

telephone line, or other communication facilities now or hereafter constructed and operated by the United States or any agency thereof. This provision shall not relieve the applicant from any responsibility or requirement which may be imposed by other lawful authority for avoiding or eliminating inductive interference.

(f) An applicant for a right-of-way for a transmission line having a voltage of 66 kv. or more must, in addition to the stipulation required by § 161.5, execute and file with its application a stipulation agreeing to accept the right-of-way grant subject to the following conditions:

(1) The applicant agrees that, in the event it becomes necessary for the United States to acquire the applicant's transmission line or facilities constructed on or across such right-of-way, the United States reserves the right to acquire such line or facilities at a sum to be determined upon by a representative of the applicant, a representative of the Secretary of the Interior, and a third representative to be selected by the other two for the purpose of determining the value of such property thus to be acquired by the United States.

(2) To allow the Department of the Interior to utilize for the transmission of electrical power any surplus capacity of the line in excess of the capacity needed by the holder of the grant for the transmission of electrical power in connection with the applicant's operations, or to increase the capacity of the line at the Department's expense and to utilize the increased capacity for the transmission of electrical power. Utilization by the Department of surplus or increased capacity shall be subject to the following terms and conditions:

(i) When the Department desires to utilize surplus capacity thought to exist in a line, notification will be given to the applicant and the applicant shall furnish to the Department within 30 days a certificate stating whether the line has any surplus capacity not needed by the applicant for the transmission of electrical power in connection with the applicant's operations, and, if so, the extent of such surplus capacity.

(ii) In order to utilize any surplus capacity certified by the applicant to be available, or any increased capacity provided by the Department at its own expense, the Department may interconnect its transmission facilities with the applicant's line in a manner conformable to approved standards of practice for the interconnection of transmission circuits.

(iii) The expense of interconnection will be borne by the Department, and the Department will at all times provide and maintain adequate switching, relaying, and protective equipment so as to insure that the normal and efficient operation of the applicant's line will not be impaired.

(iv) After any interconnection is completed, the applicant shall operate and maintain its line in good condition; and, except in emergencies, shall maintain in a closed position all connections under

the applicant's control between the applicant's line and the interconnecting facilities provided by the Department.

(v) The interconnected power systems of the Department and the applicant will be operated in parallel.

(vi) The transmission of electrical power by the Department over the applicant's line will be effected in such manner and quantity as will not interfere unreasonably with the applicant's use and operation of the line in accordance with the applicant's normal operating standards, except that the Department shall have the exclusive right to utilize any increased capacity of the line which has been provided at the Department's expense.

(vii) The applicant will not be obligated to allow the transmission over its line by the Department of electrical power to any person receiving service from the applicant on the date of the filing of the application for a grant, other than persons entitled to statutory preference in connection with the distribution and sale of electrical power by the Department.

(viii) The Department will pay to the applicant an equitable share of the total monthly cost of maintaining and operating the part of the applicant's line utilized by the Department for the transmission of electrical power, the payment to be an amount in dollars representing the same proportion of the total monthly operation and maintenance cost of such part of the line as the maximum amount in kilowatts of the power transmitted on a scheduled basis by the Department over the applicant's line during the month bears to the total capacity in kilowatts of that part of the line. The total monthly cost may include interest and amortization, in accordance with the system of accounts prescribed by the Federal Power Commission, on the applicant's net total investment (exclusive of any investment by the Department) in the part of the line utilized by the Department.

(ix) If, at any time subsequent to a certification by the applicant that surplus capacity is available for utilization by the Department, the applicant needs for the transmission of electrical power in connection with its operations the whole or any part of the capacity of the line theretofore certified as being surplus to its needs, the applicant may modify or revoke the previous certification by giving the Secretary of the Interior 30 months' notice, in advance, of the applicant's intention in this respect. After the revocation of a certificate, the Department's utilization of the particular line will be limited to the increased capacity, if any, provided by the Department at its expense.

(x) If, during the existence of the grant, the applicant desires reciprocal accommodations for the transmission of electrical power over the interconnecting system of the Department to its line, such reciprocal accommodations will be accorded under terms and conditions similar to those prescribed in this paragraph with respect to the transmission

by the Department of electrical power over the applicant's line.

(xi) The terms and conditions prescribed in this paragraph may be modified at any time by means of a supplemental agreement negotiated between the applicant and the Secretary of the Interior or his designee.

(g) Applicants may apply for additional lands for generating plants and appurtenant facilities. The lands desired for such purposes may be indicated on the maps showing the definite location of the right-of-way, but separate maps must be filed therefor. Such maps shall show enough of the line of route to indicate the position of the tract with respect to said line. The tract shall be located with respect to the public survey as provided in § 161.8, and all buildings or other structures shall be platted on a scale sufficiently large to show clearly their dimensions and relative positions.

§ 161.23 Public highways.

(a) The appropriate State or local authorities may apply under the regulations in this Part 161 for authority to open public highways across tribal and individually owned lands in accordance with State laws, as authorized by the Act of March 3, 1901 (31 Stat. 1084; 25 U.S.C. 311).

(b) In lieu of making application under the regulations in this Part 161, the appropriate State or local authorities in Nebraska or Montana may, upon compliance with the requirements of the Act of March 4, 1915 (38 Stat. 1188), lay out and open public highways in accordance with the respective laws of those States. Under the provisions of that act, the applicant must serve the Secretary with notice of intention to open the proposed road and must submit a map of definite location on tracing linen showing the width of the proposed road for the approval of the Secretary prior to the laying out and opening of the road.

(c) Applications for public highway rights-of-way over and across roadless and wild areas shall be considered in accordance with the regulations contained in Part 163 of this chapter.

[F.R. Doc. 68-15376; Filed, Dec. 26, 1968; 8:46 a.m.]

Title 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER A—INCOME TAX

[T.D. 6985]

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

Medical Expense Deduction

On September 12, 1968, notice of proposed rule making with respect to the amendments of the Income Tax Regulations (26 CFR Part 1) under sections 72, 79, 213, 401, and 405 of the Internal Revenue Code of 1954 to conform the regulations to changes made by section

106 of the Social Security Amendments of 1965 (79 Stat. 336) and section 809 (d) (2) of the Excise Tax Reduction Act of 1965 (79 Stat. 167), was published in the FEDERAL REGISTER (33 F.R. 12910). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the amendments of the regulations as proposed are hereby adopted.

(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: December 19, 1968.

STANLEY S. SURREY,
Assistant Secretary
of the Treasury.

In order to conform the Income Tax Regulations (26 CFR Part 1) under sections 72, 79, 213, 401, and 405 of the Internal Revenue Code of 1954 to section 106 of the Social Security Amendments of 1965 (79 Stat. 336) and section 809 (d) (2) of the Excise Tax Reduction Act of 1965 (79 Stat. 167), such regulations are amended as follows:

PARAGRAPH 1. Section 1.72 is amended by revising paragraph (5) (A) (i) of section 72(m), by adding a new paragraph (7) to section 72(m), by revising paragraph (1) (A) and (B) of section 72(n), by revising so much of paragraph (3) of section 72(n) as succeeds subparagraph (B) thereof, and by revising the historical note. These revised and added provisions read as follows:

§ 1.72 Statutory provisions; annuities; certain proceeds of endowment and life insurance contracts.

Sec. 72. Annuities; certain proceeds of endowment and life insurance contracts. * * *

(m) Special rules applicable to employee annuities and distributions under employee plans. * * *

(5) Penalties applicable to certain amounts received by owner-employees. (A) * * *

(i) To amounts (other than any amount received by an individual in his capacity as a policyholder of an annuity, endowment, or life insurance contract which is in the nature of a dividend or similar distribution) which are received from a qualified trust described in section 401(a) or under a plan described in section 403(a) and which are received by an individual, who is, or has been, an owner-employee, before such individual attains the age of 59½ years, for any reason other than the individual's becoming disabled (within the meaning of paragraph (7) of this subsection), but only to the extent that such amounts are attributable to contributions paid on behalf of such individual (whether or not paid by him) while he was an owner-employee.

(7) Meaning of disabled. For purposes of this section, an individual shall be considered to be disabled if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration. An individual shall not be considered to be disabled unless he furnishes proof of the existence thereof in such form and manner as the Secretary or his delegate may require.

(n) Treatment of certain distributions with respect to contributions by self-

employed individuals—(1) Application of subsection—(A) Distribution by employees' trust. Subject to the provisions of subparagraph (C), this subsection shall apply to amounts distributed to a distributee, in the case of an employees' trust described in section 401(a) which is exempt from tax under section 501(a), if the total distributions payable to the distributee with respect to an employee are paid to the distributee within one taxable year of the distributee—

(i) On account of the employee's death.
(ii) After the employee has attained the age of 59½ years, or

(iii) After the employee has become disabled (within the meaning of subsection (m) (7)).

(B) Annuity plans. Subject to the provisions of subparagraph (C), this subsection shall apply to amounts paid to a payee, in the case of an annuity plan described in section 403(a), if the total amounts payable to the payee with respect to an employee are paid to the payee within one taxable year of the payee—

(i) On account of the employee's death.
(ii) After the employee has attained the age of 59½ years, or

(iii) After the employee has become disabled (within the meaning of subsection (m) (7)).

(3) Determination of taxable income. * * *
(B) * * *

In any case in which the preceding sentence results in an increase in taxable income for any taxable year, the resulting increase in the taxes imposed by section 1 or 3 for such taxable year shall not be reduced by any credit under part IV of subchapter A (other than sections 31 and 39 thereof) which, but for this sentence, would be allowable.

[Sec. 72 as amended by sec. 4 (a), (b), Self-Employed Individuals Tax Retirement Act 1962 (76 Stat. 821); sec. 11(b), Rev. Act 1962 (76 Stat. 1005); sec. 232(b), Rev. Act 1964 (78 Stat. 110); sec. 809(d) (2), Excise Tax Reduction Act 1965 (79 Stat. 167); sec. 106 (d) (2), Social Security Amendments 1965 (79 Stat. 337)]

PAR. 2. Section 1.72-17 is amended by revising paragraph (b) (4) and paragraph (e) (1) (ii) and (3) (iii) and by adding a new paragraph (f). These revised and added provisions read as follows:

§ 1.72-17 Special rules applicable to owner-employees.

(b) Certain amounts received before annuity starting date. * * *

(4) Under section 401(d) (4), a qualified pension, profit-sharing, or annuity plan may not provide for distributions to an owner-employee before he reaches age 59½ years, except in the case of his earlier disability. Therefore, in the case of a distribution from a qualified plan to an individual for whom contributions have been made to the plan as an owner-employee, the annuity starting date cannot be prior to the time such individual attains the age 59½ years unless he is entitled to benefits before reaching such age because of his disability. For taxable years beginning after December 31, 1966, see section 72(m) (7) and paragraph (f) of this section for the meaning of disabled. For taxable years beginning before January 1, 1967, see section 213(g) (3) for the meaning of disabled.

(e) Penalties applicable to certain amounts received by owner-employees. (1) * * *

(ii) The amounts referred to in subdivision (i) (a) of this subparagraph do not include—

(a) Amounts received by reason of the owner-employee becoming disabled, or

(b) Amounts received by the owner-employee in his capacity as a policyholder of an annuity, endowment, or life insurance contract which are in the nature of a dividend or similar distribution.

Amounts attributable to contributions paid on behalf of an owner-employee and which are paid to a person other than the owner-employee before the owner-employee dies or reaches the age 59½ shall be considered received by the owner-employee for purposes of this paragraph. For taxable years beginning after December 31, 1966, see section 72(m) (7) and paragraph (f) of this section for the meaning of disabled. For taxable years beginning before January 1, 1967, see section 213(g) (3) for the meaning of disabled. For taxable years beginning after December 31, 1968, if an amount is not included in the amounts referred to in subdivision (i) (a) of this subparagraph solely by reason of the owner-employee becoming disabled and if a penalty would otherwise be applicable with respect to all or a portion of such amount, then for the taxable year in which such amount is received, there must be submitted with the owner-employee's income tax return a doctor's statement as to the impairment, and a statement by the owner-employee with respect to the effect of such impairment upon his substantial gainful activity and the date such impairment occurred. For taxable years which are subsequent to the first taxable year beginning after December 31, 1968, with respect to which the statements referred to in the preceding sentence are submitted, the owner-employee may, in lieu of such statements, submit a statement declaring the continued existence (without substantial diminution) of the impairment and its continued effect upon his substantial gainful activity.

(3) * * *

(iii) In any case in which the application of subdivision (i) or (ii) of this subparagraph results in an increase in taxable income for any taxable year, the resulting increase in taxes imposed by section 1 or 3 for such taxable year shall be reduced by the credits against tax provided by section 31 (tax withheld on wages) and section 39 (certain uses of gasoline and lubricating oil), but shall not be reduced by any other credits against tax.

(f) Meaning of disabled. (1) For taxable years beginning after December 31, 1966, section 72(m) (7) provides that an individual shall be considered to be disabled if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or

mental impairment which can be expected to result in death or to be of long-continued and indefinite duration. In determining whether an individual's impairment makes him unable to engage in any substantial gainful activity, primary consideration shall be given to the nature and severity of his impairment. Consideration shall also be given to other factors such as the individual's education, training, and work experience. The substantial gainful activity to which section 72(m) (7) refers is the activity, or a comparable activity, in which the individual customarily engaged prior to the arising of the disability (or prior to retirement if the individual was retired at the time the disability arose).

(2) Whether or not the impairment in a particular case constitutes a disability is to be determined with reference to all the facts in the case. The following are examples of impairments which would ordinarily be considered as preventing substantial gainful activity:

- (i) Loss of use of two limbs;
- (ii) Certain progressive diseases which have resulted in the physical loss or atrophy of a limb, such as diabetes, multiple sclerosis, or Buerger's disease;
- (iii) Diseases of the heart, lungs, or blood vessels which have resulted in major loss of heart or lung reserve as evidenced by X-ray, electrocardiogram, or other objective findings, so that despite medical treatment breathlessness, pain, or fatigue is produced on slight exertion, such as walking several blocks, using public transportation, or doing small chores;
- (iv) Cancer which is inoperable and progressive;
- (v) Damage to the brain or brain abnormality which has resulted in severe loss of judgment, intellect, orientation, or memory;
- (vi) Mental diseases (e.g. psychosis or severe psychoneurosis) requiring continued institutionalization or constant supervision of the individual;
- (vii) Loss or diminution of vision to the extent that the affected individual has a central visual acuity of no better than 20/200 in the better eye after best correction, or has a limitation in the fields of vision such that the widest diameter of the visual fields subtends an angle no greater than 20 degrees;
- (viii) Permanent and total loss of speech;
- (ix) Total deafness uncorrectible by a hearing aid.

The existence of one or more of the impairments described in this subparagraph (or of an impairment of greater severity) will not, however, in and of itself always permit a finding that an individual is disabled as defined in section 72(m) (7). Any impairment, whether of lesser or greater severity, must be evaluated in terms of whether it does in fact prevent the individual from engaging in his customary or any comparable substantial gainful activity.

(3) In order to meet the requirements of section 72(m) (7), an impairment must be expected either to continue for a long and indefinite period or to result in death.

Ordinarily, a terminal illness because of disease or injury would result in disability. Indefinite is used in the sense that it cannot reasonably be anticipated that the impairment will, in the foreseeable future, be so diminished as no longer to prevent substantial gainful activity. For example, an individual who suffers a bone fracture which prevents him from working for an extended period of time will not be considered disabled, if his recovery can be expected in the foreseeable future; if the fracture persistently fails to knit, the individual would ordinarily be considered disabled.

(4) An impairment which is remediable does not constitute a disability within the meaning of section 72(m) (7). An individual will not be deemed disabled if, with reasonable effort and safety to himself, the impairment can be diminished to the extent that the individual will not be prevented by the impairment from engaging in his customary or any comparable substantial gainful activity.

PAR. 3. Paragraph (b) (2) of § 1.72-18 is amended to read as follows:

§ 1.72-18 Treatment of certain total distributions with respect to self-employed individuals.

** * * * **
(b) *Distributions to which this section applies.* * * *

(2) This section shall apply—
(i) Only if the distribution or payment is made—

- (a) On account of the employee's death at any time,
- (b) After the employee has attained the age 59½ years, or
- (c) After the employee has become disabled; and

(ii) Only to so much of the distribution or payment as is attributable to contributions made on behalf of an employee while he was a self-employed individual in the business with respect to which the plan was established. Any distribution or payment, or any portion thereof, which is not so attributable shall be subject to the rules of taxation which apply to any distribution or payment that is attributable to contributions on behalf of common-law employees.

For taxable years beginning after December 31, 1966, see section 72(m) (7) and paragraph (f) of § 1.72-17 for the meaning of disabled. For taxable years beginning before January 1, 1967, see section 213(g) (3) for the meaning of disabled. For taxable years beginning after December 31, 1968, if this section is applicable by reason of the distribution or payment being made after the employee has become disabled, then for the taxable year in which the amounts to which this section applies are distributed or paid, there shall be submitted with the recipient's income tax return a doctor's statement as to the nature and effect of the employee's impairment.

PAR. 4. Section 1.79 is amended by revising paragraph (1) of section 79(b) and by revising the historical note. These revised provisions read as follows:

§ 1.79 Statutory provisions; group-term life insurance purchased for employees.

SEC. 79. *Group-term life insurance purchased for employees.* * * *

(b) *Exceptions.* * * *
(1) The cost of group-term life insurance on the life of an individual which is provided under a policy carried directly or indirectly by an employer after such individual has terminated his employment with such employer and either has reached the retirement age with respect to such employer or is disabled (within the meaning of section 72(m) (7)),

[Sec. 79 as added by sec. 204(a) (1), Rev. Act 1964 (78 Stat. 36) and as amended by sec. 106(d) (3), Social Security Amendments 1965 (79 Stat. 337)]

PAR. 5. Paragraph (b) (4) of § 1.79-2 is amended to read as follows:

§ 1.79-2 Exceptions to the rule of inclusion.

** * * * **
(b) *Retired and disabled employees.* * * *

(4) *Disabled.* (i) For taxable years beginning after December 31, 1966, an individual is considered disabled for purposes of section 79(b) (1) and subparagraph (1) of this paragraph if he is disabled within the meaning of section 72(m) (7) and paragraph (f) of § 1.72-17. For taxable years beginning before January 1, 1967, an individual is considered disabled for purposes of section 79(b) (1) and subparagraph (1) of this paragraph if he is disabled within the meaning of section 213(g) (3), relating to the meaning of disabled, but the determination of the individual's status shall be made without regard to the provisions of section 213(g) (4), relating to the determination of status.

** * * * **
PAR. 6. Section 1.213 is amended by revising subsections (a) and (b) of section 213, by deleting subsection (c) of section 213, by revising subsection (e) of section 213, by deleting subsection (g) of section 213, and by revising the historical note. These amended provisions read as follows:

§ 1.213 Statutory provisions; medical, dental, etc., expenses.

SEC. 213. *Medical, dental, etc., expenses—*
(a) *Allowance of deduction.* There shall be allowed as a deduction the following amounts, not compensated for by insurance or otherwise—

(1) The amount by which the amount of the expenses paid during the taxable year (reduced by any amount deductible under paragraph (2)) for medical care of the taxpayer, his spouse, and dependents (as defined in section 152) exceeds 3 percent of the adjusted gross income, and

(2) An amount (not in excess of \$150) equal to one-half of the expenses paid during the taxable year for insurance which constitutes medical care for the taxpayer, his spouse, and dependents.

(b) *Limitation with respect to medicine and drugs.* Amounts paid during the taxable year for medicine and drugs which (but for this subsection) would be taken into account in computing the deduction under subsection (a) shall be taken into account

only to the extent that the aggregate of such amounts exceeds 1 percent of the adjusted gross income.

(c) [Deleted]

(e) *Definitions.* For purposes of this section—

(1) The term "medical care" means amounts paid—

(A) For the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body,

(B) For transportation primarily for and essential to medical care referred to in subparagraph (A), or

(C) For insurance (including amounts paid as premiums under part B of title XVIII of the Social Security Act, relating to supplementary medical insurance for the aged) covering medical care referred to in subparagraphs (A) and (B).

(2) In the case of an insurance contract under which amounts are payable for other than medical care referred to in subparagraphs (A) and (B) of paragraph (1)—

(A) No amount shall be treated as paid for insurance to which paragraph (1)(C) applies unless the charge for such insurance is either separately stated in the contract, or furnished to the policyholder by the insurance company in a separate statement,

(B) The amount taken into account as the amount paid for such insurance shall not exceed such charge, and

(C) No amount shall be treated as paid for such insurance if the amount specified in the contract (or furnished to the policyholder by the insurance company in a separate statement) as the charge for such insurance is unreasonably large in relation to the total charges under the contract.

(3) Subject to the limitations of paragraph (2), premiums paid during the taxable year by a taxpayer before he attains the age of 65 for insurance covering medical care (within the meaning of subparagraphs (A) and (B) of paragraph (1)) for the taxpayer, his spouse, or a dependent after the taxpayer attains the age of 65 shall be treated as expenses paid during the taxable year for insurance which constitutes medical care if premiums for such insurance are payable (on a level payment basis) under the contract for a period of 10 years or more or until the year in which the taxpayer attains the age of 65 (but in no case for a period of less than 5 years).

(4) The determination of whether an individual is married at any time during the taxable year shall be made in accordance with the provisions of section 6013 (d) (relating to determination of status as husband and wife).

(g) [Deleted]

[Sec. 213 as amended by secs. 16 and 17, Technical Amendments Act 1958 (72 Stat. 1613); sec. 3, Act of May 14, 1960 (Pub. Law 86-470, 74 Stat. 133); sec. 1, Act of Oct. 23, 1962 (Pub. Law 87-863, 76 Stat. 1141); sec. 211, Rev. Act 1964 (78 Stat. 49); sec. 106 (a), (b), (c), and (d) (1), Social Security Amendments 1965 (79 Stat. 336, 337)]

PAR. 7. Section 1.213-1 is amended by revising paragraphs (a) (2) and (4) (i), by adding a new subparagraph (5) to paragraph (a), by revising paragraph (b) (2) (ii), by adding a new example (3) to paragraph (b) (2) (iii), by revising paragraph (c), by revising paragraph (e) (1) (i), and by adding a new subparagraph (4) to paragraph (e). These revised and added provisions read as follows:

§ 1.213-1 Medical, dental, etc., expenses.

(a) *Allowance of deduction.* * * *

(2) Except as provided in subparagraphs (4) (i) and (5) (i) of this paragraph, only such medical expenses (including the allowable expenses for medicine and drugs) are deductible as exceed 3 percent of the adjusted gross income for the taxable year. For taxable years beginning after December 31, 1966, the amounts paid during the taxable year for insurance that constitute expenses paid for medical care shall, for purposes of computing total medical expenses, be reduced by the amount determined under subparagraph (5) (i) of this paragraph. For the amounts paid during the taxable year for medicine and drugs which may be taken into account in computing total medical expenses, see paragraph (b) of this section. For the maximum deduction allowable under section 213 in the case of certain taxable years, see paragraph (c) of this section. As to what constitutes "adjusted gross income", see section 62 and the regulations thereunder.

(4) (i) For taxable years beginning before January 1, 1967, where either the taxpayer or his spouse has attained the age of 65 before the close of the taxable year, the 3-percent limitation on the deduction for medical expenses does not apply with respect to expenses for medical care of the taxpayer or his spouse. Moreover, for taxable years beginning after December 31, 1959, and before January 1, 1967, the 3-percent limitation on the deduction for medical expenses does not apply to amounts paid for the medical care of a dependent (as defined in sec. 152) who is the mother or father of the taxpayer or his spouse and who has attained the age of 65 before the close of the taxpayer's taxable year. For taxable years beginning before January 1, 1964, and for taxable years beginning after December 31, 1966, all amounts paid by the taxpayer for medicine and drugs are subject to the 1-percent limitation provided by section 213(b). For taxable years beginning after December 31, 1963, and before January 1, 1967, the 1-percent limitation provided by section 213(b) does not apply, under certain circumstances, to amounts paid by the taxpayer for medicine and drugs for the taxpayer and his spouse or for a dependent (as defined in sec. 152) who is the mother or father of the taxpayer or of his spouse. (For additional provisions relating to the 1-percent limitation with respect to medicine and drugs, see paragraph (b) of this section.) For taxable years beginning before January 1, 1967, whether or not the 3-percent or 1-percent limitation applies, the total medical expenses deductible under section 213 are subject to the limitations described in section 213(c) and paragraph (c) of this section and, where applicable, to the limitations described in section 213(g) and § 1.213-2.

(5) (i) For taxable years beginning after December 31, 1966, there may be deducted without regard to the 3-percent limitation the lesser of—(a) One-half of the amounts paid during the taxable year for insurance which constitute expenses for medical care for the taxpayer, his spouse, and dependents; or (b) \$150.

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

Example. H and W made a joint return for the calendar year 1967. The adjusted gross income of H and W for 1967 was \$10,000 and they paid in such year \$370 for medical care of which amount \$350 was paid for insurance which constitutes medical care for H and W. No part of the payment was for medicine and drugs or was compensated for by insurance or otherwise. The allowable deduction under section 213 for medical expenses paid in 1967 is \$150, computed as follows:

(1) Lesser of \$175 (one-half of amounts paid for insurance) or \$150-----	\$150
(2) Payments for medical care -----	\$370
(3) Less line 1-----	150
(4) Medical expenses to be taken into account under 3-percent limitation (line 2 minus line 3)-----	\$220
(5) Less: 3 percent of \$10,000 (adjusted gross income)-----	300
(6) Excess allowable as a deduction for 1967 (excess of line 4 over line 5) -----	0
(7) Allowable medical expense deduction for 1967 (line 1 plus line 6) -	\$150

(b) *Limitation with respect to medicine and drugs.* * * *

(2) *Taxable years beginning after December 31, 1963.* * * *

(ii) The 1-percent limitation provided by section 213 does not apply to amounts paid by a taxpayer during a taxable year beginning after December 31, 1963, and before January 1, 1967, for medicine and drugs for the medical care of the taxpayer and his spouse if either has attained the age of 65 before the close of the taxable year. Moreover, for taxable years beginning after December 31, 1963, and before January 1, 1967, the 1-percent limitation with respect to medicine and drugs does not apply to amounts paid for the medical care of a dependent (as defined in sec. 152) who is the mother or father of the taxpayer or of his spouse and who has attained the age of 65 before the close of the taxpayer's taxable year. Amounts paid for medicine and drugs which are not subject to the limitation on medicine and drugs are added to other medical expenses of a taxpayer and his spouse or the dependent (as the case may be) for the purpose of computing the medical expense deduction.

(iii) * * *

Example (3). Assume the same facts as example (2) except that the calendar year of the return is 1967 and the amounts paid for medical care were paid during 1967. The deduction allowable under section 213(a) for medical expenses paid in 1967 is \$1,520, computed as follows:

Payments for doctors and hospitals:

H-----	\$400	
W-----	200	
C-----	200	
F-----	700	
		\$1,500

Payments for medicine and drugs:

H-----	75	
W-----	100	
C-----	175	
F-----	150	
		\$500

Less: 1 percent of \$12,000 (adjusted gross income)----- 120 380

Medical expenses to be taken into account----- \$1,880

Less: 3 percent of \$12,000 (adjusted gross income)----- 360

Allowable medical expense deduction for 1967----- 1,520

(c) *Maximum limitations.* (1) For taxable years beginning after December 31, 1966, there shall be no maximum limitation on the amount of the deduction allowable for payment of medical expenses.

(2) Except as provided in section 213(g) and § 1.213-2 (relating to maximum limitations with respect to certain aged and disabled individuals for taxable years beginning before January 1, 1967), for taxable years beginning after December 31, 1961, and before January 1, 1967, the maximum deduction allowable for medical expenses paid in any one taxable year is the lesser of:

(i) \$5,000 multiplied by the number of exemptions allowed under section 151 (exclusive of exemptions allowed under section 151(c) for a taxpayer or spouse attaining the age of 65, or section 151(d) for a taxpayer who is blind or a spouse who is blind);

(ii) \$10,000, if the taxpayer is single, not the head of a household (as defined in section 1(b)(2)) and not a surviving spouse (as defined in section 2(b)), or is married and files a separate return; or

(iii) \$20,000 if the taxpayer is married and files a joint return with his spouse under section 6013, or is the head of a household (as defined in section 1(b)(2)), or a surviving spouse (as defined in section 2(b)).

(3) The application of subparagraph (2) of this paragraph may be illustrated by the following example:

Example. H and W made a joint return for the calendar year 1962 and were allowed five exemptions (exclusive of exemptions under sec. 151 (c) and (d)), one for each taxpayer and three for their dependents. The adjusted gross income of H and W in 1962 was \$80,000. They paid during such year \$26,000 for medical care, no part of which is compensated for by insurance or otherwise. The deduction allowable under section 213 for the calendar year 1962 is \$20,000, computed as follows:

Payments for medical care in 1962----- \$26,000
Less: 3 percent of \$80,000 (adjusted gross income)----- 2,400

Excess of medical expenses in 1962 over 3 percent of adjusted gross income----- 23,600

Allowable deduction for 1962 (\$5,000 multiplied by five exemptions allowed under sec. 151 (b) and (e) but not in excess of \$20,000)----- 20,000

(4) Except as provided in section 213(g) and § 1.213-2 (relating to certain

aged and disabled individuals), for taxable years beginning before January 1, 1962, the maximum deduction allowable for medical expenses paid in any 1 taxable year is the lesser of:

(i) \$2,500 multiplied by the number of exemptions allowed under section 151 (exclusive of exemptions allowed under section 151(c) for a taxpayer or spouse attaining the age of 65, or section 151(d) for a taxpayer who is blind or a spouse who is blind);

(ii) \$5,000, if the taxpayer is single, not the head of a household (as defined in section 1(b)(2)) and not a surviving spouse (as defined in section 2(b)) or is married and files a separate return; or

(iii) \$10,000, if the taxpayer is married and files a joint return with his spouse under section 6013, or is head of a household (as defined in section 1(b)(2)), or a surviving spouse (as defined in section 2(b)).

(5) For the maximum deduction allowable for taxable years beginning before January 1, 1967, if the taxpayer or his spouse is age 65 or over and is disabled, see § 1.213-2.

(e) *Definitions.*—(1) *General.* (i) The term "medical care" includes the diagnosis, cure, mitigation, treatment, or prevention of disease. Expenses paid for "medical care" shall include those paid for the purpose of affecting any structure or function of the body or for transportation primarily for and essential to medical care. See subparagraph (4) of this paragraph for provisions relating to medical insurance.

(4) *Medical insurance.* (i) (a) For taxable years beginning after December 31, 1966, expenditures for insurance shall constitute expenses paid for medical care only to the extent that such amounts are paid for insurance covering expenses of medical care referred to in subparagraph (1) of this paragraph. In the case of an insurance contract under which amounts are payable for other than medical care (as, for example, a policy providing an indemnity for loss of income or for loss of life, limb, or sight)—

(1) No amount shall be treated as paid for insurance covering expenses of (1) of this paragraph unless the charge for such insurance is either separately

stated in the contract or furnished to the medical care referred to in subparagraph policyholder by the insurer in a separate statement,

(2) The amount taken into account as the amount paid for such medical insurance shall not exceed such charge, and

(3) No amount shall be treated as paid for such medical insurance if the amount specified in the contract (or furnished to the policyholder by the insurer in a separate statement) as the charge for such insurance is unreasonably large in relation to the total charges under the contract.

For purposes of the preceding sentence, amounts will be considered payable for other than medical care under the contract if the contract provides for the waiver of premiums upon the occurrence of an event. In determining whether a separately stated charge for insurance covering expenses of medical care is unreasonably large in relation to the total premium, the relationship of the coverages under the contract together with all of the facts and circumstances shall be considered. In determining whether a contract constitutes an "insurance" contract it is irrelevant whether the benefits are payable in cash or in services. For example, amounts paid for hospitalization insurance, for membership in an association furnishing cooperative or so-called free-choice medical service, or for group hospitalization and clinical care are expenses paid for medical care. Premiums paid under Part B, Title XVIII of the Social Security Act (42 U.S.C. 1395j-1395w), relating to supplementary medical insurance benefits for the aged, are amounts paid for insurance covering expenses of medical care. Taxes imposed by any governmental unit do not, however, constitute amounts paid for such medical insurance.

(b) For taxable years beginning after December 31, 1966, subject to the rules of (a) of this subdivision, premiums paid during a taxable year by a taxpayer under the age of 65 for insurance covering expenses of medical care for the taxpayer, his spouse, or a dependent after the taxpayer attains the age of 65 are to be treated as expenses paid during the taxable year for insurance covering expenses of medical care if the premiums for such insurance are payable (on a level payment basis) under the contract—

(1) For a period of 10 years or more, or

(2) Until the year in which the taxpayer attains the age of 65 (but in no case for a period of less than 5 years).

For purposes of this subdivision (b), premiums will be considered payable on a level payment basis if the total premium under the contract is payable in equal annual or more frequent installments. Thus, a total premium of \$10,000 payable over a period of 10 years at \$1,000 a year shall be considered payable on a level payment basis.

(ii) For taxable years beginning before January 1, 1967, expenses paid for medical care shall include amounts paid for accident or health insurance. In determining whether a contract constitutes

an "insurance" contract it is irrelevant whether the benefits are payable in cash or in services. For example, amounts paid for hospitalization insurance, for membership in an association furnishing cooperative or so-called free-choice medical service, or for group hospitalization and clinical care are expenses paid for medical care.

PAR. 8. Section 1.213-2 is amended by revising so much of paragraph (a) as precedes subparagraph (1) thereof to read as follows:

§ 1.213-2 Maximum limitation on deduction if taxpayer or spouse is age 65 or over and is disabled.

(a) *In general.* The provisions of section 213(g) and this section shall have no application with respect to taxable years beginning after December 31, 1966. Section 213(g) provides that the limitation of section 213(c) on the amount of deduction allowable for medical expenses shall not apply in certain cases.

PAR. 9. Section 1.401 is amended by revising paragraph (4)(B) of section 401(d) and by revising the historical note. These revised provisions read as follows:

§ 1.401 Statutory provisions; qualified pension, profit-sharing, and stock bonus plans.

SEC. 401. *Qualified pension, profit-sharing, and stock bonus plans.* * * *

(d) *Additional requirements for qualification of trusts and plans benefiting owner-employees.* * * *

(4) * * *

(B) No benefits may be paid to any owner-employee, except in the case of his becoming disabled (within the meaning of section 72(m)(7)), prior to his attaining the age of 59½ years.

[Sec. 401 as amended by sec. 2, Self-Employed Individuals Tax Retirement Act, 1962 (76 Stat. 809); sec. 2 (a), Act of Oct. 23, 1962 (Pub. Law 87-863, 76 Stat. 1141); sec. 106 (d)(4), Social Security Amendments 1965 (79 Stat. 337)]

PAR. 10. Paragraph (m) of § 1.401-12 is amended by revising subparagraphs (1)(i) and (2)(ii) to read as follows:

§ 1.401-12 Requirements for qualification of trusts and plans benefiting owner-employees.

(m) *Distribution of benefits.* (1)(i) Section 401(d)(4)(B) requires that a qualified plan which provides contributions or benefits for any owner-employee must not provide for the payment of benefits to such owner-employee at any time before he has attained age 59½. An exception to the foregoing rule permits a qualified plan to provide for the distribution of benefits to an owner-employee prior to the time he attains age 59½ if he is disabled. For taxable years beginning after December 31, 1966, see section 72(m)(7) and paragraph (f) of § 1.72-17 for the meaning of disabled. For taxable years beginning before January 1, 1967, see section 213(g)(3) for the meaning of disabled. In general, both sections 72(m)(7) and 213(g)(3)

provide that an individual is considered disabled if he is unable to engage in any substantial gainful activity because of a medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration. In addition, section 401(d)(4)(B) does not preclude the distribution of benefits to the estate or other beneficiary of a deceased owner-employee prior to the time the owner-employee would have attained age 59½ if he had lived.

(2) * * *

(ii) The provisions of subparagraph (1) of this paragraph do not preclude the establishment of a profit-sharing plan which provides for the distribution of all, or part, of participants' accounts after a fixed number of years. However, such a plan must not permit a distribution of any amount to any owner-employee prior to the time the owner-employee has attained age 59½ or becomes disabled within the meaning of section 72(m)(7) or section 213(g)(3), whichever is applicable. On the other hand, if a distribution would have been made under the plan to an owner-employee but for the fact that he had not attained age 59½, then the amount of such distribution (including any increment earned on such amount) must be distributed to such owner-employee at such time as he attains age 59½.

PAR. 11. Section 1.405 is amended by revising paragraph (1)(D)(ii) of section 405(b) and by revising the historical note. These revised provisions read as follows:

§ 1.405 Statutory provisions; qualified bond purchase plans.

SEC. 405. *Qualified bond purchase plans.* * * *

(b) *Bonds to which applicable—*(1) *Characteristics of bonds.* * * *

(D) * * *

(ii) Has become disabled (within the meaning of section 72(m)(7)); and

[Sec. 405 as added by sec. 5, Self-Employed Individuals Tax Retirement Act 1962 (76 Stat. 826) and as amended by sec. 106(d)(5), Social Security Amendments 1965 (79 Stat. 337)]

[F.R. Doc. 68-15361; Filed, Dec. 26, 1968; 8:47 a.m.]

Title 32—NATIONAL DEFENSE

Chapter I—Office of the Secretary of Defense

SUBCHAPTER P—RECORDS

PART 289—SALE OF DOD DIRECTIVES, INSTRUCTIONS, AND INDEXES TO THE PUBLIC

Miscellaneous Amendments

The following miscellaneous amendments to Part 289 have been authorized: Sections 289.1(b)(1) and 289.2(b) should be corrected to read as follows:

§ 289.1 Subscription service.

(b) * * *

(1) Orders may be forwarded at any time to the Director, U.S. Naval Publications and Forms Center (formerly the Naval Supply Depot), 5801 Tabor Avenue, Philadelphia, Pa. 19120, Attention: Code NPA-1, in any form, accompanied by a certified bank check or postal money order payable to the Treasurer of the United States.

§ 289.2 Ordering individual copies.

(a) * * *

(b) The U.S. Naval Publications and Forms Center (formerly the Naval Supply Depot), 5801 Tabor Avenue, Philadelphia, Pa. 19120, Attention: Code 300, will provide this service after September 1, 1967. Distribution will be restricted to one copy of each DoD Issuance per customer.

MAURICE W. ROCHE,
Director, Correspondence and
Directives Division, OASD
(Administration).
[F.R. Doc. 68-15436; Filed, Dec. 26, 1968;
8:51 a.m.]

Title 33—NAVIGATION AND NAVIGABLE WATERS

Chapter I—Coast Guard, Department of Transportation

SUBCHAPTER C—AIDS TO NAVIGATION [CGFR 68-152]

PART 66—PRIVATE AIDS TO NAVIGATION

Subpart 66.01—Aids to Navigation Other Than Federal or State

1. The Commandant has determined that certain functions now being performed by him regarding the review and approval of applications to establish and maintain, discontinue, change or transfer ownership of private aids to navigation, as set forth in 33 CFR, Subpart 66.01 could be more easily and quickly performed by the District Commanders. The purpose of this document is to revise policies, procedures and practices in 33 CFR, Subpart 66.01 and to delegate to the District Commanders the authority to approve the establishment and maintenance, discontinuance, change or transfer of ownership of private aids to navigation.

2. Section 66.01-10 is amended to state as a matter of policy the characteristic of the light source now being accepted. It is the intent of the Coast Guard to reserve distinctive types of light sources such as "flash tube" type lights for use on Federal aids to navigation.

3. Since the changes in 33 CFR, Subpart 66.01 are deemed to be statements of policy, practices, and procedures followed in the administration of assigned functions, the notice of proposed rule

making and public procedures thereon are not required by 5 U.S.C. 553. Additionally, it is not necessary to wait 30 days to make them effective.

4. By virtue of the authority vested in me by section 633 of title 14, United States Code, and other laws cited with the regulations below, and the delegations of authority in 49 CFR 1.4(a)(2), (f) and (g), this revision is prescribed and shall be effective on and after date of publication in the FEDERAL REGISTER.

5. Subpart 66.01, including heading thereof, and consisting of § 66.01-1 to 66.01-55 are revised in their entirety to read as follows:

Subpart 66.01—Aids to Navigation Other Than Federal or State

Sec.

- 66.01-1 Basic provisions.
- 66.01-3 Delegation of authority to District Commanders.
- 66.01-5 Application procedure.
- 66.01-10 Characteristics.
- 66.01-15 Action by Coast Guard.
- 66.01-20 Inspection.
- 66.01-25 Discontinuance and removal.
- 66.01-30 Corps of Engineers; approval.
- 66.01-35 Marking of structures and floating obstructions.
- 66.01-40 Exemptions.
- 66.01-45 Penalties.
- 66.01-50 Protection of private aids to navigation.
- 66.01-55 Transfer of ownership.

AUTHORITY: The provisions of this Subpart 66.01 issued under 14 U.S.C. 81, 83, 85, 86, 92, 633, sec. 4, 67 Stat. 462, 43 U.S.C. 1333, sec. 6(b), 80 Stat. 938, 49 U.S.C. 1655(b); 49 CFR 1.4(a)(2), (f) and (g).

§ 66.01-1 Basic provisions.

(a) No person, public body or instrumentality not under the control of the Commandant, exclusive of the Armed Forces, shall establish and maintain, discontinue, change or transfer ownership of any aid to maritime navigation, without first obtaining permission to do so from the Commandant.

(b) For the purposes of this subpart, the term private aids to navigation includes all marine aids to navigation operated in the navigable waters of the United States other than those operated by the Federal Government (Part 62 of this subchapter) or those operated in State waters for private aids to navigation (Subpart 66.05).

(c) Coast Guard authorization of a private aid to navigation does not authorize any invasion of private rights, nor grant any exclusive privileges, nor does it obviate the necessity of complying with any other Federal, State or local laws or regulations.

(d) With the exception of shore based radar stations, operation of electronic aids to navigation as private aids will not be authorized.

§ 66.01-3 Delegation of authority to District Commanders.

(a) Pursuant to the authority in 49 CFR 1.4(g), the Commandant delegates to the District Commanders within the confines of their respective districts (see Part 3 of this Chapter for descriptions) the authority to grant permission to

establish and maintain, discontinue, change or transfer ownership of private aids to maritime navigation, and otherwise administer the requirements of this subpart.

(b) The decisions of the District Commander may be appealed within 30 days from the date of decision. The decision of the Commandant in any case is final.

§ 66.01-5 Application procedure.

Application to establish and maintain, discontinue, change, or transfer ownership of a private aid to navigation shall be made to the Commander of the Coast Guard District in which the private aid to navigation is or will be located. Application forms (CG-2554) will be provided upon request. The applicant shall complete all parts of the form applicable to the aid to navigation concerned, and shall forward the application in triplicate to the District Commander. The following information is required:

(a) The proposed position of the aid to navigation by two or more horizontal angles, or bearings and distance from charted landmarks. A section of chart or sketch showing the proposed location of the aid to navigation shall be included.

(b) The name and address of the person at whose expense the aid will be maintained.

(c) The name and address of the person who will maintain the aid to navigation.

(d) The time and dates during which it is proposed to operate the aid.

(e) The necessity for the aid.

(f) For lights: The color, characteristic, height above water, and description of illuminating apparatus.

(g) For fog signals: Type (whistle, horn, bell, etc.) and characteristic.

(h) For buoys or daybeacons: Shape, color, number, or letter, depth of water in which located or height above water.

§ 66.01-10 Characteristics.

The characteristics of a private aid to navigation shall conform to the standard U.S. system of aids to navigation characteristics described in subpart 62.25 of Part 62 of this subchapter, except that only tungsten-incandescent light sources will be approved for electric lights.

§ 66.01-15 Action by Coast Guard.

(a) The District Commander receiving the application will review it for completeness and will assign the aid one of the following classifications:

Class I: Aids to navigation on marine structures or other works which the owners are legally obligated to establish, maintain and operate as prescribed by the Coast Guard.

Class II: Aids to navigation exclusive of Class I located in waters used by general navigation.

Class III: Aids to navigation exclusive of Class I located in waters not ordinarily used by general navigation.

(b) Upon approval by the District Commander, a signed copy of the application will be returned to the applicant.

§ 66.01-20 Inspection.

All classes of private aids to navigation shall be maintained in proper operating condition. They are subject to inspection by the Coast Guard at any time and without prior notice.

§ 66.01-25 Discontinuance and removal.

(a) No person, public body or instrumentality shall change, move or discontinue any authorized private aid to navigation required by statute or regulation (Class I, § 66.01-15) without first obtaining permission to do so from the District Commander.

(b) Any authorized private aid to navigation not required by statute or regulation (Classes II and III, § 66.01-15) may be discontinued and removed by the owner after 30 days' notice to the District Commander to whom the original request for authorization for establishment of the aid was submitted.

(c) Private aids to navigation which have been authorized pursuant to this part shall be discontinued and removed without expense to the United States by the person, public body or instrumentality establishing or maintaining such aids when so directed by the District Commander.

§ 66.01-30 Corps of Engineers' approval.

(a) Before any private aid to navigation consisting of a fixed structure is placed in the navigable waters of the United States, authorization to erect such structure shall first be obtained from the District Engineer, U.S. Army Corps of Engineers in whose district the aid will be located.

(b) The application to establish any private aid to navigation consisting of a fixed structure shall show evidence of the required permit having been issued by the Corps of Engineers.

§ 66.01-35 Marking of structures and floating obstructions.

Any structure, mooring, mooring buoy, or dam, in or over the navigable waters of the United States shall display the lights and other signals for the protection of maritime navigation as may be prescribed by the Commandant. The prescribed lights and signals shall be installed, maintained and operated by and at the expense of the owner, or operator. After obtaining such approval or a statement of no objection from the Corps of Engineers as is required by law, the owner or operator shall apply in accordance with § 66.01-5 to the District Commander having jurisdiction over the waters in which the structure or floating obstruction will be located for a determination of the lights and other signals to be displayed. This requirement includes the temporary lights and signals to be displayed during the construction of a structure. If no regulation exists prescribing the lights or other signals required to mark any work or obstruction, each case shall be considered individually by the District Commander, who will prescribe such lights and signals as he considers necessary for the safety of navigation.

§ 66.01-40 Exemptions.

(a) Nothing in the preceding sections of this subpart shall be construed to interfere with or nullify the requirements of existing laws and regulations pertaining to the marking of vessels and other obstructions sunk in the navigable waters of the United States (Part 64 of this subchapter), the marking of artificial islands and structures which are erected on or over the seabed and subsoil of the outer Continental Shelf (Part 67 of this subchapter), or the lighting of bridges over navigable waters of the United States (Part 68 of this subchapter).

(b) Persons marking structures pursuant to Part 64 or Part 68 of this subchapter are exempted from the provisions of §§ 66.01-5 and 66.01-35.

§ 66.01-45 Penalties.

Any person, public body or instrumentality, excluding the armed forces, who shall establish, erect or maintain any aid to maritime navigation without first obtaining authority to do so from the Coast Guard or who shall violate the regulations relative thereto issued in this part, is subject to the provisions of 14 U.S.C. 83. Any owner or operator of a fixed structure, excluding an agency of the United States, who violates any of the rules or regulations prescribed with respect to lights and other signals for fixed structures, is subject to the provisions of 14 U.S.C. 85.

§ 66.01-50 Protection of private aids to navigation.

Private aids to navigation lawfully maintained under these regulations are entitled to the same protection against interference or obstruction as is afforded by law to Coast Guard aids to navigation (Part 70 of this subchapter). If interference or obstruction occurs, a prompt report containing all the evidence available should be made to the Commander of the Coast Guard District in which the aids are located.

§ 66.01-55 Transfer of ownership.

(a) When any private aid to navigation authorized by the District Commander, or the essential real estate or facility with which the aid is associated, is sold or transferred, both parties to the transaction shall submit application (§ 66.01-5) to the Commander of the Coast Guard District in which the aid is located requesting authority to transfer responsibility for maintenance of the aid.

(b) The party relinquishing responsibility for maintenance of the private aid to navigation shall indicate on the application form (CG-2554) both the discontinuance and the change of ownership of the aid sold or transferred.

(c) The party accepting responsibility for maintenance of the private aid to navigation shall indicate on the application form (CG-2554) both the establishment and the change of ownership of the aid sold or transferred.

(d) In the event the new owner of the essential real estate or facility with which

the aid is associated refuses to accept responsibility for maintenance of the aid, the former owner shall be required to remove the aid without expense to the United States. This requirement shall not apply in the case of any authorized private aid to navigation required by statute or regulation (Class I, § 66.01-15) which shall be maintained by the new owner until the conditions which made the aid necessary have been eliminated.

P. E. TRIMBLE,
Vice Admiral, U.S. Coast Guard,
Acting Commandant.

DECEMBER 23, 1968.

[F.R. Doc. 68-15427; Filed, Dec. 26, 1968;
8:51 a.m.]

Chapter II—Corps of Engineers, Department of the Army

PART 206—FISHING AND HUNTING REGULATIONS

Coastal Waters, Massachusetts, Rhode Island, New York

Pursuant to the provisions of section 10 of the River and Harbor Act of March 3, 1899 (30 Stat. 1151; 33 U.S.C. 403), § 206.15 is hereby amended in its entirety to include current information and to redesignate the limits of the fish trap area at Point Judith, R.I., effective 30 days after publication in the FEDERAL REGISTER, as follows:

§ 206.15 Coastal waters of Massachusetts and Rhode Island and the waters of Fishers Island and Gardiners Point, N.Y.; fishing.

(a) *Authority.* All weir, trap, and pound fishermen operating under authority granted by the States of Massachusetts, Rhode Island, and New York within their respective jurisdictions are hereby authorized by the Secretary of the Army to construct and maintain fishnet stakes and traps, in designated areas of the coastal waters, erected in the usual manner as heretofore subject to the regulations in this section.

(b) *Definitions.* The terms "fish trap" and/or "fishing structures" as used in this section shall include stub and floating traps, weirs, pounds, nets, or other equivalent contrivance or thing set on, in, or anchored to the bottom or shore used for the purpose of catching and/or impounding fish.

(c) *Supervision.* General supervision of the location, construction, and manner of maintenance of all fishing structures shall be exercised by the Division Engineer, U.S. Army Engineer Division, New England, 424 Trapelo Road, Waltham, Mass. 02154.

(d) *Description of fishing limits.* (1) The areas within which fishing structures may be placed are shown by hatching on the five maps attached to this section (Nos. 1 through 5). Copies of the maps are on file in the Office of the Division Engineer. The areas are also shown on applicable U.S. Coast and Geodetic Survey Charts.

(2) In the navigable parts of all tributary streams and ponds where limiting lines are not shown, no fish structures shall be placed until a map showing the exact location proposed shall have been submitted to and approved by the Division Engineer.

(e) *Requirements concerning the placing, marking, and maintenance of structures.* (1) No traps shall be set before February 15 and all structures shall be completely removed on or before December 31 of each year. All submerged or broken-off stakes must be removed promptly by and at the expense of the owner of the fishing structure.

(2) Traps within the so-called "outer areas" south and east of Newport, R.I., as designated on Map No. 4 shall not be placed or set prior to April 25 and shall be removed completely not later than July 25. Traps in this area shall be removed promptly whenever the area is needed for artillery practice and notice to that effect is given by public advertising or in writing to the trap owners.

(3) If traps in the outer areas are set in a continuous string or line, there shall be left between each pair of traps thus set an interval of at least 600 feet (100 fathoms) in which no trap, leader, or other obstructions may be placed.

(4) The name of the owner of each fishing structure shall be displayed in black letters not less than 3 inches in height upon a white background from the stake or barrel at the outer end of the structure in such position that it may be seen readily by passing vessels.

(5) Such lights and signals shall be displayed on each trap as provided in § 209.130(p) of this chapter. Each light shall have a capacity to burn 8 days of stormy weather unattended. These lights shall be placed at an elevation not less than 10 feet above the plane of mean high water; for floating traps, 3 feet above the water. All lights shall be subject to the inspection and approval of the Division Engineer. The owner of the structure will be responsible for keeping his lanterns in first-class condition and for the proper maintenance of the light during the hours above prescribed.

(6) Any fishing structure allowed to get into a condition of disrepair so that it cannot be seen readily, or on which the name of the owner is not displayed as specified in this paragraph, or on which lights and signals are not maintained as required by § 209.130(p) of this chapter, if not promptly made to conform to this section in all respects, will be regarded as abandoned, and the owner will be subject to prosecution.

(f) *General.* (1) Nothing provided in this section shall be interpreted as setting aside exclusively for fisheries any area of navigable water.

(2) It is understood that this authority does not give any property rights either in real estate or material, or exclusive privileges; and that it does not authorize any injury to private property or invasion of private rights, or any infringement of any Federal, State, or local laws or regulations, nor does it