it accordingly:

§ 121.2519 Defoaming agents used in the manufacture of paper and paperboard.

(d) \* \* \*  
(3) Miscellaneous:

a-[p-(1,1,3,3-Tetramethylbutyl)phenyl-, p-nonylphenyl-, or p-dodecylphenyl]-*omega*-hydroxypoly(oxyethylene) produced by the condensation of 1 mole of p-alkylphenol (alkyl group is 1,1,3,3-tetramethylbutyl, a propylene trimer isomer, or a propylene tetramer isomer) with an average of 1.5-15 moles of ethylene oxide.

2. Section 121.2520(c)(5) is amended by deleting the item "Polyoxyethylene (molecular weight 1900) di-*sec*-butylphenylate" and by revising the items "Polyoxyethylene (1-40 mols) nonylphenol" and "Polyoxyethylene (1-40 mols) octylphenol" to read as follows, respectively, and by realphabetizing them accordingly:

§ 121.2520 Adhesives.

(c) \* \* \*  
(5) \* \* \*

COMPONENTS OF ADHESIVES

Substances Limitations

a-(p-Nonylphenyl)-*omega*-hydroxypoly(oxyethylene) produced by the condensation of 1 mole of p-nonylphenol (nonyl group is a propylene trimer isomer) with an average of 1-40 moles of ethylene oxide.

a-[p-(1,1,3,3-Tetramethylbutyl)phenyl]-*omega*-hydroxypoly(oxyethylene) produced by the condensation of 1 mole of p-(1,1,3,3-tetramethylbutyl)phenol with an average of 1-40 moles of ethylene oxide.

§ 121.2536 [Amended]

3. Section 121.2536 *Filters, resin-bonded* is amended by deleting from the list in paragraph (d)(2) the item "Polyoxyethylene (9-10 mols) ether of octyl- or nonylphenol."

4. Section 121.2541(c) is amended by alphabetically inserting 3 new items (the first three set forth below) and by revising and realphabetizing the item "p-*tert*-Octylphenoxy-polyethoxyethanol (40 moles) \* \* \*" to read as the fourth item below, as follows:

§ 121.2541 Emulsifiers and/or surface-active agents.

(c) List of substances: Limitations

a-Di-*sec*-butylphenyl-*omega*-hydroxypoly(oxyethylene) produced by the condensation of 1 mole of di-*sec*-butylphenol with an average of 4-14 or 30-50 moles of ethylene oxide; if a blend of products is used, the average number of moles of ethylene oxide reacted to produce any product that is a component of the blend shall be in the range 4-14 or 30-50; *sec*-butyl groups are predominantly (90 percent or more) *o*-, *p*-substituents.

a-(p-Dodecylphenyl)-*omega*-hydroxypoly(oxyethylene) produced by the condensation of 1 mole of dodecylphenol (dodecyl group is a propylene tetramer isomer) with an average of 4-14 or 30-50 moles of ethylene oxide; if a blend of products is used, the average number of moles of ethylene oxide reacted to produce any product that is a component of the blend shall be in the range 4-14 or 30-50.

a-(p-Nonylphenyl)-*omega*-hydroxypoly(oxyethylene) produced by the condensation of 1 mole of nonylphenol (nonyl group is a propylene trimer isomer) with an average of 4-14 or 30-50 moles of ethylene oxide; if a blend of products is used, the average number of moles of ethylene oxide reacted to produce any product that is a component of the blend shall be in the range 4-14 or 30-50.

a-[p-(1,1,3,3-Tetramethylbutyl)phenyl]-*omega*-hydroxypoly(oxyethylene) produced by the condensation of 1 mole of p-(1,1,3,3-tetramethylbutyl)phenol with an average of 4-14 or 30-40 moles of ethylene oxide; if a blend of products is used, the average number of moles of ethylene oxide reacted to produce any product that is a component of the blend shall be in the range 4-14 or 30-50.

5. Section 121.2547(b)(5) is revised to read as follows:

§ 121.2547 Sanitizing solutions.

(b) \* \* \*  
(5) An aqueous solution containing elemental iodine, hydriodic acid, isopropyl alcohol, *alpha*-(p-nonylphenyl)-*omega*-hydroxypoly(oxyethylene) complying with the identity prescribed in § 121.2541(c) and having a maximum average molecular weight of 748) and/or polyoxyethylene-polyoxypropylene block polymers (having a minimum average molecular weight of 1,900), together with components generally recognized as safe.

§ 121.2550 [Amended]

6. Section 121.2550 *Closures with sealing gaskets for food containers* is amended in paragraph (b)(5) by deleting from table 1 the item "Polyoxyethylated (8-10 moles) octylphenol."

7. Section 121.2571(b)(2) is amended by revising the item "Polyoxyethylene ethers of octyl- or nonylphenol" to read as follows and by realphabetizing it accordingly:

§ 121.2571 Components of paper and paperboard in contact with dry food.

(b) \* \* \*  
(2) \* \* \*

List of substances Limitations

a-[p-(1,1,3,3-Tetramethylbutyl)phenyl or p-nonylphenyl]-*omega*-hydroxypoly(oxyethylene) where nonyl group is a propylene trimer isomer.

Any person who will be adversely affected by the foregoing order may at any time within 30 days 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, D.C. 20201, written objections thereto, preferably in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

*Effective date.* This order shall become effective on 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 1, 1967.

J. K. KIRK,  
Associate Commissioner  
for Compliance.

[P.R. Doc. 67-14431; Filed, Dec. 11, 1967;  
8:49 a.m.]

## SUBCHAPTER C—DRUGS

## PART 146a—CERTIFICATION OF PENICILLIN AND PENICILLIN-CONTAINING DRUGS

## Sodium Ampicillin

## Correction

In F.R. Doc. 67-14070 appearing at page 16491 in the issue of Friday, December 1, 1967, the following changes should be made in § 146a.119(b):

1. The 13th line which reads "containers either 125 milligrams, 250" should be deleted.

2. The 18th line should read "of ampicillin. If it is packaged for dis-".

## Title 26—INTERNAL REVENUE

## Chapter 1—Internal Revenue Service, Department of the Treasury

## SUBCHAPTER A—INCOME TAX

[T.D. 6939]

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

## Treatment of Income From Unrelated Trade or Business

On April 14, 1967, a notice of proposed rule making with respect to the amendment of the Income Tax Regulations (26 CFR Part 1) under sections 513 and 512 of the Internal Revenue Code of 1954, relating to the treatment of income from unrelated trade or business, was published in the FEDERAL REGISTER (32 F.R. 5993). After consideration of all the relevant matter presented by interested persons regarding the rules proposed, the following amendments to the regulations are hereby adopted:

PARAGRAPH 1. Section 1.513-1 is redesignated as § 1.513-2 and, as so redesignated, is amended by revising the title of the section and by adding a new paragraph (d) thereto. Such revised and added provisions read as follows:

§ 1.513-2 Definition of unrelated trade or business applicable to taxable years beginning before December 13, 1967.

(d) *Effective date.* Except as provided in paragraph (g) of § 1.513-1, this section is applicable with respect to taxable years beginning before December 13, 1967.

PAR. 2. There is inserted immediately following § 1.513 the following new section:

§ 1.513-1 Definition of unrelated trade or business.

(a) *In general.* As used in section 512 the term "unrelated business taxable income" means the gross income derived by an organization from any unrelated trade or business regularly carried on by it, less the deductions and subject to the exceptions, additions and limitations provided in section 512. Section 513 specifies with certain exceptions that the

phrase "unrelated trade or business" means, in the case of an organization subject to the tax imposed by section 511, any trade or business the conduct of which is not substantially related (aside from the need of such organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its charitable, educational or other purpose or function constituting the basis for its exemption under section 501 (or, in the case of an organization described in section 511(a)(2)(B), to the exercise or performance of any purpose or function described in section 501(c)(3)). (For certain exceptions from this definition, and a special rule for certain publishing businesses, see paragraphs (e) and (f) of this section. For a special definition of "unrelated trade or business" applicable to certain trusts, see section 513(b).) Therefore, unless one of the specific exceptions of section 512 or 513 is applicable, gross income of an exempt organization subject to the tax imposed by section 511 is includible in the computation of unrelated business taxable income if (1) it is income from trade or business, (2) such trade or business is regularly carried on by the organization, and (3) the conduct of such trade or business is not substantially related (other than through the production of funds) to the organization's performance of its exempt functions.

(b) *Trade or business.* The primary objective of adoption of the unrelated business income tax was to eliminate a source of unfair competition by placing the unrelated business activities of certain exempt organizations upon the same tax basis as the nonexempt business endeavors with which they compete. In general, any activity of a section 511 organization which is carried on for the production of income and which otherwise possesses the characteristics required to constitute "trade or business" within the meaning of section 162—and which, in addition, is not substantially related to the performance of exempt functions—presents sufficient likelihood of unfair competition to be within the policy of the tax. Accordingly, for the purposes of section 513 the term "trade or business" has the same meaning it has in section 162, and generally includes any activity carried on for the production of income from the sale of goods or performance of services. Thus, the term "trade or business" in section 513 is not limited to integrated aggregates of assets, activities and good will which comprise businesses for the purposes of certain other provisions of the Internal Revenue Code. Activities of producing or distributing goods or performing services from which a particular amount of gross income is derived do not lose identity as trade or business merely because they are carried on within a larger aggregate of similar activities or within a larger complex of other endeavors which may, or may not, be related to the exempt purposes of the organization. Thus, for example, the regular sale of pharmaceutical supplies to the general public by a

hospital pharmacy does not lose identity as trade or business merely because the pharmacy also furnishes supplies to the hospital and patients of the hospital in accordance with its exempt purposes or in compliance with the terms of section 513(a)(2). Similarly, activities of soliciting, selling, and publishing commercial advertising do not lose identity as trade or business even though the advertising is published in an exempt organization periodical which contains editorial matter related to the exempt purposes of the organization.

(c) *Regularly carried on.* (1) *General principles.* In determining whether trade or business from which a particular amount of gross income derives is "regularly carried on," within the meaning of section 512, regard must be had to the frequency and continuity with which the activities productive of the income are conducted and the manner in which they are pursued. This requirement must be applied in light of the purpose of the unrelated business income tax to place exempt organization business activities upon the same tax basis as the nonexempt business endeavors with which they compete. Hence, for example, specific business activities of an exempt organization will ordinarily be deemed to be "regularly carried on" if they manifest a frequency and continuity, and are pursued in a manner, generally similar to comparable commercial activities of nonexempt organizations.

(2) *Application of principles in certain cases.*—(i) *Normal time span of activities.* Where income producing activities are of a kind normally conducted by nonexempt commercial organizations on a year-round basis, the conduct of such activities by an exempt organization over a period of only a few weeks does not constitute the regular carrying on of trade or business. For example, the operation of a sandwich stand by a hospital auxiliary for only 2 weeks at a state fair would not be the regular conduct of trade or business. However, the conduct of year-round business activities for one day each week would constitute the regular carrying on of trade or business. Thus, the operation of a commercial parking lot on Saturday of each week would be the regular conduct of trade or business. Where income producing activities are of a kind normally undertaken by nonexempt commercial organizations only on a seasonal basis, the conduct of such activities by an exempt organization during a significant portion of the season ordinarily constitutes the regular conduct of trade or business. For example, the operation of a track for horse racing for several weeks of a year would be considered the regular conduct of trade or business because it is usual to carry on such trade or business only during a particular season.

(ii) *Intermittent activities; in general.* In determining whether or not intermittently conducted activities are regularly carried on, the manner of conduct of the activities must be compared with the

manner in which commercial activities are normally pursued by non-exempt organizations. In general, exempt organization business activities which are engaged in only discontinuously or periodically will not be considered regularly carried on if they are conducted without the competitive and promotional efforts typical of commercial endeavors. For example, the publication of advertising in programs for sports events or music or drama performances will not ordinarily be deemed to be the regular carrying on of business. Similarly, where an organization sells certain types of goods or services to a particular class of persons in pursuance of its exempt functions "primarily for the convenience" of such persons within the meaning of section 513(a)(2) (as, for example, the sale of books by a college bookstore to students or the sale of pharmaceutical supplies by a hospital pharmacy to patients of the hospital), casual sales in the course of such activity which do not qualify as related to the exempt function involved or as described in section 513(a)(2) will not be treated as regular. On the other hand, where the nonqualifying sales are not merely casual, but are systematically and consistently promoted and carried on by the organization, they meet the section 512 requirement of regularity.

(iii) *Intermittent activities; special rule in certain cases of infrequent conduct.* Certain intermittent income producing activities occur so infrequently that neither their recurrence nor the manner of their conduct will cause them to be regarded as trade or business regularly carried on. For example, income producing or fund raising activities lasting only a short period of time will not ordinarily be treated as regularly carried on if they recur only occasionally or sporadically. Furthermore, such activities will not be regarded as regularly carried on merely because they are conducted on an annually recurrent basis. Accordingly, income derived from the conduct of an annual dance or similar fund raising event for charity would not be income from trade or business regularly carried on.

(d) *Substantially related.* (1) *In general.* Gross income derives from "unrelated trade or business," within the meaning of section 513(a), if the conduct of the trade or business which produces the income is not substantially related (other than through the production of funds) to the purposes for which exemption is granted. The presence of this requirement necessitates an examination of the relationship between the business activities which generate the particular income in question—the activities, that is, of producing or distributing the goods or performing the services involved—and the accomplishment of the organization's exempt purposes.

(2) *Type of relationship required.* Trade or business is "related" to exempt purposes, in the relevant sense, only where the conduct of the business activities has causal relationship to the achievement of exempt purposes (other than through the production of income);

and it is "substantially related," for purposes of section 513, only if the causal relationship is a substantial one. Thus, for the conduct of trade or business from which a particular amount of gross income is derived to be substantially related to purposes for which exemption is granted, the production or distribution of the goods or the performance of the services from which the gross income is derived must contribute importantly to the accomplishment of those purposes. Where the production or distribution of the goods or the performance of the services does not contribute importantly to the accomplishment of the exempt purposes of an organization, the income from the sale of the goods or the performance of the services does not derive from the conduct of related trade or business. Whether activities productive of gross income contribute importantly to the accomplishment of any purpose for which an organization is granted exemption depends in each case upon the facts and circumstances involved.

(3) *Size and extent of activities.* In determining whether activities contribute importantly to the accomplishment of an exempt purpose, the size and extent of the activities involved must be considered in relation to the nature and extent of the exempt function which they purport to serve. Thus, where income is realized by an exempt organization from activities which are in part related to the performance of its exempt functions, but which are conducted on a larger scale than is reasonably necessary for performance of such functions, the gross income attributable to that portion of the activities in excess of the needs of exempt functions constitutes gross income from the conduct of unrelated trade or business. Such income is not derived from the production or distribution of goods or the performance of services which contribute importantly to the accomplishment of any exempt purpose of the organization.

(4) *Application of principles.*—(1) *Income from performance of exempt functions.* Gross income derived from charges for the performance of exempt functions does not constitute gross income from the conduct of unrelated trade or business. The following examples illustrate the application of this principle:

*Example (1).* M, an organization described in section 501(c)(3), operates a school for training children in the performing arts, such as acting, singing, and dancing. It presents performances by its students and derives gross income from admission charges for the performances. The students' participation in performances before audiences is an essential part of their training. Since the income realized from the performances derives from activities which contribute importantly to the accomplishment of M's exempt purposes, it does not constitute gross income from unrelated trade or business. (For specific exclusion applicable in certain cases of contributed services, see section 513(a)(1) and paragraph (e)(1) of this section.)

*Example (2).* N is a trade union qualified for exemption under section 501(c)(6). To improve the trade skills of its members, N conducts refresher training courses and supplies handbooks and technical manuals. N

receives payments from its members for these services and materials. However, the development and improvement of the skills of its members is one of the purposes for which exemption is granted N; and the activities described contribute importantly to that purpose. Therefore, the income derived from these activities does not constitute gross income from unrelated trade or business.

*Example (3).* O is an industry trade association qualified for exemption under section 501(c)(6). It presents a trade show in which members of its industry join in an exhibition of industry products. O derives income from charges made to exhibitors for exhibit space and admission fees charged patrons or viewers of the show. The show is not a sales facility for individual exhibitors; its purpose is the promotion and stimulation of interest in, and demand for, the industry's products in general, and it is conducted in a manner reasonably calculated to achieve that purpose. The stimulation of demand for the industry's products in general is one of the purposes for which exemption is granted O. Consequently, the activities productive of O's gross income from the show—that is, the promotion, organization and conduct of the exhibition—contribute importantly to the achievement of an exempt purpose, and the income does not constitute gross income from unrelated trade or business.

(ii) *Disposition of product of exempt functions.* Ordinarily, gross income from the sale of products which from result the performance of exempt functions does not constitute gross income from the conduct of unrelated trade or business if the product is sold in substantially the same state it is in on completion of the exempt functions. Thus, in the case of an organization described in section 501(c)(3) and engaged in a program of rehabilitation of handicapped persons, income from sale of articles made by such persons as a part of their rehabilitation training would not be gross income from conduct of unrelated trade or business. The income in such case would be from sale of products, the production of which contributed importantly to the accomplishment of purposes for which exemption is granted the organization—namely, rehabilitation of the handicapped. On the other hand, if a product resulting from an exempt function is utilized or exploited in further business endeavor beyond that reasonably appropriate or necessary for disposition in the state it is in upon completion of exempt functions, the gross income derived therefrom would be from conduct of unrelated trade or business. Thus, in the case of an experimental dairy herd maintained for scientific purposes by a research organization described in section 501(c)(3), income from sale of milk and cream produced in the ordinary course of operation of the project would not be gross income from conduct of unrelated trade or business. On the other hand, if the organization were to utilize the milk and cream in the further manufacture of food items such as ice cream, pastries, etc., the gross income from the sale of such products would be from the conduct of unrelated trade or business unless the manufacturing activities themselves contribute importantly to the accomplishment of an exempt purpose of the organization.

**(iii) Dual use of assets or facilities.**

In certain cases, an asset or facility necessary to the conduct of exempt functions may also be employed in a commercial endeavor. In such cases, the mere fact of the use of the asset or facility in exempt functions does not, by itself, make the income from the commercial endeavor gross income from related trade or business. The test, instead, is whether the activities productive of the income in question contribute importantly to the accomplishment of exempt purposes. Assume, for example, that a museum exempt under section 501(c)(3) has a theater auditorium which is specially designed and equipped for showing of educational films in connection with its program of public education in the arts and sciences. The theater is a principal feature of the museum and is in continuous operation during the hours the museum is open to the public. If the organization were to operate the theater as an ordinary motion picture theater for public entertainment during the evening hours when the museum was closed, gross income from such operation would be gross income from conduct of unrelated trade or business.

**(iv) Exploitation of exempt functions.**

In certain cases, activities carried on by an organization in the performance of exempt functions may generate good will or other intangibles which are capable of being exploited in commercial endeavors. Where an organization exploits such an intangible in commercial activities, the mere fact that the resultant income depends in part upon an exempt function of the organization does not make it gross income from related trade or business. In such cases, unless the commercial activities themselves contribute importantly to the accomplishment of an exempt purpose, the income which they produce is gross income from the conduct of unrelated trade or business. The application of this subdivision is illustrated in the following examples:

**Example (1).** U, an exempt scientific organization, enjoys an excellent reputation in the field of biological research. It exploits this reputation regularly by selling endorsements of various items of laboratory equipment to manufacturers. The endorsing of laboratory equipment does not contribute importantly to the accomplishment of any purpose for which exemption is granted U. Accordingly, the income derived from the sale of endorsements is gross income from unrelated trade or business.

**Example (2).** V, an exempt university, has a regular faculty and a regularly enrolled student body. During the school year, V sponsors the appearance of professional theater companies and symphony orchestras which present drama and musical performances for the students and faculty members. Members of the general public are also admitted. V advertises these performances and supervises advance ticket sales at various places, including such university facilities as the cafeteria and the university bookstore. V derives gross income from the conduct of the performances. However, while the presentation of the performances make use of an intangible generated by V's exempt educational functions—the presence of the student body and faculty—the presentation of such drama and music events contributes importantly to the overall educational and

cultural function of the university. Therefore, the income which V receives does not constitute gross income from the conduct of unrelated trade or business.

**Example (3).** W is an exempt business league with a large membership. Under an arrangement with an advertising agency, W regularly mails brochures, pamphlets and other commercial advertising materials to its members, for which service W charges the agency an agreed amount per enclosure. The distribution of the advertising materials does not contribute importantly to the accomplishment of any purpose for which W is granted exemption. Accordingly, the payments made to W by the advertising agency constitute gross income from unrelated trade or business.

**Example (4).** X, an exempt organization for the advancement of public interest in classical music, owns a radio station and operates it in a manner which contributes importantly to the accomplishment of the purposes for which the organization is granted exemption. However, in the course of the operation of the station the organization derives gross income from the regular sale of advertising time and services to commercial advertisers in the manner of an ordinary commercial station. Neither the sale of such time nor the performance of such services contributes importantly to the accomplishment of any purpose for which the organization is granted exemption. Notwithstanding the fact that the production of the advertising income depends upon the existence of the listening audience resulting from performance of exempt functions, such income is gross income from unrelated trade or business.

**Example (5).** Y, an exempt university, provides facilities, instruction and faculty supervision for a campus newspaper operated by its students. In addition to news items and editorial commentary, the newspaper publishes paid advertising. The solicitation, sale, and publication of the advertising are conducted by students, under the supervision and instruction of the university. Although the services rendered to advertisers are of a commercial character, the advertising business contributes importantly to the university's educational program through the training of the students involved. Hence, none of the income derived from publication of the newspaper constitutes gross income from unrelated trade or business. The same results would follow even though the newspaper is published by a separately incorporated section 501(c)(3) organization, qualified under the university rules for recognition of student activities, and even though such organization utilizes its own facilities and is independent of faculty supervision, but carries out its educational purposes by means of student instruction of other students in the editorial and advertising activities and student participation in those activities.

**Example (6).** Z is an association exempt under section 501(c)(6), formed to advance the interests of a particular profession and drawing its membership from the members of that profession. Z publishes a monthly journal containing articles and other editorial material which contribute importantly to the accomplishment of purposes for which exemption is granted the organization. Income from the sale of subscriptions to members and others in accordance with the organization's exempt purposes, therefore, does not constitute gross income from unrelated trade or business. In connection with the publication of the journal, Z also derives income from the regular sale of space and services for general consumer advertising, including advertising of such products as soft drinks, automobiles, articles of apparel, and home appliances. Neither the publica-

tion of such advertisements nor the performance of services for such commercial advertisers contributes importantly to the accomplishment of any purpose for which exemption is granted. Therefore, notwithstanding the fact that the production of income from advertising utilizes the circulation developed and maintained in performance of exempt functions, such income is gross income from unrelated trade or business.

**Example (7).** The facts are as described in the preceding example, except that the advertising in Z's journal promotes only products which are within the general area of professional interest of its members. Following a practice common among taxable magazines which publish advertising, Z requires its advertising to comply with certain general standards of taste, fairness, and accuracy; but within those limits the form, content, and manner of presentation of the advertising messages are governed by the basic objective of the advertisers to promote the sale of the advertised products. While the advertisements contain certain information, the informational function of the advertising is incidental to the controlling aim of stimulating demand for the advertised products and differs in no essential respect from the informational function of any commercial advertising. Like taxable publishers of advertising, Z accepts advertising only from those who are willing to pay its prescribed rates. Although continuing education of its members in matters pertaining to their profession is one of the purposes for which Z is granted exemption, the publication of advertising designed and selected in the manner of ordinary commercial advertising is not an educational activity of the kind contemplated by the exemption statute; it differs fundamentally from such an activity both in its governing objective and in its method. Accordingly, Z's publication of advertising does not contribute importantly to the accomplishment of its exempt purposes; and the income which it derives from advertising constitutes gross income from unrelated trade or business.

**(e) Exceptions.** Section 513(a) specifically states that the term "unrelated trade or business" does not include—

(1) Any trade or business in which substantially all the work in carrying on such trade or business is performed for the organization without compensation; or

(2) Any trade or business carried on by an organization described in section 501(c)(3) or by a governmental college or university described in section 511(a)(2)(B), primarily for the convenience of its members, students, patients, officers, or employees; or

(3) Any trade or business which consists of selling merchandise, substantially all of which has been received by the organization as gifts or contributions.

An example of the operation of the first of the exceptions mentioned above would be an exempt orphanage operating a retail store and selling to the general public, where substantially all the work in carrying on such business is performed for the organization by volunteers without compensation. An example of the second exception would be a laundry operated by a college for the purpose of laundering dormitory linens and the clothing of students. The third exception applies to so-called "thrift shops" operated by a tax-exempt organization where

those desiring to benefit such organization contribute old clothes, books, furniture, etc., to be sold to the general public with the proceeds going to the exempt organization.

(f) *Special rule respecting publishing businesses.* For a special rule with respect to publishing businesses carried on by an organization, see section 513(c).

(g) *Effective date.* This section is applicable with respect to taxable years beginning after December 13, 1967. However, if a taxpayer wishes to rely on the rules stated in this section for taxable years beginning before December 13, 1967, it may do so.

PAR. 3. Section 1.512(a)-1 is redesignated, as § 1.512(a)-2 and, as so redesignated, is amended by revising the title of the section, by designating the existing provision as paragraph (a), and by adding a new paragraph (b) thereto. Such revised and added provisions read as follows:

**§ 1.512(a)-2 Definition applicable to taxable years beginning before December 13, 1967.**

(a) *In general.* \* \* \*

(b) *Effective date.* Except as provided in paragraph (f) of § 1.512(a)-1, this section is applicable with respect to taxable years beginning before December 13, 1967.

PAR. 4. There is inserted immediately after § 1.512(a) the following new section:

**§ 1.512(a)-1 Definition.**

(a) *In general.* Section 512 defines "unrelated business taxable income" as the gross income derived from any unrelated trade or business regularly carried on, less those deductions allowed by chapter 1 of the Code which are directly connected with the carrying on of such trade or business, subject to certain exceptions, additions and limitations referred to in § 1.512(b)-1. To be deductible in computing unrelated business taxable income, therefore, expenses, depreciation, and similar items not only must qualify as deductions allowed by chapter 1 of the Code, but also must be directly connected with the carrying on of unrelated trade or business. Except as provided in paragraph (d) (2) of this section, to be "directly connected with" the conduct of unrelated business, for purposes of section 512, an item of deduction must have proximate and primary relationship to the carrying on of that business. In the case of an organization which derives gross income from the regular conduct of two or more unrelated business activities, unrelated business taxable income is the aggregate of gross income from all such unrelated business activities less the aggregate of the deductions allowed with respect to all such unrelated business activities.

(b) *Expenses attributable solely to unrelated business.* Expenses, depreciation and similar items attributable solely to the conduct of unrelated business are proximately and primarily related to that business and therefore qualify for deduction to the extent that they meet

the requirements of section 162, section 167, or other relevant provisions of the Internal Revenue Code. Thus, for example, salaries of personnel employed full-time in carrying on unrelated business are directly connected with the conduct of the unrelated business and are deductible in computing unrelated business taxable income if they otherwise qualify for deduction under the requirements of section 162. Similarly, depreciation of a building used entirely in the conduct of unrelated business would be an allowable deduction to the extent otherwise permitted by section 167.

(c) *Dual use of facilities or personnel.* Where facilities or personnel are used both to carry on exempt functions and to conduct unrelated trade or business, expenses, depreciation, and similar items attributable to such facilities or personnel (as, for example, items of overhead) shall be allocated between the two uses on a reasonable basis. The portion of any such item so allocated to the unrelated trade or business is proximately and primarily related to that business, and shall be allowable as a deduction in computing unrelated business taxable income in the manner and to the extent permitted by section 162, section 167, or other relevant sections of the Internal Revenue Code. Thus, for example, assume that X, an exempt organization subject to the provisions of section 511, pays its president a salary of \$20,000 a year. X derives gross income from the conduct of unrelated trade or business. The president devotes approximately 10 percent of his time during the year to the unrelated business. For purposes of computing X's unrelated business taxable income, a deduction of \$2,000 (\$20,000 times 10 percent) would be allowable for the salary paid to its president.

(d) *Exploitation of exempt functions—(1) In general.* In certain cases, gross income is derived from unrelated trade or business which exploits an exempt function. Except as specified in subparagraph (2) of this paragraph, in such cases expenses, depreciation and similar items attributable to the conduct of the exempt function are not deductible in computing unrelated business taxable income. Since such items are incident to a function of the type which it is the chief purpose of the organization to conduct, they do not possess proximate and primary relationship to the unrelated trade or business. Therefore, they do not qualify as directly connected with that business.

(2) *Allowable deductions.* Where unrelated trade or business is of a kind carried on for profit by taxable organizations and where the exempt activity exploited by the business is a type of activity normally conducted by taxable organizations in pursuance of such business, the expenses, depreciation and similar items which are attributable to the exempt activity qualify as directly connected with the carrying on of the unrelated trade or business to the extent that:

(i) The aggregate of such items exceeds the income (if any) derived from

or attributable to the exempt activity; and

(ii) The allocation of such excess to the unrelated trade or business does not result in a loss from such unrelated trade or business.

Under the rule of the preceding sentence, expenses, depreciation and similar items paid or incurred in the performance of an exempt function must be allocated first to the exempt function to the extent of the income derived from or attributable to the performance of that function. Furthermore, such items are in no event allocable to the unrelated trade or business to the extent that their deduction would result in a loss carryover or carryback with respect to that trade or business. Similarly, they may not be taken into account in computing unrelated business taxable income attributable to unrelated trade or business not exploiting the same exempt function.

(e) *Examples.* The provisions of this section are illustrated by the following examples:

(3) *Examples.* The provisions of this paragraph are illustrated by the following examples:

*Example (1).* W is an exempt business league with a large membership. Under an arrangement with an advertising agency W regularly mails brochures, pamphlets and other commercial advertising materials to its members, charging the agency an agreed amount per enclosure. The distribution of the advertising materials does not contribute importantly to the accomplishment of the purpose for which W is granted exemption. Accordingly, the payments made to W by the advertising agency constitute gross income from unrelated trade or business. In computing W's unrelated business taxable income, the expenses attributable solely to the conduct of the business, or allocable to such business under the rule of paragraph (e) of this section; are allowable as deductions in accordance with the provisions of section 162. Such deductions include the costs of handling and mailing, the salaries of personnel used full-time in the unrelated business and an allocable portion of the salaries of personnel used both to carry on exempt functions and to conduct the unrelated business. However, costs of developing W's membership and carrying on its exempt activities are not deductible. Those costs are necessary to the maintenance of the intangible asset exploited in the unrelated business—W's membership—but are incurred primarily in connection with W's fundamental status and functioning as an exempt organization. As a consequence, they do not have proximate and primary relationship to the conduct of the unrelated business, and do not qualify as directly connected with it.

*Example (2).* Z, an exempt business league, publishes a monthly journal which it sells by subscription to members and others. The articles and other editorial content contribute importantly to the accomplishment of Z's exempt purposes. Therefore, the income attributable to journal subscriptions does not constitute gross income from unrelated trade or business. In connection with the publication of the journal, Z derives income from the regular sale of advertising space and services to commercial advertisers. Since the provision of commercial advertising space and services does not contribute importantly to the accomplishment of Z's exempt purposes, Z's income from advertising constitutes gross income from unrelated trade or

business. In computing Z's unrelated business taxable income, allowable deductions would (subject to the rules provided in section 162 and other relevant sections of the Internal Revenue Code) include the specific costs of the advertising business, such as advertising copy and mechanical costs, advertising sales commissions and similar expenses. Also allowable would be items of deduction (such as general overhead expenses and depreciation) allocable to the advertising business in accordance with the rule of paragraph (c) of this section. In addition, since expenses, depreciation and similar items related to the production and distribution of the editorial content of the journal are costs generally incurred by taxable organizations publishing journals with advertising, such items would, subject to the limitations of subdivisions (1) and (2) of paragraph (d) (2) of this section, be treated as directly connected with the conduct of the advertising business and be allowable as deductions in computing Z's unrelated business taxable income to the extent provided in section 162, section 167, and other relevant sections of the Internal Revenue Code. The limitation of subdivision (1) of paragraph (d) (2) of this section would require reduction of the total of the items of editorial cost by the amount of the income attributable to subscriptions before deduction of such cost from the advertising income. The general effect of these rules would be to result in taxation of the advertising income only if the journal produced an overall net profit for the year and to confine the base upon which any tax would be computed to the amount of such net profit. The limitation of subdivision (2) of paragraph (d) (2) of this section would preclude deduction of the items of editorial cost from any other unrelated business income of Z for the same taxable year or use of such items in computing a net operating loss carryover or carryback of the organization.

(f) *Effective date.* This section is applicable with respect to taxable years beginning after December 13, 1967. However, if a taxpayer wishes to rely on the rules stated in this section for taxable years beginning before December 13, 1967, it may do so.

PAR. 5. Paragraph (f) (4) of § 1.512(b)-1 is amended to read as follows:

§ 1.512(b)-1 Exceptions, additions, and limitations.

(f) *Research.* . . . .  
 (4) For the purpose of §§ 1.512(a)-1, 1.512(a)-2, and this section, the term "research" does not include activities of a type ordinarily carried on as an incident to commercial or industrial operations, for example, the ordinary testing or inspection of materials or products or the designing or construction of equipment, buildings, etc. The term "fundamental research" does not include research carried on for the primary purpose of commercial or industrial application.

PAR. 6. Paragraph (d) (5) (v) of § 1.501(c) (3)-1 is amended to read as follows:

§ 1.501(c) (3)-1 Organizations organized and operated for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals.

(d) *Exempt purposes.* . . . .  
 (5) *Scientific defined.* . . . .  
 (v) The fact that any organization (including a college, university, or hospital) carries on research which is not in furtherance of an exempt purpose described in section 501(c) (3) will not preclude such organization from meeting the requirements of section 501(c) (3) so long as the organization meets the organizational test and is not operated for the primary purpose of carrying on such research (see paragraph (e) of this section, relating to organizations carrying on a trade or business). See paragraph (a) (5) of § 1.513-2, with respect to research which constitutes an unrelated trade or business, and section 512(b) (7), (8), and (9), with respect to income derived from research which is excludable from the tax on unrelated business income.

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

Approved: December 8, 1967.

[SEAL] SHELDON S. COHEN,  
 Commissioner of Internal Revenue.

STANLEY S. SURREY,  
 Assistant Secretary  
 of the Treasury.

[P.R. Doc. 67-14463; Filed, Dec. 11, 1967; 8:51 a.m.]

**Title 32—NATIONAL DEFENSE**  
**Chapter I—Office of the Secretary of Defense**

**SUBCHAPTER B—PERSONNEL; MILITARY AND CIVILIAN**  
**PART 52—SOLE SURVIVING SONS**

The Secretary of Defense approved the following:

- Sec.  
 52.1 Reissuance and purpose.  
 52.2 Applicability.  
 52.3 Definitions.  
 52.4 Policy.

*AUTHORITY:* The provisions of this Part 52 are issued under sec. 301, 80 Stat. 379; 5 U.S.C. 301.

§ 52.1 *Reissuance and purpose.*  
 This part reflects up-to-date policies concerning the assignment and discharge of sole surviving sons of families who have suffered casualties.

§ 52.2 *Applicability.*  
 The provisions of this part apply to the Military Departments.

§ 52.3 *Definitions.*  
 As used in this part, the following definitions will apply:

- (a) "Sole surviving son" means the only remaining son in a family of which, because of hazards incident to service in the Armed Forces of the United States, the father, or one or more sons or daughters—  
 (1) Have been killed;  
 (2) Have died as a result of wounds, accident, or disease;

- (3) Are in a captured or missing-in-action status; or  
 (4) Are permanently 100 percent physically disabled (to include 100 percent mental disability) as determined by the Veterans Administration or one of the military services, and are hospitalized on a continuing basis, and not gainfully employed by virtue of such disability.  
 (b) "Armed Forces of the United States" denotes collectively all components of the Army, Navy, Air Force, Marine Corps, and Coast Guard.

§ 52.4 *Policy.*  
 (a) *Assignments.* (1) A sole surviving son may not be assigned to duties normally involving actual combat with the enemy if he or one of his parents submits a request for noncombat duty. However, where the parent alone makes the request, it may be waived by the serviceman.  
 (2) This policy will not be interpreted to mean that sole surviving sons will not be assigned to overseas commands where combat conditions are nonexistent.

(b) *Discharges.* (1) Enlisted personnel who become sole surviving sons subsequent to their enlistment or induction may apply for and be granted an administrative discharge, except in instances:  
 (i) Arising during the period of a war or national emergency hereafter declared by the Congress; or  
 (ii) Where the individual qualifies as a sole surviving son on the basis of a captured or missing-in-action status of a father, brother, or sister (see § 52.3(a) (3)).

(2) Sole surviving sons who qualify for discharge on the basis of the 100 percent disability status of the father, or one or more sons or daughters in a family (see § 52.3(a) (4)) shall be required to complete at least 6 months of active duty prior to discharge in order to qualify for a veteran's exemption under the provisions of 50 App. U.S.C. 456(b) (3).  
 (3) Commissioned officers (including warrant officers) will not be released from active duty based on their qualifications as sole surviving sons.

(3) Commissioned officers (including warrant officers) will not be released from active duty based on their qualifications as sole surviving sons.

MAURICE W. ROCHE,  
 Director, Correspondence and Directives Division, OASD (Administration).  
 [P.R. Doc. 67-14380; Filed, Dec. 11, 1967; 8:45 a.m.]

**Title 36—PARKS, FORESTS, AND MEMORIALS**

**Chapter I—National Park Service, Department of the Interior**

**PART 7—SPECIAL REGULATIONS RELATING TO PARKS AND MONUMENTS**

**Shenandoah National Park, Va.**

Notice is hereby given that pursuant to the authority contained in section 3 of the Act of August 25, 1916, 245 DM-1 (27

F.R. 6395), National Park Service Order No. 34 (31 F.R. 4255), Regional Director, Southeast Region Order No. 4 (31 F.R. 8135), as amended, § 7.15 of Title 36 of the Code of Federal Regulations is amended as set forth below.

The purpose of this amendment is to revoke regulations concerning: State fishing licenses, speed, travel on roads and trails, report of accidents by wrecker operators, riding or hitching horses in areas of public gatherings, and quiet hours in campgrounds and picnic areas, which are no longer necessary because these matters are covered by regulations contained in Parts 2 and 4 of this chapter.

Since these amendments will not impose any additional restrictions on the public, and in some instances will remove existing restrictions, public comment thereon and a delayed effective date are deemed unnecessary and these amendments shall take effect upon publication in the FEDERAL REGISTER.

(5 U.S.C. 553, 39 Stat. 535; 16 U.S.C. 3)

Section 7.15 of Part 7 of Title 36 of the Code of Federal Regulations is hereby amended by revoking paragraph (a) (7), paragraphs (b), (c), (d), and (f), and paragraph (e) (2).

JACKSON E. PRICE,  
Regional Director, Southeast  
Region, National Park Service.

NOVEMBER 13, 1967.

[F.R. Doc. 67-14385; Filed, Dec. 11, 1967;  
8:45 a.m.]

## Title 42—PUBLIC HEALTH

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

#### SUBCHAPTER D—GRANTS

### PART 53—GRANTS FOR CONSTRUCTION AND MODERNIZATION OF HOSPITALS AND MEDICAL FACILITIES

#### General Standards of Construction and Equipment

On page 8334 of the FEDERAL REGISTER of June 9, 1967, there was published a notice of proposed rule making to issue regulations incorporating by reference in Part 53 of Title 42 a rearranged, revised, and updated version of the standards of construction for hospitals and long-term care facilities and deleting the present Standards of construction and equipment for such facilities contained in Subpart N of Part 53. Interested persons were given 30 days in which to submit their views in writing regarding the proposed rulemaking and regarding any matters in the revised construction standards appended to the notice.

No comments were received on the proposed amendments to incorporate the construction standards by reference, and those amendments incorporating such standards by reference are hereby adopted without change and are set forth below.

Several comments were received within the allotted time dealing with various items in the standards hereby incorporated. After consideration of such comments, some revisions were made in the standards, principally concerning:

(1) The provision of the elements for general hospital services which are to be purchased or shared by cooperative arrangements between a general hospital and other hospitals or medical facilities; (2) the fire-resistive characteristics of partitions in hospitals and long-term care facilities; (3) deletion of the stand-pipe system requirement for hospitals and long-term care facilities; (4) the percentage of beds in a nursing home which must be provided in one or two bedrooms; (5) deletion of the requirement for special isolation rooms in long-term care facilities.

Requests for copies of the "General Standards of Construction and Equipment for Hospital and Medical Facilities" (PHS No. 930-A-7) containing such revisions, as well as other editorial and minor technical changes, should be directed to the Division of Hospital and Medical Facilities, Public Health Service, Department of Health, Education, and Welfare, Willste Building, 7915 Eastern Avenue, Silver Spring, Md. 20910, or to the Public Health Service Information Center or Regional Office Information Center as listed in 45 CFR § 5.31 (32 F.R. 9316).

**Effective date.** These amendments to the regulations of Part 53 as set forth below shall be effective upon publication in the FEDERAL REGISTER.

1. Paragraph (a) of § 53.101 is revised to read as follows:

#### § 53.101 General.

(a) Plans and specifications for each project submitted to the Surgeon General for approval, and in the case of rehabilitation facilities, the approval of the Secretary, under the Federal Act shall be prepared in accordance with "General Standards of Construction and Equipment for Hospital and Medical Facilities" (PHS No. 930-A-7), and any amendments or revisions thereof, which document is hereby incorporated by reference and deemed published herein. Said document will be provided to all applicants for construction grants under this part, and is available to any interested person, whether or not affected by the provisions of this part, upon request to the Division of Hospital and Medical Facilities, Public Health Service, Department of Health, Education, and Welfare, or to the Public Health Service Information Center or Regional Office Information Center as listed in 45 CFR § 5.31 (32 F.R. 9316). The Surgeon General may approve, subject also in the case of rehabilitation facilities to the approval of the Secretary, plans and specifications which contain deviations from the requirements prescribed if he is satisfied that the purposes of such requirements have been fulfilled.

\* The Division also maintains an official, historic file of PHS No. 930-A-7.

2. Paragraph (f) of § 53.1 is revised to read as follows:

#### § 53.1 Definitions.

(f) *Facilities for long-term care.* \* \* \*  
(2) In which such nursing care and medical services are prescribed by, or are performed under the general direction of, persons licensed to practice medicine or surgery in the State. Institutions furnishing primarily domiciliary care are not included.

"Chronic disease hospitals" and "nursing homes" as used in the document "General Standards of Construction and Equipment for Hospital and Medical Facilities," incorporated by reference in § 53.101(a), constitute "facilities for long-term care."

3. Section 53.125 is revised to read as follows:

#### § 53.125 Construction standards.

The State agency shall adopt general standards of construction and equipment for the various types of hospitals, facilities for long-term care, diagnostic or treatment centers, rehabilitation facilities, and public health centers assisted under this program. The standards adopted shall not be less than the general standards prescribed by the Public Health Service and set forth in the document "General Standards of Construction and Equipment for Hospital and Medical Facilities", as incorporated by reference in § 53.101(a).

4. Subpart N (Appendix A) of part 53, Chapter 1 of Title 42 of the Code of Federal Regulations is revoked.

(Sec. 215, 58 Stat. 600, as amended, sec. 603, 78 Stat. 451, as amended; 42 U.S.C. 216, 291c)

Approved: November 30, 1967.

(SEAL) WILLIAM H. STEWART,  
Surgeon General.

WILLIAM H. STEWART,  
Chairman,  
Federal Hospital Council.

WILBUR J. COHEN,  
Acting Secretary.

NOTE: Incorporation by reference provisions in § 53-101(a) approved by Director of the Federal Register on December 11, 1967.

[F.R. Doc. 67-14323; Filed, Dec. 11, 1967;  
8:45 a.m.]

## Title 43—PUBLIC LANDS: INTERIOR

### Chapter II—Bureau of Land Management, Department of the Interior

#### APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 4337]

[Idaho 017167]

#### IDAHO

### Withdrawal for Research and Grazing Study Area

By virtue of the authority vested in the President and pursuant to Executive