

Proclamation 3779

MODIFYING PROCLAMATION 3279 ADJUSTING IMPORTS OF
PETROLEUM AND PETROLEUM PRODUCTS

By the President of the United States of America

A Proclamation

WHEREAS, pursuant to section 2 of the act of July 1, 1954, as amended (72 Stat. 678), and section 232 of the Trade Expansion Act of 1962 (76 Stat. 877), findings and determinations have been made that adjustments in the imports of crude oil, unfinished oils, and finished products were necessary so that such imports would not threaten to impair the national security, such adjustments have been made by Proclamation 3279¹ (24 F.R. 1781) and modified by Proclamation 3290 (24 F.R. 3527), Proclamation 3328 (24 F.R. 10133), Proclamation 3386 (25 F.R. 13945), Proclamation 3389 (26 F.R. 507, 811), Proclamation 3509 (27 F.R. 11985), Proclamation 3531 (28 F.R. 4077), Proclamation 3541 (28 F.R. 5931), and Proclamation 3693 (30 F.R. 15459); and

WHEREAS I find and determine that it is necessary to provide more flexible authority to the Secretary of the Interior with respect to asphalt:

NOW, THEREFORE, I, LYNDON B. JOHNSON, President of the United States of America, acting under and by virtue of the authority vested in me by the Constitution and the statutes, including section 232 of the Trade Expansion Act of 1962, do hereby proclaim that effective immediately a new paragraph (d), reading as follows, is added to section 3 of Proclamation 3279, as amended:

"(d) The Secretary of the Interior shall keep under review the supply-demand situation with respect to asphalt in District I, Districts II-IV, District V, and Puerto Rico, and, as he determines to be consonant with the objectives of this proclamation, he may in his discretion (1) establish, without respect to the levels of imports prescribed in section 2, a maximum level of imports of asphalt for District I, or Districts II-IV, or District V, of Puerto Rico and, notwithstanding the provisions of subparagraph (4) of paragraph (b) of this section 3, establish a special system of allocation of such imports, or (2) permit the entry for consumption or the withdrawal from warehouse for consumption of asphalt in District I, or Districts II-IV, or District V, or Puerto Rico, without allocations or licenses, notwithstanding the provisions of section 1."

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



DONE at the City of Washington this tenth day of April in the year of our Lord nineteen hundred and sixty-seven, and of the Independence of the United States of America the one hundred and ninety-first.

A handwritten signature in dark ink, reading "Lyndon B. Johnson".

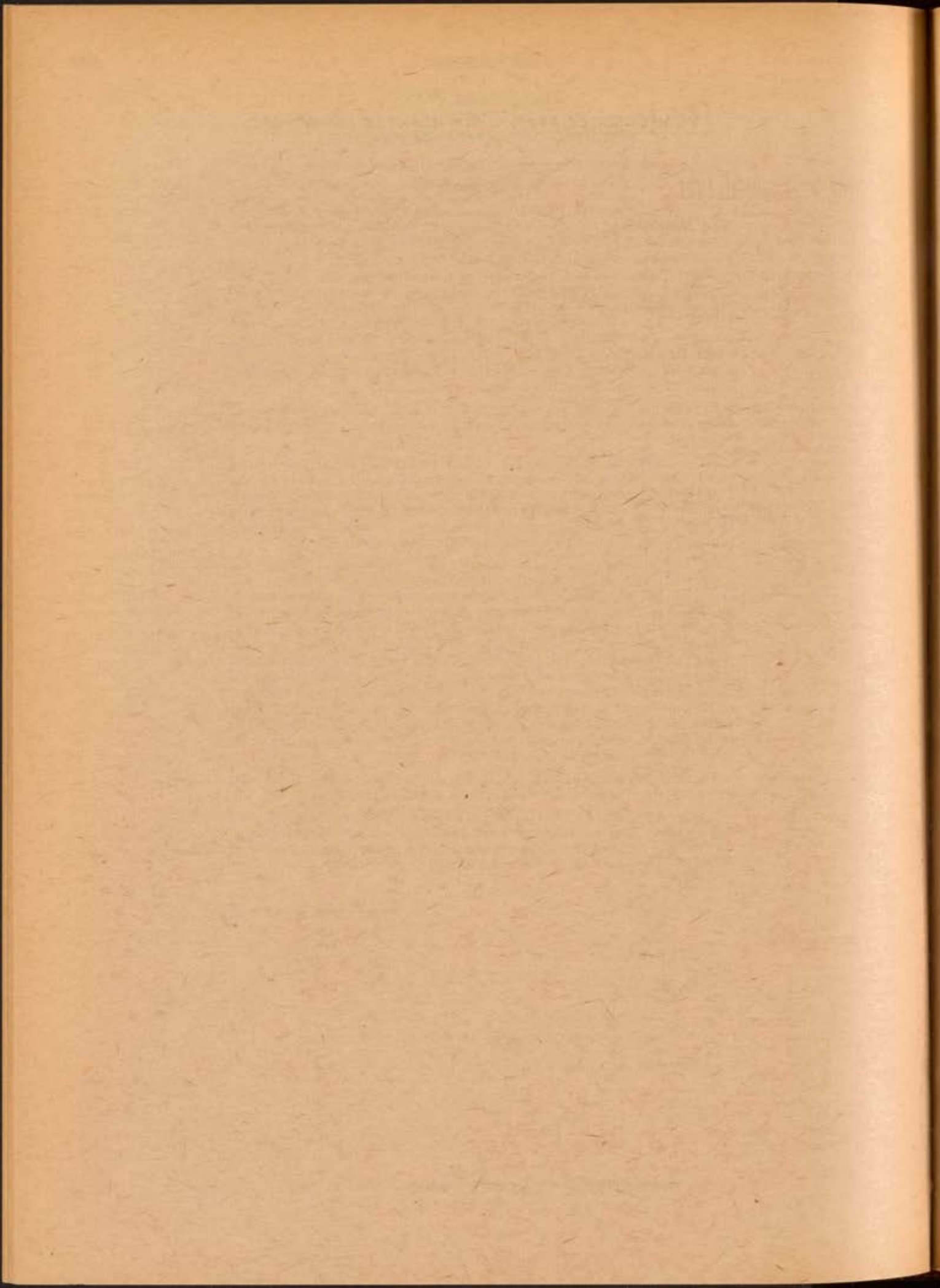
By the President:

A handwritten signature in dark ink, reading "Nelson A. Rockefeller".

Acting Secretary of State.

[F.R. Doc. 67-4124; Filed, Apr. 12, 1967; 10:46 a.m.]

¹ 3 CFR, 1950-1963, Comp., p. 11; 24 F.R. 1781.



Rules and Regulations

Title 7—AGRICULTURE

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

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

Modification of Reserve and Surplus Percentages for 1966-67 Crop Year

The Raisin Administrative Committee has unanimously recommended that the reserve percentage and the surplus percentage applicable to standard natural (sun-dried) Thompson Seedless raisins acquired by handlers during the 1966-67 crop year (§ 989.224, 31 F.R. 13696) be modified. The modification would reduce the reserve percentage from the present 15 percent to 4 percent, and increase the surplus percentage from the present 35 percent to 46 percent. The committee is established under, and its recommendations are made pursuant to, the marketing agreement, as amended, and Order No. 989, as amended (7 CFR Part 989), regulating the handling of raisins produced from grapes grown in California. This marketing agreement and order program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), herein after referred to as the "act".

A free tonnage percentage of 50 percent for natural Thompson Seedless raisins, together with the reserve percentage of 15 percent and the surplus percentage of 35 percent, were designated October 19, 1966. That action was designed to achieve a free tonnage goal of 142,000 tons, estimated to equal trade demand. It provided for enough raisins to be placed in the reserve tonnage—which could be sold to handlers to augment free tonnage or become surplus if not so needed—to protect against failure to achieve the free tonnage goal because of any over or under estimation of production (then estimated to be 237,000 tons). In the notice proposing establishment of the percentage (31 F.R. 13244), it was further proposed that on or about February 1, 1967, on the basis of relevant information then available concerning the 1966 production of such raisins, appropriate modifications in the percentages will be made to retain in the reserve pool a sufficient tonnage to meet any deficit in free tonnage and transfer the remainder to the surplus tonnage. Under this part, reserve and surplus percentages may be modified at any time, and any reserve remaining unsold on August 1 automatically becomes surplus tonnage.

The natural Thompson Seedless raisin production is now known to be approximately 260,000 tons. Handlers' needs for additional free tonnage has been determined as approximately 4 percent of this production, leaving 11 percent (present 15 percent less 4 percent) as reserve tonnage which may now become surplus. A transfer at this time of the excess reserve tonnage to surplus tonnage will remove uncertainty as to its ultimate disposition and so tend to stabilize free tonnage prices.

After consideration of all relevant matter presented, including that in the notice issued in connection with the designation of the free, reserve, and surplus percentages for the 1966-67 crop year, the information and recommendation submitted by the committee, and other available information, it is found that to revise § 989.224 (31 F.R. 13696) so as to modify the reserve and surplus percentages, as set forth below, will tend to effectuate the declared policy of the act.

§ 989.224 Free, reserve, and surplus percentages for the 1966-67 crop year.

The percentages of standard natural (sun-dried) Thompson Seedless raisins acquired by handlers during the crop year beginning September 1, 1966, which shall be free tonnage, reserve tonnage, and surplus tonnage, respectively, are designated as follows: Free tonnage percentage, 50 percent; reserve tonnage percentage, 4 percent; and surplus tonnage percentage, 46 percent.

It is further found that it is impracticable, unnecessary, or contrary to the public interest to give preliminary notice of this specific action and engage in public rule making procedure, and that good cause exists for not postponing the effective time of this action until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553 (1966)) in that: (1) Notice that action of this type would be taken later in the crop year was given last fall in the rule making procedure with respect to the designation of the free, reserve, and surplus percentages for the 1966-67 crop year; (2) full information concerning the need of reserve tonnage raisins for use as free tonnage is now available, and no useful purpose will be served by delaying the transfer of the unneeded quantity to surplus; (3) under this marketing program, the percentages designated for a particular crop year, and any modifications thereof, apply to all standard raisins of the applicable varietal type acquired by handlers from the beginning of the crop year; (4) the current crop year began September 1, 1966, and the modified percentages herein designated will automatically apply to such raisins acquired on and after that date; (5) this action must be taken promptly to achieve its purpose by pro-

viding a firm basis for pricing raisins during the remainder of the crop year; and (6) handlers are aware of this action as recommended by the committee and require no advance notice to comply with this regulation.

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

Dated: April 7, 1967.

PAUL A. NICHOLSON,
Deputy Director,
Fruit and Vegetable Division.

[F.R. Doc. 67-4040; Filed, Apr. 12, 1967; 8:47 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Docket No. 8015; Amdt. 39-400]

PART 39—AIRWORTHINESS DIRECTIVES

Allison-Aero Products Models A6441 FN-606, A6441FN-606A Propellers

Pursuant to the authority delegated to me by the Administrator, an airworthiness directive was adopted on April 10, 1967, and made effective immediately, by telegram, as to all known operators of Allison-Aero Products Models A6441FN-606 and A6441FN-606A propellers installed on Convair Model 340/440 airplanes modified in accordance with STC SA4-1100 and Lockheed Model L-188 Series airplanes. In order to prevent improper propeller functioning due to an unairworthy condition reported by the manufacturer which may exist in the propeller fixed spline Part No. 6522974 due to possible core hardness below specifications, the directive requires a check of each propeller in which is installed a fixed spline Part No. 6522974, Serial Number 1367 and up, as required by the manufacturer and the correction of any unsatisfactory condition found by removal of the propeller. The check is required within 10 hours in service and thereafter on a daily basis. Previous airworthiness directives and amendments on related problems were issued on March 8, 1967, March 10, 1967, March 17, 1967, March 22, 1967, and March 24, 1967.

Since it was found that immediate corrective action was required, notice and public procedure thereon was impractical and contrary to the public interest and good cause existed for making the airworthiness directive effective immediately as to all known operators of the propellers. These conditions still exist and the airworthiness directive is hereby

published in the FEDERAL REGISTER as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons.

In view of the foregoing, § 39.13 is amended by adding the following airworthiness directive:

ALLISON-AERO PRODUCTS. Applies to Models A6441FN-606 and A6441FN-606A propellers installed on Allison-Convair Model 340/440 airplanes modified in accordance with STC SA4-1100 or Lockheed Model L-188 airplanes.

(a) Within the next 10 hours' time in service, each propeller in which is installed a fixed spline Part No. 6522974, Serial Number 1367 and up, must be inspected and marked as required by Allison telegram THO-641W-L0D, dated April 7, 1967, as modified by Allison telegram THO-662W-L0D, dated April 10, 1967. Thereafter, repetitive daily inspections are required as specified in those telegrams.

(b) If, upon inspection, it is determined that a propeller blade is beyond tolerance as set forth in those telegrams, the propeller shall be removed from service and be—

(1) Retained by the operator, with immediate notification to the Chief, Engineering and Manufacturing Branch, FAA Central Region, pending further instructions by him; or

(2) Returned to an approved overhaul base and the Chief, Engineering and Manufacturing Branch, FAA Central Region, notified immediately.

(c) The daily inspection required by this AD may be discontinued when the fixed splines identified in paragraph (a) have been inspected for hardness and determined to meet specifications or have been replaced by other airworthy fixed splines.

(d) Further flight beyond the point where the aircraft is grounded pursuant to this AD may be conducted only in accordance with FAR 21.197.

This amendment becomes effective upon publication in the FEDERAL REGISTER for all persons except those to whom it was made effective by telegram dated April 10, 1967.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958; 49 U.S.C. 1354(a), 1421, 1423)

Issued in Washington, D.C., on April 11, 1967.

JAMES F. RUDOLPH,
Acting Director,
Flight Standards Service.

[P.R. Doc. 67-4102; Filed, Apr. 12, 1967; 8:49 a.m.]

Title 21—FOOD AND DRUGS

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

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 31—NONALCOHOLIC BEVERAGES

Soda Water, Identity Standard; Confirmation of Effective Date of Order Changing Labeling Requirements and Listing Dimethylpolysiloxane as an Optional Ingredient

In the matter of amending the standard of identity for soda water (21 CFR

31.1): To permit designation of non-sweetened and nonflavored soda water by names other than those prescribed by the standard; and to list dimethylpolysiloxane (complying with § 121.1099 of the food additive regulations (21 CFR 121.1099)) as an optional ingredient:

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (secs. 401, 701, 52 Stat. 1046, 1055, as amended 70 Stat. 919, 72 Stat. 948; 21 U.S.C. 341, 371) and in accordance with the authority delegated to the Commissioner of Food and Drugs by the Secretary of Health, Education, and Welfare (21 CFR 2.120), notice is given that no objections were filed to the order in the above-identified matter published in the FEDERAL REGISTER of February 16, 1967 (32 F.R. 2940). Accordingly, the amendments promulgated by that order will become effective April 17, 1967.

(Secs. 401, 701, 52 Stat. 1046, 1055, as amended 70 Stat. 919, 72 Stat. 948; 21 U.S.C. 341, 371)

Dated: April 5, 1967.

J. K. KIRK,
Associate Commissioner
for Compliance.

[P.R. Doc. 67-4057; Filed, Apr. 12, 1967; 8:48 a.m.]

PART 45—OLEOMARGARINE, MARGARINE

Identity Standard; Confirmation of Effective Date of Order Making Optional the Requirement for Culturing Milk Ingredients

In the matter of amending the standard of identity for margarine (21 CFR 45.1), and by cross-reference affecting the standard of identity for liquid margarine (21 CFR 45.2), to make optional the requirement that milk ingredients be subjected to the action of harmless bacterial starters:

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (secs. 401, 701, 52 Stat. 1046, 1055, as amended 70 Stat. 919, 72 Stat. 948; 21 U.S.C. 341, 371) and in accordance with the authority delegated to the Commissioner of Food and Drugs by the Secretary of Health, Education, and Welfare (21 CFR 2.120), notice is given that no objections were filed to the order in the above-identified matter published in the FEDERAL REGISTER of February 15, 1967 (32 F.R. 2893). Accordingly, the amendment promulgated by that order will become effective April 16, 1967.

(Secs. 401, 701, 52 Stat. 1046, 1055, as amended 70 Stat. 919, 72 Stat. 948; 21 U.S.C. 341, 371)

Dated: April 5, 1967.

J. K. KIRK,
Associate Commissioner
for Compliance.

[P.R. Doc. 67-4058; Filed, Apr. 12, 1967; 8:48 a.m.]

PART 121—FOOD ADDITIVES

Subpart D—Food Additives Permitted in Food for Human Consumption

BOILER WATER ADDITIVES

The Commissioner of Food and Drugs, having evaluated data in a petition (FAP 7A2109) filed by W. H. Miner, Inc., Rookery Building, 209 South La Salle Street, Chicago, Ill. 60604, and other relevant material, has concluded that the food additive regulations should be amended to provide for the safe use of sodium glucoheptonate as a boiler water additive used in the preparation of steam that will contact food. Therefore, pursuant to the provisions of the Federal Food, Drug, and Cosmetic 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 (21 CFR 2.120), § 121.1088(c) is amended by inserting alphabetically a new item, as follows:

§ 121.1088 Boiler water additives.

(c) List of substances:

	Limitations
.....	
Sodium glucoheptonate.....	Less than 1 part per million cyanide in the sodium glucoheptonate.
.....	

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: April 5, 1967.

J. K. KIRK,
Associate Commissioner
for Compliance.

[P.R. Doc. 67-4062; Filed, Apr. 12, 1967; 8:48 a.m.]

Title 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER A—INCOME TAX

[T.D. 6916]

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

Certain Reacquisitions of Real Property

On August 5, 1965, notice of proposed rule making with respect to the amendment of the Income Tax Regulations (26 CFR Part 1) to conform such regulations to section 2 of the Act of September 2, 1964 (Public Law 88-570, 78 Stat. 854), relating to certain reacquisitions of real property, was published in the *FEDERAL REGISTER* (30 F.R. 9768). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the amendment of the regulations as proposed is hereby adopted, subject to the changes set forth below. Except as otherwise specifically provided, such amendment is effective for taxable years beginning after December 31, 1953, and ending after August 16, 1954.

PARAGRAPH 1. Section 1.121-5 is amended by adding a new paragraph (h).

PAR. 2. Paragraph (a) of § 1.1034-1, as set forth in paragraph 4 of the notice of proposed rule making, is revised.

PAR. 3. Section 1038-1, as set forth in paragraph 5 of the notice of proposed rule making, is changed by revising paragraph (a) (2), (3), and (4), paragraph (b) (2) (iv), paragraph (b) (3), paragraph (c) (1) and (4), paragraph (d), paragraph (f) (1) and (2), paragraph (g) (1) and (2) and all of paragraph (h) preceding example 1.

PAR. 4. Section 1.1038-2, as set forth in paragraph 5 of the notice of proposed rule making, is changed by revising paragraphs (d), (e), and (f) (1) and (3) and by revising paragraph (a) in example (1) in paragraph (h).

PAR. 5. Paragraph (a) of § 1.1038-3, as set forth in paragraph 5 of the notice of proposed rule making, is revised.

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

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

Approved: April 7, 1967.

STANLEY S. SURREY,
Assistant Secretary
of the Treasury.

In order to conform the Income Tax Regulations (26 CFR Part 1) to section 2 of the Act of September 2, 1964 (Public Law 88-570, 78 Stat. 854), relating to certain reacquisitions of real property, such regulations are amended as follows:

PARAGRAPH 1. Section 1.121-5 is amended by adding a new paragraph (h) thereto as follows:

§ 1.121-5 Special rules.

(h) *Special rules applicable to certain reacquisitions of real property.* For special rules relating to a case where real property with respect to which an election under this section is in effect is reacquired by the seller in partial or full satisfaction of the indebtedness arising from the sale of such property and resold by him within 1 year after the date of such reacquisition, see § 1.1038-2.

PAR. 2. Section 1.166-6 is amended by adding a new paragraph (e) thereto as follows:

§ 1.166-6 Sale of mortgaged or pledged property.

(e) *Special rules applicable to certain reacquisitions of real property.* Notwithstanding this section, special rules apply for taxable years beginning after September 2, 1964 (and for certain taxable years beginning after December 31, 1957), to the gain or loss on certain reacquisitions of real property, to indebtedness remaining unsatisfied as a result of such reacquisitions, and to the basis of the reacquired real property. See §§ 1.1038 through 1.1038-3.

PAR. 3. Section 1.453-5 is amended by revising paragraph (b) to read as follows:

§ 1.453-5 Sale of real property treated on installment method.

(b) *Defaults and repossession—(1) Effective date.* This paragraph shall apply only with respect to taxable years beginning before September 3, 1964, in respect of which an election has not been properly made to have the provisions of section 1038 apply. For rules applicable to taxable years beginning after September 2, 1964, and for taxable years beginning after December 31, 1957, to which such an election applies, see §§ 1.1038 through 1.1038-3.

(2) *Gain or loss on reacquisition of property.* If the purchaser of real property on the installment plan defaults in any of his payments, and the vendor returning income on the installment method reacquires the property sold, whether title thereto had been retained by the vendor or transferred to the purchaser, gain or loss for the year in which the reacquisition occurs is to be computed upon any installment obligations of the purchaser which are satisfied or discharged upon the reacquisition or are applied by the vendor to the purchase or bid price of the property. Such gain or loss is to be measured by the difference between the fair market value at the date of reacquisition of the property reacquired (including the fair market value of any fixed improvements placed on the property by the purchaser) and the basis in the hands of the vendor of the obligations of the purchaser which are so satisfied, discharged, or applied, with proper adjustment for any other amounts realized or costs incurred in connection with the reacquisition.

(3) *Fair market value of reacquired property.* If the property reacquired is bid in by the vendor at a foreclosure sale, the fair market value of the property shall be presumed to be the purchase or bid price thereof in the absence of clear and convincing proof to the contrary.

(4) *Basis of obligations.* The basis in the hands of the vendor of the obligations of the purchaser satisfied, discharged, or applied upon the reacquisition of the property will be the excess of the face value of such obligations over an amount equal to the income which would be returnable were the obligations paid in full. For definition of the basis of an installment obligation, see section 453(d)(2) and paragraph (b)(2) of § 1.453-9.

(5) *Bad debt deduction.* No deduction for a bad debt shall in any case be taken on account of any portion of the obligations of the purchaser which are treated by the vendor as not having been satisfied, discharged, or applied upon the reacquisition of the property, unless it is clearly shown that after the property was reacquired the purchaser remained liable for such portion; and in no event shall the amount of the deduction exceed the basis in the hands of the vendor of the portion of the obligations with respect to which the purchaser remained liable after the reacquisition. See section 166 and the regulations thereunder.

(6) *Basis of reacquired property.* If the property reacquired is subsequently sold, the basis for determining gain or loss is the fair market value of the property at the date of reacquisition, including the fair market value of any fixed improvements placed on the property by the purchaser.

PAR. 4. Section 1.453-6 is amended by revising paragraphs (b) and (c) and by adding a new paragraph (d). These amended and added provisions read as follows:

§ 1.453-6 Deferred payment sale of real property not on installment method.

(b) *Repossession of property where title is retained by vendor—(1) Gain or loss on repossession.* If the vendor in sales referred to in paragraph (a) of this section has retained title to the property and the purchaser defaults in any of his payments, and the vendor repossesses the property, the difference between—

(i) The entire amount of the payments actually received on the contract and retained by the vendor plus the fair market value at the time of repossession of fixed improvements placed on the property by the purchaser, and

(ii) The sum of the profits previously returned as income in connection therewith and an amount representing what would have been a proper adjustment for exhaustion, wear and tear, obsolescence, amortization, and depletion of the property during the period the property was in the hands of the purchaser had the sale not been made,

will constitute gain or loss, as the case may be, to the vendor for the year in which the property is repossessed.

(2) *Basis of repossessed property.* The basis of the property described in subparagraph (1) of this paragraph in the hands of the vendor will be the original basis at the time of the sale plus the fair market value at the time of repossession of fixed improvements placed on the property by the purchaser, except that, with respect to repossessions occurring after September 18, 1958, the basis of the property shall be reduced by what would have been a proper adjustment for exhaustion, wear and tear, obsolescence, amortization, and depletion of the property during the period the property was in the hands of the purchaser if the sale had not been made.

(c) *Reacquisition of property where title is transferred to purchaser.*—(1) *Gain or loss on reacquisition.* If the vendor in sales described in paragraph (a) of this section has previously transferred title to the purchaser, and the purchaser defaults in any of his payments, and the vendor accepts a voluntary reconveyance of the property, in partial or full satisfaction of the unpaid portion of the purchase price, the receipt of the property so reacquired, to the extent of its fair market value at that time, including the fair market value of fixed improvements placed on the property by the purchaser, shall be considered as the receipt of payment on the obligations satisfied. If the fair market value of the property is greater than the basis of the obligations of the purchaser so satisfied (generally, such basis being the fair market value of such obligations previously recognized in computing income), the excess constitutes ordinary income. If the value of such property is less than the basis of such obligations, the difference may be deducted as a bad debt if uncollectible, except that, if the obligations satisfied are securities (as defined in section 165(g)(2)(C)), any gain or loss resulting from the transaction is a capital gain or loss subject to the provisions of sections 1201 through 1241.

(2) *Basis of reacquired property.* If the reacquired property described in subparagraph (1) of this paragraph is subsequently sold, the basis for determining gain or loss is the fair market value of the property at the date of reacquisition, including the fair market value of the fixed improvements placed on the property by the purchaser. See section 166 and the regulations thereunder with respect to property reacquired by the vendor in a foreclosure proceeding.

(d) *Effective date.* Paragraphs (b) and (c) of this section shall apply only with respect to taxable years beginning before September 3, 1964, in respect of which an election has not been properly made to have the provisions of section 1038 apply. For rules applicable to taxable years beginning after September 2, 1964, and for taxable years beginning after December 31, 1957, to which such an election applies, see §§ 1.1038 through 1.1038-3.

PAR. 5. Section 1.1034-1 is amended by adding a new sentence at the end of paragraph (a) thereof. This amended provision reads as follows:

§ 1.1034-1 Sale or exchange of residence.

(a) *Nonrecognition of gain; general statement.* Section 1034 provides rules for the nonrecognition of gain in certain cases where a taxpayer sells one residence after December 31, 1953, and buys or builds, and uses as his principal residence, another residence within specified time limits before or after such sale. In general, if the taxpayer invests in a new residence an amount at least as large as the adjusted sales price of his old residence, no gain is recognized on the sale of the old residence (see paragraph (b) of this section for definitions of "adjusted sales price", "new residence", and "old residence"). On the other hand, if the new residence costs the taxpayer less than the adjusted sales price of the old residence, gain is recognized to the extent of the difference. Thus, if an amount equal to or greater than the adjusted sales price of an old residence is invested in a new residence, according to the rules stated in section 1034, none of the gain (if any) realized from the sale shall be recognized. If an amount less than such adjusted sales price is so invested, gain shall be recognized, but only to the extent provided in section 1034. If there is no investment in a new residence, section 1034 is inapplicable and all of the gain shall be recognized. Whenever, as a result of the application of section 1034, any or all of the gain realized on the sale of an old residence is not recognized, a corresponding reduction must be made in the basis of the new residence. The provisions of section 1034 are mandatory, so that the taxpayer cannot elect to have gain recognized under circumstances where this section is applicable. Section 1034 applies only to gains; losses are recognized or not recognized without regard to the provisions of this section. Section 1034 affects only the amount of gain recognized, and not the amount of gain realized (see also section 1001 and the regulations issued thereunder). Any gain realized upon disposition of other property in exchange for the new residence is not affected by section 1034. For special rules relating to a case where real property with respect to the sale of which gain is not recognized under this section is reacquired by the seller in partial or full satisfaction of the indebtedness arising from such sale and resold by him within 1 year after the date of such reacquisition, see § 1.1038-2.

PAR. 6. There are inserted immediately after § 1.1036-1 the following new sections:

§ 1.1038 Statutory provisions; certain reacquisitions of real property.

SEC. 1038. *Certain reacquisitions of real property.*—(a) *General rule.* If—

(1) A sale of real property gives rise to indebtedness to the seller which is secured by the real property sold, and

(2) The seller of such property reacquires such property in partial or full satisfaction of such indebtedness,

then, except as provided in subsections (b) and (d), no gain or loss shall result to the

seller from such reacquisition, and no debt shall become worthless or partially worthless as a result of such reacquisition.

(b) *Amount of gain resulting.*—(1) *In general.* In the case of a reacquisition of real property to which subsection (a) applies, gain shall result from such reacquisition to the extent that—

(A) The amount of money and the fair market value of other property (other than obligations of the purchaser) received, prior to such reacquisition, with respect to the sale of such property, exceeds

(B) The amount of the gain on the sale of such property returned as income for periods prior to such reacquisition.

(2) *Limitations.* The amount of gain determined under paragraph (1) resulting from a reacquisition during any taxable year beginning after the date of the enactment of this section shall not exceed the amount by which the price at which the real property was sold exceeded its adjusted basis, reduced by the sum of—

(A) The amount of the gain on the sale of such property returned as income for periods prior to the reacquisition of such property, and

(B) The amount of money and the fair market value of other property (other than obligations of the purchaser received with respect to the sale of such property) paid or transferred by the seller in connection with the reacquisition of such property.

For purposes of this paragraph, the price at which real property is sold is the gross sales price reduced by the selling commissions, legal fees, and other expenses incident to the sale of such property which are properly taken into account in determining gain or loss on such sale.

(3) *Gain recognized.* Except as provided in this section, the gain determined under this subsection resulting from a reacquisition to which subsection (a) applies shall be recognized, notwithstanding any other provision of this subtitle.

(c) *Basis of reacquired real property.* If subsection (a) applies to the reacquisition of any real property, the basis of such property upon such reacquisition shall be the adjusted basis of the indebtedness to the seller secured by such property (determined as of the date of reacquisition), increased by the sum of—

(1) The amount of the gain determined under subsection (b) resulting from such reacquisition, and

(2) The amount described in subsection (b)(2)(B).

If any indebtedness to the seller secured by such property is not discharged upon the reacquisition of such property, the basis of such indebtedness shall be zero.

(d) *Indebtedness treated as worthless prior to reacquisition.* If, prior to a reacquisition of real property to which subsection (a) applies, the seller has treated indebtedness secured by such property as having become worthless or partially worthless—

(1) Such seller shall be considered as receiving, upon the reacquisition of such property, an amount equal to the amount of such indebtedness treated by him as having become worthless, and

(2) The adjusted basis of such indebtedness shall be increased (as of the date of reacquisition) by an amount equal to the amount so considered as received by such seller.

(e) *Principal residences.* If—

(1) Subsection (a) applies to a reacquisition of real property with respect to the sale of which—

(A) An election under section 121 (relating to gain from sale or exchange of residence of an individual who has attained age 65) is in effect, or

(B) Gain was not recognized under section 1034 (relating to sale or exchange of residence); and

(2) Within one year after the date of the reacquisition of such property by the seller, such property is resold by him,

then, under regulations prescribed by the Secretary or his delegate, subsections (b), (c), and (d) of this section shall not apply to the reacquisition of such property and, for purposes of applying sections 121 and 1034, the resale of such property shall be treated as a part of the transaction constituting the original sale of such property.

(f) *Reacquisitions by domestic building and loan associations.* This section shall not apply to a reacquisition of real property by an organization described in section 593(a) (relating to domestic building and loan associations, etc.).

[Sec. 1038 as added by sec. 2, Act of Sept. 2, 1964 (Pub. Law 88-570, 78 Stat. 854)]

§ 1.1038-1 Reacquisitions of real property in satisfaction of indebtedness.

(a) *Scope of section 1038—(1) General rule on gain or loss.* If a sale of real property gives rise to indebtedness to the seller which is secured by the real property which is sold, and the seller of such property reacquires such property in a taxable year beginning after September 2, 1964, in partial or full satisfaction of such indebtedness, then, except as provided in paragraphs (b) and (f) of this section, no gain or loss shall result to the seller from such reacquisition. The treatment so provided is mandatory; however, see § 1.1038-3 for an election to apply the provisions of this section to certain taxable years beginning after December 31, 1957. It is immaterial, for purposes of applying this subparagraph, whether the seller realized a gain or sustained a loss on the sale of the real property, or whether it can be ascertained at the time of the sale whether gain or loss occurs as a result of the sale. It is also immaterial what method of accounting the seller used in reporting gain or loss from the sale of the real property or whether at the time of reacquisition such property has depreciated or appreciated in value since the time of the original sale. Moreover, the character of the gain realized on the original sale of the property is immaterial for purposes of applying this subparagraph. The provisions of this section shall apply, except as provided in § 1.1038-2, to the reacquisition of real property which was used by the seller as his principal residence and with respect to the sale of which an election under section 121 is in effect or with respect to the sale of which gain was not recognized under section 1034.

(2) *Sales giving rise to indebtedness—*

(i) *Sale defined.* For purposes of this section, it is not necessary for title to the property to have passed to the purchaser in order to have a sale. Ordinarily, a sale of property has occurred in a transaction in which title to the property has not passed to the purchaser, if the purchaser has a contractual right to retain possession of the property so long as he performs his obligations under the contract and to obtain title to the property upon the completion of the contract. However, a sale may have oc-

curred even if the purchaser does not have the right to possession until he partially or fully satisfies the terms of the contract. For example, if S contracts to sell real property to P, and if S promises to convey title to P upon the completion of all of the payments due under the contract and to allow P to obtain possession of the property after 10 percent of the purchase price has been paid, there has been a sale on the date of the contract for purposes of this section. This section shall not apply to a disposition of real property which constituted an exchange of property or was treated as a sale under section 121(d) (4) or section 1034(i); nor shall it apply to a sale of stock in a cooperative housing corporation described in section 121(d) (3) or section 1034(f).

(ii) *Secured indebtedness defined.* An indebtedness to the seller is secured by the real property for purposes of this section whenever the seller has the right to take title or possession of the property or both if there is a default with respect to such indebtedness. A sale of real property may give rise to an indebtedness to the seller although the seller is limited in his recourse to the property for payment of the indebtedness in the case of a default.

(3) *Reacquisitions in partial or full satisfaction of indebtedness—(1) Purpose of reacquisition.* This section applies only where the seller reacquires the real property in partial or full satisfaction of the indebtedness to him that arose from the sale of the real property and was secured by the property. That is, the reacquisition must be in furtherance of the seller's security rights in the property with respect to indebtedness to him that arose at the time of the sale. Accordingly, if the seller in reacquiring the real property does not pay consideration in addition to discharging the purchaser's indebtedness to him that arose from the sale and was secured by such property, this section shall apply to the reacquisition even though the purchaser has not defaulted in his obligations under the contract or such a default is not imminent. If in addition to discharging the purchaser's indebtedness to him that arose from the sale the seller pays consideration in reacquiring the real property, this section shall generally apply to the reacquisition if the reacquisition and the payment of additional consideration is provided for in the original contract for the sale of the property. This section generally shall apply to a reacquisition of real property if the seller reacquires the property either when the purchaser has defaulted in his obligations under the contract or when such a default is imminent. This section generally shall not apply to a reacquisition of real property where the seller pays consideration in addition to discharging the purchaser's indebtedness to him that arose from the sale if the reacquisition and payment of additional consideration was not provided for in the original contract for the sale of the property and if the purchaser has not defaulted in his obligations under the contract or such a default is not imminent. Thus, for ex-

ample, if the purchaser is in arrears on the payment of interest or principal or has in any other way defaulted on his contract for the purchase of the property, or if the facts of the case indicate that the purchaser is unable satisfactorily to perform his obligations under the contract, and the seller reacquires the property from the purchaser in a transaction in which the seller pays consideration in addition to discharging the purchaser's indebtedness to him that arose from the sale and was secured by the property, this section shall apply to the reacquisition. Additional consideration paid by the seller includes money and other property paid or transferred by the seller. Also, the reacquisition by the seller of real property subject to an indebtedness (or the assumption, upon the reacquisition, of indebtedness) which arose subsequent to the original sale shall be considered as a payment by the seller of additional consideration. However, the reacquisition by the seller of real property subject to an indebtedness (or the assumption, upon the reacquisition, of an indebtedness) which arose prior to or arose out of the original sale shall not be considered as a payment by the seller of additional consideration.

(ii) *Manner of reacquisition.* For purposes of applying section 1038 and this section there must be a reacquisition by the seller of the real property itself, but the manner in which the seller so reduces the property to ownership or possession, as the case may be, shall generally be immaterial. Thus, the seller may reduce the real property to ownership or possession or both, as the case may require, by agreement or by process of law. The reduction of the real property to ownership or possession by agreement includes, where valid under local law, such methods as voluntary conveyance from the purchaser and abandonment to the seller. The reduction of the real property to ownership or possession by process of law includes foreclosure proceedings in which a competitive bid is entered, such as foreclosure by judicial sale or by power of sale contained in the loan agreement without recourse to the courts, as well as those types of foreclosure proceedings in which a competitive bid is not entered, such as strict foreclosure and foreclosure by entry and possession, by writ of entry, or by publication or notice.

(4) *Persons from whom real property may be reacquired.* The real property reacquired in satisfaction of the indebtedness need not be reacquired from the purchaser but may be reacquired from the purchaser's transferee or assignee, or from a trustee holding title to such property pending the purchaser's satisfaction of the terms of the contract, so long as the indebtedness that is partially or completely satisfied in the reacquisition of such property arose in the original sale of the property and was secured by the property so reacquired. In such a case, a reference in this section to the purchaser shall, where appropriate, include the purchaser's transferee or assignee. Thus, for example, this section will apply if the seller reacquires the property from

a purchaser from the original purchaser and either the property is subject to, or the subsequent purchaser assumes, the liability to the seller on the indebtedness.

(5) *Reacquisitions not included.* This section shall not apply to reacquisitions of real property by mutual savings banks, domestic building and loan associations, and cooperative banks, described in section 593(a). However, for rules respecting the reacquisition of real property by such organizations, see § 1.595-1.

(b) *Amount of gain resulting from a reacquisition—(1) Determination of amount—(i) In general.* As a result of a reacquisition to which paragraph (a) of this section applies gain shall be derived by the seller to the extent that the amount of money and the fair market value of other property (other than obligations of the purchaser arising with respect to the sale) which are received by the seller, prior to such reacquisition, with respect to the sale of the property exceed the amount of the gain derived by the seller on the sale of such property which is returned as income for periods prior to the reacquisition. However, the amount of gain so determined shall in no case exceed the amount determined under paragraph (c) of this section with respect to such reacquisition.

(ii) *Amount of gain returned as income for prior periods.* For purposes of this subparagraph and paragraph (c) (1) of this section, the amount of gain on the sale of the property which is returned as income for periods prior to the reacquisition of the real property does not include any amount of income determined under paragraph (f) (2) of this section which is considered to be received at the time of the reacquisition of the property. However, the amount of gain on the sale of the property which is returned as income for such periods does include gain on the sale resulting from payments received in the taxable year in which the date of reacquisition occurs if such payments are received prior to such reacquisition. The application of this subdivision may be illustrated by the following example:

Example. In 1965 S, who uses the calendar year as the taxable year, sells to P for \$10,000 real property which has an adjusted basis of \$3,000. S properly elects under section 453 to report the income from the sale on the installment method. In 1965 and 1966, S receives a total of \$4,000 on the contract. On May 15, 1967, S receives \$1,000 on the contract. Because of P's default, S reacquires the property on August 31, 1967. The gain on the sale which is returned as income for periods prior to the reacquisition is \$3,500 (\$5,000 × \$7,000/\$10,000).

(2) *Amount of money and other property received with respect to the sale—(i) In general.* Amounts of money and other property received by the seller with respect to the sale of the property include payments made by the purchaser for the seller's benefit, as well as payments made and other property transferred directly to the seller. If the purchaser of the real property makes payments on a mortgage or other indebtedness to which the property is subject at the time of the sale of such prop-

erty to him, or on which the seller was personally liable at the time of such sale, such payments are considered amounts received by the seller with respect to the sale. However, if after the sale the purchaser borrows money and uses the property as security for the loan, payments by the purchaser in satisfaction of the indebtedness are not considered as amounts received by the seller with respect to the sale, although the seller does in fact receive some indirect benefit when the purchaser makes such payments.

(ii) *Payments by purchaser at time of reacquisition.* All payments made by the purchaser at the time of the reacquisition of the real property that are with respect to the original sale of the property shall be treated, for purposes of subparagraph (1) of this paragraph, by the seller as having been received prior to the reacquisition with respect to such sale. For example, if the purchaser, at the time of the reacquisition by the seller, pays money or other property to the seller in partial or complete satisfaction of the purchaser's indebtedness on the original sale, the seller shall treat such amounts as having been received prior to the reacquisition with respect to the sale.

(iii) *Interest received.* For purposes of this subparagraph and paragraph (c) (1) of this section any amounts received by the seller as interest, stated or unstated, are excluded from the computation of gain on the sale of the property and are not considered amounts of money or other property received with respect to the sale.

(iv) *Amounts received on sale of purchaser's indebtedness.* Money or other property received by the seller on the sale of the purchaser's indebtedness that arose at the time of the sale of the real property are amounts received by the seller with respect to the sale of such real property, except that the amounts so received from the sale of such indebtedness shall be reduced by the amount of money and the fair market value of other property paid or transferred by the seller, before the reacquisition of the real property, to reacquire such indebtedness. For example, if S sells real property to P for \$25,000, and under the contract receives \$10,000 down and a note from P for \$15,000, S would receive \$22,000 with respect to the sale if he were to discount the note for \$12,000. If before the reacquisition of the real property S were to reacquire the discounted note for \$8,000, he would receive \$14,000 with respect to the sale.

(3) *Obligations of the purchaser arising with respect to the sale.* The term "obligations of the purchaser arising with respect to the sale" of the real property includes, for purposes of subparagraph (1) of this paragraph, only that indebtedness on which the purchaser is liable to the seller and which arises out of the sale of such property. Thus, the term does not include any indebtedness in respect of the property that the seller owes to a third person which the purchaser assumes, or to which the property is subject, at the time of the sale of the

property to the purchaser. Nor does the term include any indebtedness on which the purchaser is liable to the seller if such indebtedness arises subsequent to the sale of such property.

(c) *Limitation upon amount of gain—(1) In general.* Except as provided by subparagraph (2) of this paragraph, the amount of gain on a reacquisition of real property, as determined under paragraph (b) of this section, shall in no case exceed—

(i) The amount by which the price at which the real property was sold exceeded its adjusted basis at the time of the sale, as determined under § 1.1011-1, reduced by

(ii) The amount of gain on the sale of such real property which is returned as income for periods prior to the reacquisition, and by

(iii) The amount of money and the fair market value of other property (other than obligations of the purchaser to the seller which are secured by the real property) paid or transferred by the seller in connection with the reacquisition of such real property.

(2) *Cases where limitation does not apply.* The limitation provided by subparagraph (1) of this paragraph shall not apply in a case where the selling price of property is indefinite in amount and cannot be ascertained at the time of the reacquisition of such property, as, for example, where the selling price is stated as a percentage of the profits to be realized from the development of the property which is sold. Moreover, the limitation so provided shall not apply to a reacquisition of real property occurring in a taxable year beginning before September 3, 1964, to which the provisions of this section are applied pursuant to an election under § 1.1038-3.

(3) *Determination of sales price.* The price at which the real property was sold shall be, for purposes of subparagraph (1) of this paragraph, the gross sales price reduced by the selling commissions, legal fees, and other expenses incident to the sale of such property which are properly taken into account in determining gain or loss on the sale. For example, the amount of selling commissions paid by a nondealer will be deducted from the gross sales price in determining the price at which the real property was sold; on the other hand, selling commissions paid by a real estate dealer will be deducted as a business expense. Examples of other expenses incident to the sale of the property are expenses for appraisal fees, advertising expense, cost of preparing maps, recording fees, and documentary stamp taxes. Payments on indebtedness to the seller which are for interest, stated or unstated, are not included in determining the price at which the property was sold. See paragraph (b) (2) (iii) of this section.

(4) *Determination of amounts paid or transferred in connection with a reacquisition—(1) In general.* Amounts of money or property paid or transferred by the seller of the real property in connection with the reacquisition of such property include payments of money, or transfers of property, to persons from

whom the real property is reacquired as well as to other persons. Payments or transfers in connection with the reacquisition of the property do not include money or property paid or transferred by the seller to reacquire obligations of the purchaser to the seller which were received by the seller with respect to the sale of the property or which arose subsequent to the sale. Amounts of money or property paid or transferred by the seller in connection with the reacquisition of the property include payments or transfers for such items as court costs and fees for services of an attorney, master, trustee, or auctioneer, or for publication, acquiring title, clearing liens, or filing and recording.

(ii) *Assumption of indebtedness.* The assumption by the seller, upon reacquisition of the real property, of any indebtedness to another person which at such time is secured by such property will be considered a payment of money by the seller in connection with the reacquisition. Also, if at the time of reacquisition such property is subject to an indebtedness which is not an indebtedness of the purchaser to the seller, the seller shall be considered to have paid money, in an amount equal to such indebtedness, in connection with the reacquisition of the property. Thus, for example, if at the time of the sale the purchaser executes in connection with the sale a first mortgage to a bank and a second mortgage to the seller and at the time of reacquisition the seller reacquires the property subject to the first mortgage which he does not assume, the seller will be considered to have paid money, in an amount equal to the unpaid amount of the first mortgage, in connection with the reacquisition.

(d) *Character of gain resulting from a reacquisition.* Paragraphs (b) and (c) of this section set forth the extent to which gain shall be derived from a reacquisition to which paragraph (a) of this section applies, but the rule provided by section 1038 and this section do not affect the character of the gain so derived. The character of the gain resulting from such a reacquisition is determined on the basis of whether the gain on the original sale was returned on the installment method or, if not, on the basis of whether title to the real property was transferred to the purchaser; and, if title was transferred to the purchaser in a deferred-payment sale, whether the reconveyance of the property to the seller was voluntary. For example, if the gain on the original sale of the reacquired property was returned on the installment method, the character of the gain on reacquisition by the seller shall be determined in accordance with the rules provided in paragraph (a) of § 1.453-9. If the original sale was not on the installment method but was a deferred-payment sale, as described in § 1.453-6(a), where title to the real property was transferred to the purchaser and the seller accepts a voluntary reconveyance of the property, the gain on the reacquisition shall be ordinary income; however, if the obligations satis-

fied are securities (as defined in section 165(g)(2)(C)), any gain resulting from the reacquisition is capital gain subject to the provisions of subchapter P of chapter 1 of the Code.

(e) *Recognition of gain.* The entire amount of the gain determined under paragraphs (b) and (c) of this section with respect to a reacquisition to which paragraph (a) of this section applies shall be recognized notwithstanding any other provision of subtitle A (relating to income taxes) of the Code.

(f) *Special rules applicable to worthless indebtedness.* (1) *Worthlessness resulting from reacquisition.* No debt of the purchaser to the seller which was secured by the reacquired real property shall be considered as becoming worthless or partially worthless as a result of a reacquisition of such real property to which paragraph (a) of this section applies. Accordingly, no deduction for a bad debt and no charge against a reserve for bad debts shall be allowed, as a result of the reacquisition, in order to reflect the noncollectibility of any indebtedness of the purchaser to the seller which at the time of reacquisition was secured by such real property.

(2) *Indebtedness treated as worthless prior to reacquisition.* (i) *Prior taxable years.* If for any taxable year ending before the taxable year in which occurs a reacquisition of real property to which paragraph (a) of this section applies the seller of such property has treated any indebtedness of the purchaser which is secured by such property as having become worthless or partially worthless by taking a bad debt deduction under section 166(a), he shall be considered as receiving, at the time of such reacquisition, income in an amount equal to the amount of such indebtedness previously treated by him as having become worthless. The amount so treated as income received shall be treated as a recovery of a bad debt previously deducted as worthless or partially worthless. Accordingly, the amount of such income shall be excluded from gross income, as provided in § 1.111-1, to the extent of the "recovery exclusion" with respect to such item. For purposes of § 1.111-1, if the indebtedness was treated as partially worthless in a prior taxable year, the amount treated under this subparagraph as a recovery shall be considered to be with respect to the part of the indebtedness that was previously deducted as worthless. The seller shall not be considered to have treated an indebtedness as worthless in any taxable year for which he took the standard deduction under section 141 or paid the tax imposed by section 3 if a deduction in respect of such indebtedness was not allowed in determining adjusted gross income for such year under section 62.

(ii) *Current taxable year.* No deduction shall be allowed under section 166(a), for the taxable year in which occurs a reacquisition of real property to which paragraph (a) of this section applies, in respect of any indebtedness of the purchaser secured by such property which has been treated by the seller as having become worthless or partially worthless

in such taxable year but prior to the date of such reacquisition.

(3) *Basis adjustment.* The basis of any indebtedness described in subparagraph (2)(i) of this paragraph shall be increased (as of the date of the reacquisition) by an amount equal to the amount which, under such subparagraph of this paragraph, is treated as income received by the seller with respect to such indebtedness, but only to the extent the amount so treated as received is not excluded from gross income by reason of the application of § 1.111-1.

(g) *Rules for determining gain or loss on disposition of reacquired property.* (1) *Basis of reacquired real property.* The basis of any real property acquired in a reacquisition to which paragraph (a) of this section applies shall be the sum of the following amounts, determined as of the date of such reacquisition:

(i) The amount of the adjusted basis, determined under sections 453 and 1011, and the regulations thereunder, of all indebtedness of the purchaser to the seller which at the time of reacquisition was secured by such property, including any increase by reason of paragraph (f)(3) of this section.

(ii) The amount of gain determined under paragraphs (b) and (c) of this section with respect to such reacquisition, and

(iii) The amount of money and the fair market value of other property (other than obligations of the purchaser to the seller which are secured by the real property) paid or transferred by the seller in connection with the reacquisition of such real property, determined as provided in paragraph (c) of this section even though such paragraph does not apply to the reacquisition.

(2) *Basis of undischarged indebtedness.* The basis of any indebtedness of the purchaser to the seller which was secured by the reacquired real property described in subparagraph (1) of this paragraph, to the extent that such indebtedness is not discharged upon the reacquisition of such property, shall be zero. Therefore, to the extent not discharged upon the reacquisition of the real property, indebtedness on the original obligation of the purchaser, a substituted obligation of the purchaser, a deficiency judgment entered in a court of law into which the purchaser's obligation has merged, or any other obligation of the purchaser to the seller, shall be zero if such indebtedness constitutes an indebtedness to the seller which was secured by such property.

(3) *Holding period of reacquired property.* Since the reacquisition described in subparagraph (1) of this paragraph is in a sense considered a nullification of the original sale of the real property, for purposes of determining gain or loss on a disposition of such property after its reacquisition the period for which the seller has held the real property at the time of such disposition shall include the period for which such property is held by him prior to the original sale. However, the holding period shall not include the period of time commencing with the date

following the date on which the property is originally sold to the purchaser and ending with the date on which the property is reacquired by the seller. The period for which the property was held by the seller prior to the original sale shall be determined as provided in § 1.1223-1. For example, if under paragraph (a) of § 1.1223-1 real property, which was acquired as the result of an involuntary conversion, has been held for five months on January 1, 1965, the date of its sale, and such property is reacquired on July 2, 1965, and resold on July 3, 1965, the seller will be considered to have held such property for five months and one day for purposes of this subparagraph.

(h) *Illustrations.* The application of this section may be illustrated by the following examples in which it is assumed that the reacquisition is in satisfaction of secured indebtedness arising out of the sale of the real property:

Example (1). (a) S purchases real property for \$20 and sells it to P for \$100, the property not being mortgaged at the time of sale. Under the contract P pays \$10 down and executes a note for \$90, with stated interest at 6 percent, to be paid in nine annual installments. S properly elects to report the gain on the installment method. After the second \$10 annual payment P defaults and S accepts a voluntary reconveyance of the property in complete satisfaction of the indebtedness. S pays \$5 in connection with the reacquisition of the property. The fair market value of the property at the time of the reacquisition is \$110.

(b) The gain derived by S on the reacquisition of the property is \$6, determined as follows:

Gain before application of limitation:	
Money with respect to the sale received by S prior to the reacquisition	\$30
Less: Gain returned by S as income for periods prior to the reacquisition ($\$30 \times [(\$100 - \$20) / \$100]$)	24
Gain before application of limitation	6
Limitation on amount of gain:	
Sales price of real property	100
Less:	
Adjusted basis of the property at the time of sale	\$20
Gain returned by S as income for periods prior to the reacquisition	24
Amount of money paid by S in connection with the reacquisition	5
Limitation on amount of gain	51
Gain resulting from the reacquisition of the property	6

(c) The basis of the reacquired real property at the date of the reacquisition is \$25, determined as follows:

Adjusted basis of P's indebtedness to S ($\$70 - [\$70 \times \$80 / \$100]$)	\$14
Gain resulting from the reacquisition of the property	6
Amount of money paid by S in connection with the reacquisition	5
Basis of reacquired property	25

Example (2). (a) The facts are the same as in example (1) except that S purchased the property for \$80.

(b) The gain derived by S on the reacquisition of the property is \$9, determined as follows:

Gain before application of limitation:	
Money with respect to the sale received by S prior to the reacquisition	\$30
Less: Gain returned by S as income for periods prior to the reacquisition ($\$30 \times [(\$100 - \$80) / \$100]$)	6
Gain before application of limitation	24

Limitation on amount of gain:

Sales price of real property	100
Less:	
Adjusted basis of the property at the time of sale	\$80
Gain returned by S as income for periods prior to the reacquisition	6
Amount of money paid by S in connection with the reacquisition	5
Limitation on amount of gain	9
Gain resulting from the reacquisition of the property	9

(c) The basis of the reacquired real property at the date of the reacquisition is \$70, determined as follows:

Adjusted basis of P's indebtedness to S ($\$70 - [\$70 \times \$20 / \$100]$)	\$56
Gain resulting from the reacquisition of the property	9
Amount of money paid by S in connection with the reacquisition	5
Basis of reacquired property	70

Example (3). (a) S purchases real property for \$70 and sells it to P for \$100, the property not being mortgaged at the time of sale. Under the contract P pays \$10 down and executes a note for \$90, with stated interest at 6 percent, to be paid in nine annual installments. S properly elects to report the gain on the installment method. After the first \$10 annual payment P defaults and S accepts a voluntary reconveyance of the property in complete satisfaction of the indebtedness. S pays \$5 in connection with the reacquisition of the property. The fair market value of the property at the time of the reacquisition is \$50.

(b) The gain derived by S on the reacquisition of the property is \$14, determined as follows:

Gain before application of limitation:	
Money with respect to the sale received by S prior to the reacquisition	\$20
Less: Gain returned by S as income for periods prior to the reacquisition ($\$20 \times [(\$100 - \$70) / \$100]$)	6
Gain before application of limitation	14
Limitation on amount of gain:	
Sales price of real property	100
Less:	
Adjusted basis of the property at time of sale	\$70
Gain returned by S as income for periods prior to the reacquisition	6
Amount paid by S in connection with the reacquisition	5
Limitation on amount of gain	19
Gain resulting from the reacquisition of the property	14

(c) The basis of the reacquired real property at the date of the reacquisition is \$75, determined as follows:

Adjusted basis of P's indebtedness to S ($\$80 - [\$80 \times \$30 / \$100]$)	\$56
Gain resulting from the reacquisition of the property	14
Basis of reacquired property	70

(c) The basis of the reacquired real property at the date of the reacquisition is \$75, determined as follows:

Adjusted basis of P's indebtedness to S ($\$80 - [\$80 \times \$30 / \$100]$)	\$56
Gain resulting from the reacquisition of the property	14
Basis of reacquired property	70

Gain resulting from the reacquisition of the property	14
Amount of money paid by S in connection with the reacquisition	\$5
Basis of reacquired property	75

Example (4). (a) S purchases real property for \$20 and sells it to P for \$100, the property not being mortgaged at the time of sale. Under the contract P pays \$10 down and executes a note for \$90, with stated interest at 6 percent, to be paid in nine annual installments. S properly elects to report gain on the installment method. After the second \$10 annual payment P defaults and S accepts from P in complete satisfaction of the indebtedness a voluntary reconveyance of the property plus cash in the amount of \$20. S does not pay any amount in connection with the reacquisition of the property. The fair market value of the property at the time of the reacquisition is \$30.

(b) The gain derived by S on the reacquisition of the property is \$10, determined as follows:

Gain before application of the limitation:	
Money with respect to the sale received by S prior to the reacquisition ($\$30 + \$20$)	\$50
Less: Gain returned by S as income for periods prior to the reacquisition ($\$50 \times [(\$100 - \$20) / \$100]$)	40
Gain before application of limitation	10
Limitation on amount of gain:	
Sales price of real property	100
Less:	
Adjusted basis of the property at time of sale	\$20
Gain returned by S as income for periods prior to the reacquisition	40
Limitation on amount of gain	40
Gain resulting from the reacquisition of the property	10

(c) The basis of the reacquired real property at the date of the reacquisition is \$20, determined as follows:

Adjusted basis of P's indebtedness to S ($\$50 - [\$50 \times \$80 / \$100]$)	\$10
Gain resulting from the reacquisition of the property	10
Basis of reacquired property	20

Example (5). (a) S purchases real property for \$80 and sells it to P for \$100, the property not being mortgaged at the time of sale. Under the contract P pays \$10 down and executes a note for \$90, with stated interest at 6 percent, to be paid in nine annual installments. At the time of sale P's note has a fair market value of \$90. S does not elect to report the gain on the installment method but treats the transaction as a deferred-payment sale. After the third \$10 annual payment P defaults and S forecloses. Under the foreclosure sale S bids in the property at \$70, cancels P's obligation of \$60, and pays \$10 to P. There are no other amounts paid by S in connection with the reacquisition of the property. The fair market value of the property at the time of the reacquisition is \$70.

(b) The gain derived by S on the reacquisition of the property is \$0, determined as follows:

Gain before application of the limitation:	
Money with respect to the sale received by S prior to the reacquisition	\$40
Less: Gain returned by S as income for periods prior to the reacquisition	40
Gain before application of limitation	0
Limitation on amount of gain	0
Gain resulting from the reacquisition of the property	0

(c) The basis of the reacquired real property at the date of the reacquisition is \$70, determined as follows:

Adjusted basis of P's indebtedness to S ($\$70 - [\$70 \times \$80 / \$100]$)	\$14
Gain resulting from the reacquisition of the property	6
Amount of money paid by S in connection with the reacquisition	5
Basis of reacquired property	25

(c) The basis of the reacquired real property at the date of the reacquisition is \$75, determined as follows:

Adjusted basis of P's indebtedness to S ($\$80 - [\$80 \times \$30 / \$100]$)	\$56
Gain resulting from the reacquisition of the property	14
Basis of reacquired property	70

(c) The basis of the reacquired real property at the date of the reacquisition is \$75, determined as follows:

Adjusted basis of P's indebtedness to S ($\$80 - [\$80 \times \$30 / \$100]$)	\$56
Gain resulting from the reacquisition of the property	14
Basis of reacquired property	70

Less: Gain returned by S as income for periods prior to the reacquisition ($[\$10 + \$90] - \$80$)	20
Gain before application of limitation	20
Limitation on amount of gain:	
Sales price of real property	\$100
Less:	
Adjusted basis of the property at time of sale	\$80
Gain returned by S at income for periods prior to the reacquisition	20
Amount of money paid by S in connection with the reacquisition	10-110
Limitation on amount of gain (not to be less than zero)	0
Gain resulting from the reacquisition of the property	0
(c) The basis of the reacquired real property at the date of the reacquisition is \$70, determined as follows:	
Adjusted basis of P's indebtedness to S (face value at time of reacquisition)	\$60
Gain resulting from the reacquisition of the property	0
Amount of money paid by S in connection with the reacquisition	10
Basis of reacquired property	70

§ 1.1038-2 Reacquisition and resale of property used as a principal residence.

(a) *Application of special rules*—(1) *In general.* If paragraph (a) of § 1.1038-1 applies to the reacquisition of real property which was used by the seller as his principal residence and with respect to the sale of which an election under section 121 is in effect or with respect to the sale of which gain was not recognized under section 1034, the provisions of § 1.1038-1 (other than paragraph (a) thereof) shall not, and this section shall, apply to the reacquisition of such property if the property is resold by the seller within one year after the date of the reacquisition. For purposes of this section an election under section 121 shall be considered to be in effect with respect to the sale of the property if, at the close of the last day for making such an election under section 121(c) with respect to such sale, an election under section 121 has been made and not revoked. Thus, a taxpayer who properly elects, subsequent to the reacquisition, to have section 121 apply to a sale of his residence may be eligible for the treatment provided in this section. The treatment provided by this section is mandatory; however, see § 1.1038-3 for an election to apply the provisions of this section to certain taxable years beginning after December 31, 1957.

(2) *Sale and resale treated as one transaction.* In the case of a reacquisition to which this section applies, the resale of the reacquired property shall be treated, for purposes of applying sections 121 and 1034, as part of the transaction constituting the original sale of such property. In effect, the reacquisition is generally disregarded pursuant to this section and, for purposes of applying sections 121 and 1034, the resale of

the property is considered to constitute a sale of such property occurring on the date of the original sale of such property.

(b) *Transactions not included.* (1) If with respect to the original sale of the property there was no nonrecognition of gain under section 1034 and an election under section 121 is not in effect, the provisions of § 1.1038-1, and not this section, shall apply to the reacquisition. Thus, for example, if in the case of a taxpayer not entitled to the benefit of section 121 there is no gain on the original sale of the property, the provisions of § 1.1038-1, and not this section, shall apply even though a redetermination of gain under this section would result in the nonrecognition of gain on the sale under section 1034. Also, if in the case of such a taxpayer there was gain on the original sale of the property but after the application of section 1034 all of such gain was recognized, the provisions of § 1.1038-1, and not this section, shall apply to the reacquisition.

(2) If the original sale of the property was not eligible for the treatment provided by section 121 and section 1034, the provisions of § 1.1038-1, and not this section, shall apply to the reacquisition of the property even though the resale of such property is eligible for the treatment provided by either or both of sections 121 and 1034.

(c) *Redetermination of gain required*—(1) *Sale of old residence.* The amount of gain excluded under section 121 on the sale of the property and the amount of gain recognized under section 1034 on the sale of the property shall be redetermined under this section by recomputing the adjusted sales price and the adjusted basis of the property, and any adjustments resulting from the redetermination of the gain on the sale of such property shall be reflected in the income of the seller for his taxable year in which the resale of the property occurs.

(2) *Sale of new residence.* If gain was not recognized under section 1034 on the original sale of the property, the adjusted basis of the new residence shall be redetermined under this section. If the new residence has been sold, the amount of gain returned on such sale of the new residence which is affected by the redetermination of the recognized gain on the sale of the old residence shall be redetermined under this section, and any adjustments resulting from the redetermination of the gain on the sale of the new residence shall be reflected in income of the seller for his taxable year in which the resale of the old residence occurs.

(d) *Redetermination of adjusted sales price.* For purposes of applying sections 121 and 1034 pursuant to this section, the adjusted sales price of the reacquired real property shall be redetermined by taking into account both the sale and the resale of the property and shall be—

(1) The amount realized, which for purposes of section 1001 shall be—

(i) The amount realized on the resale of the property, as determined under paragraph (b) (4) of § 1.1034-1, plus

(ii) The amount realized on the original sale of the property, determined as

provided in paragraph (b) (4) of § 1.1034-1, less that portion of any obligations of the purchaser arising with respect to such sale which at the time of reacquisition are secured by such property and is unpaid, less

(iii) The amount of money and the fair market value of other property (other than obligations of the purchaser to the seller secured by the real property) paid or transferred by the seller in connection with the reacquisition of such real property,

reduced by

(2) The total of the fixing-up expenses (as defined in par. (b) (6) of § 1.1034-1) incurred for work performed on such real property to assist in both its original sale and its resale.

For purposes of applying paragraph (b) (6) of § 1.1034-1, there shall be two 90-day periods, the first ending on the day on which the contract to sell is entered into in connection with the original sale of the property, and the second ending on the day on which the contract to sell is entered into in connection with the resale of the property. There shall also be two 30-day periods for such purposes, the first ending on the 30th day after the date of the original sale, and the second ending on the 30th day after the date of the resale. For determination of the obligations of the purchaser arising with respect to the original sale of the property, see paragraph (b) (3) of § 1.1038-1. For determination of amounts paid or transferred by the seller in connection with the reacquisition of the property, see paragraph (c) (4) of § 1.1038-1.

(e) *Determination of adjusted basis at time of resale.* For purposes of applying sections 121 and 1034 pursuant to this section, the adjusted basis of the reacquired real property at the time of its resale shall be—

(1) The sum of—

(i) The adjusted basis of such property at the time of the original sale, with proper adjustment under section 1016(a) in respect of such property for the period occurring after the reacquisition of such property, and

(ii) Any indebtedness of the purchaser to the seller which arose subsequent to the original sale of such property and which at the time of reacquisition was secured by such property,

reduced by

(2) Any indebtedness of the purchaser to the seller which at the time of reacquisition was secured by the reacquired real property and which, for any taxable year ending before the taxable year in which occurs the reacquisition of such property, was treated by the seller as having become worthless or partially worthless by taking a bad debt deduction under section 166(a).

The reduction under the preceding sentence by reason of having treated indebtedness as worthless or partially worthless shall not exceed the amount by which there would be an increase in the basis of such indebtedness under paragraph (f) (3) of § 1.1038-1 if section

1038(d) had been applicable to the reacquisition of such property.

(f) *Treatment of indebtedness secured by the property.*—(1) *Year of reacquisition.* No debt of the purchaser to the seller which was secured by the reacquired real property shall be considered as becoming worthless or partially worthless as a result of a reacquisition of such real property to which this section applies. Accordingly, no deduction for a bad debt shall be allowed, as a result of the reacquisition, in order to reflect the noncollectibility of any indebtedness of the purchaser to the seller which at the time of reacquisition was secured by such real property. In addition, no deduction shall be allowed, for the taxable year in which occurs a reacquisition of real property to which this section applies, in respect of any indebtedness of the purchaser secured by such property which has been treated by the seller as having become worthless or partially worthless in such taxable year but prior to the date of such reacquisition.

(2) *Prior taxable years.* For reduction of the basis of the real property for indebtedness treated as worthless or partially worthless for taxable years ending before the taxable year in which occurs the reacquisition, see paragraph (e) of this section.

(3) *Basis of indebtedness.* The basis of any indebtedness of the purchaser to the seller which was secured by the reacquired real property, to the extent that such indebtedness is not discharged upon the reacquisition of such property, shall be zero.

(g) *Date of sale.* Since the resale of the property, by being treated as part of the transaction constituting the original sale of the property, is treated as having occurred on the date of the original sale, in determining whether any of the time requirements of section 121 or section 1034 are satisfied for purposes of this section the date of the original sale is used, except to the extent provided in paragraph (d)(2) of this section.

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

Example (1). (a) On June 30, 1964, S, a single individual over 65 years of age, sells his principal residence to P for an adjusted sales price of \$25,000, the property not being mortgaged at the time of sale. S properly elects to apply the provisions of section 121 to the sale. Under the contract, P pays \$5,000 down and executes a note for \$20,000, with stated interest at 6 percent, the principal being payable in installments of \$5,000 each on January 1 of each year and the note being secured by the real property which is sold. At the time of sale P's note has a fair market value of \$20,000. S does not elect to report the gain on the installment method but treats the transaction as a deferred-payment sale, title to the property being transferred to P at the time of sale. S uses the calendar year as the taxable year and the cash receipts and disbursements method of accounting. After making two annual payments of \$5,000 each on the note, P defaults on the contract, and on March 1, 1967, S reacquires the real property in full satisfaction of P's indebtedness, title to the property being voluntarily reconveyed to S. On November 1, 1967, S sells the property to

T for \$35,000. The assumption is made that no fixing-up expenses are incurred for work performed on the principal residence in order to assist in the sale of the property in 1964 or in the resale of the property in 1967. At the time of sale in 1964 the property has an adjusted basis of \$15,000. S does not treat any indebtedness with respect to the sale in 1964 as being worthless or partially worthless or make any capital expenditures with respect to the property after such sale. In his return for 1964, S includes in income \$2,000 capital gain from the sale of his residence.

(b) The results obtained before and after the reacquisition of the property are as follows:

	Before reacqui- sition	After reacqui- sition
Adjusted sales price:		
\$5,000 + \$20,000	\$25,000	\$25,000
Less: Adjusted basis of property at time of sale	15,000	15,000
Gain on sale	10,000	35,000
Gain excluded from income under sec. 121:		
\$10,000 × \$20,000/\$25,000	8,000	14,000
\$35,000 × \$20,000/\$50,000		
Gain included in income after applying sec. 121:		
\$10,000 - 8,000	2,000	21,000
\$35,000 - 14,000		

(c) S is required to show the additional inclusion of \$19,000 capital gain (\$21,000 - \$2,000) in income on his return for 1967.

Example (2). (a) The facts are the same as in example (1) except that on April 1, 1965, S purchases a new residence at a cost of \$30,000 and qualifies for the nonrecognition of gain under section 1034 in respect of the sale of his principal residence on June 30, 1964. In his return for 1964, S does not include any capital gain in income as a result of the sale of the old residence.

(b) The results obtained before and after the reacquisition of the property are as follows:

	Before reacqui- sition	After reacqui- sition
Application of sec. 121 (see example (1)):		
Adjusted sales price:	\$25,000	\$25,000
Less: Adjusted basis of property at time of sale	15,000	15,000
Gain on sale	10,000	35,000
Gain excluded from income under sec. 121	8,000	14,000
Gain not excluded from income under sec. 121	2,000	21,000
Application of sec. 1034:		
Adjusted sales price:		
\$25,000 - \$8,000	17,000	26,000
\$50,000 - \$14,000		
Less: Cost of new residence	30,000	30,000
Gain recognized under sec. 1034 on sale of old residence	0	6,000
Gain not recognized under sec. 1034 on sale of old residence:		
(\$10,000 - (\$8,000 + \$0))	2,000	15,000
(\$35,000 - (\$14,000 + \$6,000))		
Adjusted basis of new residence on April 1, 1965:		
\$30,000 - \$2,000	28,000	15,000
\$30,000 - \$15,000		

(c) The \$6,000 of capital gain on the sale of the old residence is required to be included in income on the return for 1967. The adjusted basis on April 1, 1965, for determining gain on a sale or exchange of the new residence at any time on or after that date is \$15,000, after taking into account the reacquisition and resale of the old residence.

Example (3). The facts are the same as in example (2) except that S sells the new residence on June 20, 1965, for \$40,000 and includes \$12,000 of capital gain (\$40,000 - \$28,000) on its sale in his income on the return for 1965. S is required to include the additional capital gain of \$13,000 [(\$40,000 - \$15,000) - \$12,000] on the sale of the new residence in his income on the return for 1967. For this purpose, the assumption is

also made that there are no additional adjustments to the basis of the new residence after April 1, 1965.

§ 1.1038-3 Election to have section 1038 apply for taxable years beginning after December 31, 1957.

(a) *In general.* If an election is made in the manner provided by paragraph (b) of this section, the applicable provisions of § 1.1038-1 and § 1.1038-2 shall apply to all reacquisitions of real property occurring in each and every taxable year beginning after December 31, 1957, and before September 3, 1964, for which the assessment of a deficiency, or the credit or refund of an overpayment, is not prevented on September 2, 1964, by the operation of any law or rule of law. The election so made shall apply to all taxable years beginning after December 31, 1957, and before September 3, 1964, for which the assessment of a deficiency, or the credit or refund of an overpayment, is not prevented on September 2, 1964, by the operation of any law or rule of law and shall apply to every reacquisition occurring in such taxable years. The fact that the assessment of a deficiency, or the credit or refund of an overpayment, is prevented for any other taxable year or years affected by the election will not prohibit the making of an election under this section. For example, if an individual who uses the calendar year as the taxable year were to sell in 1960 real property used as his principal residence in respect of the sale of which gain is not recognized under section 1034, and if such property were reacquired by the seller in 1962 and resold within 1 year, he would be permitted to make an election under this section with respect to such reacquisition even though on September 2, 1964, the period of limitations on assessment or refund has run for 1960. An election under this section shall be deemed a consent to the application of the provisions of this section.

(b) *Time and manner of making election.*—(1) *In general.* (i) An election to have the provisions of § 1.1038-2 apply to reacquisitions of real property occurring in taxable years beginning after December 31, 1957, and before September 3, 1964, shall be made by filing on or before September 3, 1965, a return, an amended return, or a claim for refund, whichever is proper, for each taxable year in which the resale of such real property occurs. If the return for any such year is not due on or before such date and has not been filed, the election with respect to such taxable year shall be made by filing on or before such date the statement described in subparagraph (2) of this paragraph.

(ii) An election to have the provisions of § 1.1038-1 apply to reacquisitions of real property occurring in taxable years beginning after December 31, 1957, and before September 3, 1964, shall be made by filing on or before September 3, 1965, a return, an amended return, or a claim for refund, whichever is proper, for each taxable year in which such reacquisitions occur. If the return for any such year is not due on or before such date and has not been filed, the election with respect

to such taxable year shall be made by filing on or before such date the statement described in subparagraph (2) of this paragraph.

(iii) If the facts are such that § 1.1038-2 applies to a reacquisition of property except that the reacquisition occurs in a taxable year beginning after December 31, 1957, and before September 3, 1964, an election may not be made under this paragraph to have the provisions of § 1.1038-1 apply to such reacquisition.

(iv) Once made, an election under this paragraph may not be revoked after September 3, 1965. To any return, amended return, or claim for refund filed under this subparagraph there shall be attached the statement described in subparagraph (2) of this paragraph.

(2) *Statement to be attached.* The statement described in subparagraph (1) of this paragraph shall indicate—

(i) The name, address and account number of the taxpayer, and the fact that the taxpayer is electing to have the provisions of section 1038 apply to the reacquisitions of real property.

(ii) The taxable years in which the reacquisitions of property occur and any other taxable year or years the tax for which is affected by the application of section 1038 to such reacquisitions.

(iii) The office of the district director where the return or returns for such taxable year or years were or will be filed.

(iv) The dates on which such return or returns were filed and on which the tax for such taxable year or years was paid.

(v) The type of real property reacquired, the terms under which such property was sold and reacquired, and an indication of whether the taxpayer is applying the provisions of § 1.1038-2 to the reacquisition of such property.

(vi) If § 1.1038-2 is being applied to the reacquisition, the terms under which the old residence was resold and, if applicable, the terms under which the new residence was sold, and

(vii) The office where, and the date when, the election to apply section 121 in respect of any sale of such property was or will be made.

(3) *Place for filing.* Any claim for refund, amended return, or statement, filed under this paragraph in respect of any taxable year, whether the taxable year in which occurs the reacquisition of property or the taxable year in which occurs the resale of the old residence, shall be filed in the office of the district director in which the return for such taxable year was or will be filed.

(c) *Extension of period of limitations on assessment or refund.*—(1) *Assessment of tax.* If an election is properly made under paragraph (b) of this section and the assessment of a deficiency for the taxable years to which such election applies is not prevented on September 2, 1964, by the operation of any law or rule of law, the period within which a deficiency for such taxable years may be assessed shall, to the extent such deficiency is attributable to the application of section 1038, not expire prior to one

year after the date on which such election is made.

(2) *Refund of tax.* If an election is properly made under paragraph (b) of this section and the credit or refund of any overpayment for the taxable years to which such election applies is not prevented on September 2, 1964, by the operation of any law or rule of law, the period within which a claim for credit or refund of an overpayment for such taxable years may be filed shall, to the extent such overpayment is attributable to the application of section 1038, not expire prior to one year after the date on which such election is made.

(d) *Payment of interest for period prior to September 2, 1964.* No interest shall be payable with respect to any deficiency attributable to the application of the provisions of section 1038, and no interest shall be allowed with respect to any credit or refund of any overpayment attributable to the application of such section, for any period prior to September 2, 1964. See section 2(c)(3) of the Act of September 2, 1964 (Public Law 88-570, 78 Stat. 856).

[F.R. Doc. 67-4044; Filed, Apr. 12, 1967; 8:49 a.m.]

Title 49—TRANSPORTATION

Chapter I—Interstate Commerce Commission

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[3d Rev. S.O. 935]

PART 195—CAR SERVICE

Appointment of Embargo Agents

At a session of the Interstate Commerce Commission, Division 3, held at its office in Washington, D.C., on the 6th day of April A.D. 1967.

It appearing, that the matter of car service (sec. 1, pars. 10-17 inclusive) of the Interstate Commerce Act being under consideration by Division 3 that whenever any carrier by railroad subject to Part I of the Interstate Commerce Act, is for any reason, unable to control freight traffic movement when car accumulations, threatened congestions, or other interference with operations, of a temporary nature compel restrictions against such movement so as to properly serve the public, that car service will be promoted in the interest of the public and the commerce of the people by the appointment of agents with authority to direct the placement of embargoes, and that notice and public procedure are impracticable and contrary to the public interest and that good cause exists for making this order effective upon less than 30 days' notice:

It is ordered, That:

§ 195.935 Service Order No. 935.

(a) Appointment of embargo agents: R. D. Pfahler, Director, and Martin E. Foley, Assistant Director, Bureau of Operations, Interstate Commerce Commis-

sion, Washington, D.C., are hereby appointed Agents of the Interstate Commerce Commission and vested with authority to direct the placement of embargoes by railroads at such points where freight cars are being unduly delayed due to accumulations, congestions, or emergency situations.

(b) Embargoes placed under this order shall be at the direction of the Agents of the Commission and shall be published through the Association of American Railroads, Car Service Division, and in conformity with the Association of American Railroads' "Instructions to Govern the Placing and Handling of Embargoes" and the "Code of Car Service and Per Diem Rules—Freight."

(c) Application: The provisions of this order shall apply to cars moving in intrastate and foreign commerce as well as interstate commerce.

(d) Rules, regulations, and practices suspended: The operation of all rules, regulations, and practices insofar as they conflict with the provisions of this order, is hereby suspended.

(e) Effective date: This order shall become effective at 12:01 a.m., April 10, 1967.

(f) Expiration date: The provisions of this order shall expire at 11:59 p.m., December 31, 1967, unless otherwise modified, changed, or suspended by order of this Commission.

(Secs. 1, 12, 15, 17(2), 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15, 17(2). Interpret or applies secs. 1(10-17), 15(4), 17(2), 40 Stat. 101, as amended 54 Stat. 911; 49 U.S.C. 1(10-17), 15(4), 17(2))

It is further ordered, That a copy of this order and direction shall be served upon each State railroad regulatory body, the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and per diem agreement under the terms of that agreement; and the American Short Line Railroad Association; and that notice of this order 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 3.

[SEAL]

H. NEIL GARSON,
Secretary.

[F.R. Doc. 67-4064; Filed, Apr. 12, 1967; 8:49 a.m.]

[4th Rev. S.O. 562]

PART 197—ROUTING OF TRAFFIC

Rerouting of Traffic; Appointment of Agents

At a session of the Interstate Commerce Commission, Division 3, held at its office in Washington, D.C., on the 6th day of April A.D. 1967.

It appearing, that the matter of car service (sec. 1, pars. 10-17 inclusive) of the Interstate Commerce Act being under consideration by Division 3 that