

issuance is in the public interest and in the interest of motor vehicle safety.

In consideration of the foregoing, effective January 1, 1968, § 255.21 of Part 255, Initial Federal Motor Vehicle Safety Standards, Motor Vehicle Safety Standard No. 108 (32 F.R. 2411), as amended (32 F.R. 18032), is further amended as follows:

Paragraph S3.1.1.4 is amended to read as follows:

S3.1.1.4 Until June 1, 1968, boat trailers need not be equipped with identification lamps, clearance lamps, front side-marker lamps, or rear side-marker lamps.

(Secs. 103, 119, National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1392, 1407); delegation of authority of Mar. 31, 1967 (32 F.R. 5606), as amended Apr. 6, 1967 (32 F.R. 6495), July 27, 1967 (32 F.R. 11276), Oct. 11, 1967 (32 F.R. 14277), and Nov. 8, 1967 (32 F.R. 15710))

Issued in Washington, D.C., on February 8, 1968.

LOWELL K. BRIDWELL,
Federal Highway Administrator.

[F.R. Doc. 68-1904; Filed, Feb. 14, 1968;
8:48 a.m.]

[Docket No. 9]

PART 255—INITIAL FEDERAL MOTOR VEHICLE SAFETY STANDARDS

Motor Vehicle Safety Standard No. 108; Lamps, Reflective Devices, Passenger Cars, Multipurpose Passenger Vehicles, Trucks, Buses, Trailers, and Motorcycles

Motor Vehicle Safety Standard No. 108, published in the FEDERAL REGISTER on December 16, 1967 (32 F.R. 18033), specifies requirements for lamps, reflective devices, and associated equipment for passenger cars, multipurpose passenger vehicles, trucks, buses, trailers, and motorcycles manufactured after December 31, 1968.

Paragraph S3.1.1.7 requires that passenger cars manufactured after December 31, 1968, be equipped with turn signal lamps that provide Class A photometric values in accordance with Society of Automotive Engineers Standard J588d, "Turn-Signal Lamps," June 1966.

Paragraph S3.4.5 requires that actuation of the vehicular hazard warning signal operating unit shall, when energized, cause all turn-signal lamps to flash simultaneously.

The Administrator has determined that—

(a) Hardships will be imposed on motor vehicle and motor vehicle equipment manufacturers in reengineering, redesigning, and retooling to meet the requirement for Class A photometric turn signals; and therefore, it would not be reasonable or practicable to apply an effective date of January 1, 1969, to this requirement of paragraph S3.1.1.7; and

(b) Clarification is needed with respect to the number of turn-signal lamps

that must be flashed to meet the requirement of paragraph S3.4.5.

Therefore, the standard is being amended—

(a) To change the effective date of the requirement for Class A photometric turn-signal lamps, as specified in paragraph § 3.1.1.7, from January 1, 1969, to January 1, 1970; and

(b) To require in paragraph S3.4.5 that only sufficient turn-signal lamps, located in accordance with Table II or Table IV, as applicable, required to provide the turn-signal photometric requirements of paragraph S3.1.1.7 need be flashed simultaneously.

Since these amendments provide clarification and alternative means of compliance, relieve restrictions, and impose no additional burden on any person, notice and public procedure hereon are unnecessary.

In consideration of the foregoing, § 255.21 of Part 255, Federal Motor Vehicle Safety Standards, Motor Vehicle Safety Standard No. 108 (32 F.R. 18033), is amended as follows:

(a) Paragraph S3.1.1.7 is revised to read as follows:

S3.1.1.7 Passenger cars manufactured before January 1, 1970, shall be equipped with turn-signal lamps that provide Class B photometric values and Class B effective projected illuminated areas. Passenger cars manufactured on or after January 1, 1970, shall be equipped with turn-signal lamps that provide Class A photometric values and Class B effective projected illuminated areas. If a multiple compartment lamp or multiple lamps are used to meet this requirement, the effective projected illuminated area of each compartment or lamp shall be not less than that of a Class B lamp, and photometric requirements of Class B, or Class A, as applicable, shall be provided by one or a combination of the compartments or lamps.

(b) Paragraph S3.4.5 is revised to read as follows:

S3.4.5 The vehicular hazard warning signal operating unit shall operate independently of the ignition or equivalent switch, and when energized, shall cause to flash simultaneously sufficient turn-signal lamps, located in accordance with Table II or Table IV, as applicable, to meet the turn-signal lamp photometric requirements specified in S3.1.1.7.

(Secs. 103, 119, National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1392, 1407); delegation of authority of Mar. 31, 1967 (32 F.R. 5606), as amended Apr. 6, 1967 (32 F.R. 6495), July 27, 1967 (32 F.R. 11276), Oct. 11, 1967 (32 F.R. 14277), Nov. 8, 1967 (32 F.R. 15710))

Effective date: January 1, 1969.

Issued in Washington, D.C., on February 8, 1968.

LOWELL K. BRIDWELL,
Federal Highway Administrator.

[F.R. Doc. 68-1905; Filed, Feb. 14, 1968;
8:49 a.m.]

Title 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

Chapter I—Veterans Administration

PART 1—GENERAL PROVISIONS

Disclosure of Records to Federal Government Departments, State Unemployment Compensation Agencies and the Office of Servicemen's Group Life Insurance

Section 1.506 is revised to read as follows:

§ 1.506 Disclosure of records to Federal Government departments, State unemployment compensation agencies and the Office of Servicemen's Group Life Insurance.

(a) All records or documents required for official purposes by any department or other agency of the U.S. Government or any State unemployment compensation agency acting in an official capacity for the Veterans Administration shall be furnished in response to an official request, written, or oral, from such department or agency. If the requesting department or agency does not indicate the purpose for which the records or documents are requested and there is doubt as to whether they are to be used for official purposes, the requesting department or agency will be asked to specify the purpose for which they are to be used.

(b) The Chief Benefits Director, Director of Insurance Service, or designee of either in Central Office, is authorized to release information to OSGLI (Office of Servicemen's Group Life Insurance) for the purpose of aiding in the settlement of a particular insurance case.

(72 Stat. 1114; 38 U.S.C. 210)

This VA regulation is effective the date of approval.

Approved: February 8, 1968.

By direction of the Administrator.

[SEAL]

A. W. STRATTON,
Deputy Administrator.

[F.R. Doc. 68-1883; Filed, Feb. 14, 1968;
8:47 a.m.]

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

AID AND ATTENDANCE ALLOWANCE FOR WIDOWS

1. In § 3.402, paragraph (c) is amended to read as follows:

§ 3.402 Widows.

Awards of pension, compensation, or dependency and indemnity compensation to or for a widow will be effective as follows:

* * *

(c) *Aid and attendance* (§ 3.351(a)).
(1) Date of receipt of claim or date entitlement arose, whichever is later. See also § 3.400(c) (2).

(2) Date of departure from hospital, institutional or domiciliary care at Veterans Administration expense.

2. In § 3.502, paragraph (e) is amended to read as follows:

§ 3.502 Widows.

The effective date of discontinuance of pension, compensation, or dependency and indemnity compensation to or for a widow will be the earliest of the dates stated in this section. Where an award is reduced, the reduced rate will be payable the day following the date of discontinuance of the greater benefit.

(e) *Aid and attendance* (§ 3.351(a)).
(1) Date of last payment, if need for aid and attendance has ceased.

(2) If hospitalized at Veterans Administration expense as a veteran, the date specified in § 3.552(b) (1) or (3).

(72 Stat. 1114; 38 U.S.C. 210)

These VA regulations are effective October 1, 1967.

Approved: February 9, 1968.

By direction of the Administrator.

[SEAL]

A. W. STRATTON,
Deputy Administrator.

[F.R. Doc. 68-1884; Filed, Feb. 14, 1968;
8:47 a.m.]

Title 43—PUBLIC LANDS: INTERIOR

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

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 4355]

[Anchorage 983]

ALASKA

Withdrawal for Railroad Terminal

By virtue of the authority vested in the President by the act of March 12, 1914 (38 Stat. 305; 48 U.S.C. 301-308), as amended, and pursuant to Executive Order No. 10355 of May 26, 1952 (17 F.R. 4831), it is ordered as follows:

1. Subject to valid existing rights, the following described land, which is under the jurisdiction of the Secretary of Agriculture, is hereby withdrawn from all forms of appropriation under the public land laws, including the mining laws (30 U.S.C., Ch. 2), but not from leasing under the mineral leasing laws, and reserved for use as a railroad terminal by the Department of Transportation:

CROWN POINT

SEWARD MERIDIAN (UNSURVEYED)

Chugach National Forest

T. 4 N., R. 1 W.,

A tract of land containing 81.2 acres in sec. 24, E½, being situated at Alaska Rail-

road milepost 25, north of Seward, and more particularly described as follows:

Beginning at Corner No. 2 of H.E.A. No. 186 and a point on the easterly right-of-way line of the Alaska Railroad opposite main tract Centerline Station 1300+85.9, which corner and point bears N. 2°25' W., 1,207.8 feet and N. 10°42'11" E., 20,139.24 feet from U.S. Land Monument No. 62; thence N. 2°25' W., along said easterly right-of-way line, 2,068.4 feet; thence, continuing along said right-of-way line, northwesterly, along an arc with a radius of 5,829.65 feet, 611.5 feet; thence continuing along said right-of-way line, N. 8°24' W., 937.6 feet; thence N. 84°06' E., 704.3 feet; thence S. 72°38' E., 1,029.8 feet; thence S. 12°00' W., 1,840.2 feet; thence S. 44°24'04" W., 821.45 feet; thence S. 12°00' W., 1,000 feet to a point on the northerly boundary of said H.E.A. No. 186; thence west along said northerly boundary, 236.40 feet to the point of beginning.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the national forest land under lease, license, or permit, or governing the disposal of its mineral or vegetative resources other than under the mining laws. However, leases, licenses, or permits will be issued only if the proposed use of the land will not interfere with the proper operation of the facilities on the land.

HARRY R. ANDERSON,
Assistant Secretary of the Interior.

FEBRUARY 9, 1968.

[F.R. Doc. 68-1852; Filed, Feb. 14, 1968;
8:45 a.m.]

Title 46—SHIPPING

Chapter II—Maritime Administration, Department of Commerce

SUBCHAPTER J—MISCELLANEOUS

[General Order 89, Amdt. 2]

PART 355—REQUIREMENTS FOR ESTABLISHING UNITED STATES CITIZENSHIP

Form of Affidavit

Correction

In F.R. Doc. 68-1823 appearing at page 2893 in the issue of Tuesday, February 13, 1968, in the third line of the affidavit form in § 355.3, the word "citizenship" should read "citizen".

Title 49—TRANSPORTATION

Subtitle A—Office of the Secretary of Transportation

[OST Docket No. 1; Amdt. No. 1-7]

PART 1—FUNCTIONS, POWERS, AND DUTIES IN THE DEPARTMENT OF TRANSPORTATION

Limitation on Reservation of Authority; Federal Highway Administration

The purpose of this amendment is to further limit the reservation imposed

in § 1.5(j) (1) of Part 1 (32 F.R. 14277) on the authority delegated to the Federal Highway Administrator to issue motor vehicle safety standards. Currently, the Administrator has been delegated authority to issue initial standards, new and revised standards under the second sentence of section 103(h) of the National Traffic and Motor Vehicle Safety Act of 1966, and certain procedural rules and notices of proposed rule making.

Under this amendment authority is delegated to the Administrator to issue Federal Motor Vehicle Safety Standard No. 202, Head Restraints—Passenger Cars and amendments to Federal Motor Vehicle Safety Standard No. 108, Lamps, Reflective Devices and Associated Equipment—Multipurpose Passenger Vehicles, Trucks, Trailers, and Buses 80 inches or More in Overall Width, with respect to photometric requirements.

This action is taken under the authority of sections 6(a) (6) (A) and 9 of the Department of Transportation Act (Public Law 89-670, 80 Stat. 931). Since this amendment involves a delegation of authority and relates to the internal management of the Department, notice and public procedure thereon are not required and the amendment may be made effective in less than 30 days.

In consideration of the foregoing, effective February 1, 1968, § 1.5(j) (1) (iii) of Part 1 of the regulations of the Office of the Secretary of Transportation is amended to read as follows:

§ 1.5 Reservations of authority.

(j) * * *
(1) * * *

(iii) New and revised Federal motor vehicle standards under the second sentence of section 103(h) of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1392(h)); Federal Motor Vehicle Safety Standard No. 202; amendments to Federal Motor Vehicle Safety Standard No. 108, with respect to photometric requirements; procedural rules and regulations related to the issuance of any motor vehicle standards; and notices of proposed rule making to any motor vehicle standards.

Issued in Washington, D.C., on February 8, 1968.

ALAN S. BOYD,
Secretary of Transportation.

[F.R. Doc. 68-1876; Filed, Feb. 14, 1968;
8:46 a.m.]

Title 50—WILDLIFE AND FISHERIES

Chapter I—Bureau of Sport Fisheries and Wildlife, Fish and Wildlife Service, Department of the Interior

PART 33—SPORT FISHING

Mingo National Wildlife Refuge, Mo.

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER.

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

MISSOURI

MINGO NATIONAL WILDLIFE REFUGE

Sport fishing on the Mingo National Wildlife Refuge, Mo. is permitted in all waters on the refuge. These waters comprise about 4,300 acres. Maps and information are available at refuge headquarters and from the office of the Regional Director, Bureau of Sport Fish-

eries and Wildlife, 1006 West Lake Street, Minneapolis, Minn. 55408. Sport fishing shall be in accordance with all applicable State regulations subject to the following conditions:

(1) Open season: March 15, 1968, through September 30, 1968, daylight hours only.

(2) The use of motors on boats is not permitted.

The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas

generally which are set forth in Title 50, Code of Federal Regulations, Part 33, and are effective through September 30, 1968.

JOHN E. TOLL,

Refuge Manager, Mingo National Wildlife Refuge, Puxico, Mo.

FEBRUARY 7, 1968.

[F.R. Doc. 68-1851; Filed, Feb. 14, 1968; 8:45 a.m.]

Proposed Rule Making

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 1]

INCOME TAX

Consolidated Returns; Allocation of Tax Liability Among Members of an Affiliated Group

Regulations proposed to be prescribed as §§ 1.1502-33(d), 1.1552, and 1.1552-1 (a) (3) and (b) were published in tentative form with a notice of proposed rule making in the FEDERAL REGISTER for December 31, 1966 (31 F.R. 16788). Notice is hereby given that such proposed regulations are withdrawn.

Further, notice is hereby given that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, in duplicate, to the Commissioner of Internal Revenue, Attention: CC:LR: T, Washington, D.C. 20224, within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. Any written comments or suggestions not specifically designated as confidential in accordance with 26 CFR 601.601 (b) may be inspected by any person upon written request. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner within the 30-day period. In such case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in sections 1502, 1552, and 7805 of the Internal Revenue Code of 1954 (68A Stat. 367, 371, 917; 26 U.S.C. 1502, 1552, 7805).

[SEAL]

SHELDON S. COHEN,

Commissioner of Internal Revenue.

In order to provide more specific rules for, and additional methods of, allocating the consolidated tax liability among the members of an affiliated group of corporations, and in order to conform the regulations under section 1552 of the Internal Revenue Code of 1954 to section 234(b) (8) of the Revenue Act of 1964 (78 Stat. 116), the Income Tax Regulations (26 CFR Part 1) under sections 1502 and 1552 are amended as follows:

PARAGRAPH 1. Section 1.1502-33 is amended by revising so much of paragraph (c) (4) (iii) as follows subdivision

(d) thereof, and by adding a new paragraph (d). These revised and added provisions read as follows:

§ 1.1502-33 Earnings and profits.

- (c) *Stock and obligations.* * * *
- (4) *Investment adjustment.* * * *
- (iii) *Election to adjust currently.* * * *
- (d) * * *

Such election shall be made by submitting a statement, on or before the due date (including any extensions of time) of the consolidated return for the first taxable year for which the election is to apply, to the district director with whom the group files such return. However, such election may be made for any taxable year beginning after December 31, 1965, within 60 days from (insert date these regulations are published in final form in the FEDERAL REGISTER), if it is made in conjunction with an election under paragraph (d) of this section. If an election is made under this subdivision, it may not thereafter be revoked.

(d) *Federal income tax liability.* (1) In general: For the purpose of determining the earnings and profits of each member of a group for a consolidated return year beginning after December 31, 1965, the tax liability of the group for such year may be allocated among the members in accordance with subparagraph (2) (i), (ii), or (iii) of this paragraph, if an election is made in accordance with subparagraph (3) of this paragraph. Allocations of tax liability made in accordance with subparagraph (2) of this paragraph shall be treated as allocations of the tax liability of the group for taxable years beginning after December 31, 1965, even though the sum of the amounts allocated for a taxable year may exceed the tax liability of the group as determined under paragraph (b) (1) of § 1.1552-1. See paragraph (b) (2) of § 1.1552-1 for the effect of the allocations.

(2) Methods of allocation: (i) The tax liability of the group, as determined under paragraph (b) (1) of § 1.1552-1, shall be allocated to the members in accordance with paragraph (a) (1), (2), or (3) of § 1.1552-1, whichever is applicable, but—

(a) The amount of tax liability allocated to any member for a taxable year shall not exceed the excess of (1) the total of the tax liabilities of such member on a separate return basis for all taxable years to which the election under this paragraph applies, and for which such member joined in the filing of a consolidated return of such group (including the current taxable year), computed as if it had actually filed separate returns for all such years, over

(2) the total of the portions of the tax liability of the group allocated to such member for all previous taxable years to which the election under this paragraph applies; and

(b) The amount of any excess tax liability which would be allocated to a member of a group but for (a) of this subdivision (1) shall be apportioned among the other members in direct proportion to, but limited to, the reduction in tax liability resulting to such other members. Such reduction for any member shall be the excess, if any, of (1) the total of its tax liabilities on a separate return basis for all taxable years to which the election under this paragraph applies, and for which such member joined in the filing of a consolidated return of such group (including the current taxable year), computed as if it had actually filed separate returns for all such years, over (2) the total of the portions of the tax liability of the group allocated to such member for all taxable years to which the election under this paragraph applies (including for the current taxable year only the amount allocated under § 1.1552-1(a) (1), (2), or (3)).

If any excess tax liability remains after being apportioned among members with a reduction in tax liability to the extent of such reduction, as provided in (b) of this subdivision (1), such remaining amount shall, notwithstanding (a) of this subdivision (1), be allocated to the members in accordance with § 1.1552-1(a) (1), (2), or (3), whichever is applicable. In computing the tax liability of a member on a separate return basis for purposes of (a) (1) and (b) (1) of this subdivision (1), its surtax exemption shall be an amount equal to \$25,000 divided by the number of members in the group for such year, and an election under section 243(b) (2) shall be deemed to be in effect for the group. (However, if for the taxable year some or all of the members are component members of a controlled group of corporations (within the meaning of section 1563) and if there are other such component members which do not join in filing the consolidated return for such year, the amount to be divided among the members filing the consolidated return shall be (in lieu of \$25,000) the sum of the amounts apportioned to the component members which join in filing the consolidated return (as determined under § 1.1561-2 (a) (2) or § 1.1561-3, whichever is applicable).) If a group elects to use the method of allocation provided by this subdivision, it must maintain specific records to substantiate the tax liability of each member on a separate return basis for purposes of (a) (1) and (b) (1) of this subdivision (1).

(ii) (a) The tax liability of the group, as determined under paragraph (b) (1) of

§ 1.1552-1, shall be allocated to the members in accordance with paragraph (a) (1), (2) or (3) of § 1.1552-1, whichever is applicable;

(b) An additional amount shall be allocated to each member equal to a fixed percentage (which does not exceed 100 percent) of the excess, if any, of (1) the separate return tax liability of such member for the taxable year (computed as provided in paragraph (a) (2) (ii) of § 1.1552-1), over (2) the tax liability allocated to such member in accordance with (a) of this subdivision (ii); and

(c) The total of any additional amounts allocated pursuant to (b) of this subdivision (ii) (including amounts allocated as a result of a carryback) shall be credited to the earnings and profits of those members which had items of income, deductions, or credits to which such total is attributable pursuant to a consistent method which fairly reflects such items of income, deductions, or credits, and which is substantiated by specific records maintained by the group for such purpose.

(iii) Allocations of tax liability to the members shall be made in accordance with any other method approved by the Commissioner. A condition of any such approval shall be that the group maintains specific records to substantiate its computations pursuant to such method.

(3) Method of election: In the event a group desires to allocate its tax liability in accordance with a method provided in subparagraph (2) (i) or (ii) of this paragraph, for a consolidated return year beginning after December 31, 1965, an election to that effect shall be made within the time prescribed by law for filing the consolidated return for the first taxable year to which the group desires the election to apply (including extensions thereof), or within 60 days after (insert date these regulations are published in final form in the FEDERAL REGISTER), whichever is later. The election shall be made by attaching a statement to the consolidated return for the first taxable year to which the group desires the election to apply, or if such election is made within the time prescribed above but after such return is filed, by filing a statement with the district director with whom such return was filed. Such statement shall indicate which method is elected, and which method under paragraph (a) (1), (2), or (3) of § 1.1552-1 is elected in conjunction with the election under this subparagraph; in addition, if the method elected is the method provided in subparagraph (2) (ii) of this paragraph, such statement shall state the percentage used pursuant to subparagraph (2) (ii) (b) of this paragraph. In the event a group desires to allocate its tax liability in accordance with a method pursuant to subparagraph (2) (iii) of this paragraph, approval of such method by the Commissioner must be obtained within the time prescribed above. The request shall state fully the method which the group wishes to use. An election once made under this subparagraph shall be irrevocable and shall be binding upon the group with respect to the year for which made and

for all future consolidated return years of the group unless the Commissioner authorizes a change to another method prior to the time prescribed by law for filing the return for the year in which such change is to be effective. If a group does not make an election under this subparagraph for a taxable year ending before January 1, 1968, it may not thereafter make such an election without the approval of the Commissioner unless the election is made for the first consolidated return year of the group. Further, an election under this subparagraph shall not be effective unless the group has also made an election under paragraph (c) (4) (iii) of this section.

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

Example (1). (i) Corporation P is the common parent owning all of the stock of corporations S1 and S2, members of an affiliated group. A consolidated return is filed for the taxable year ending December 31, 1966, by P, S1, and S2. The group has made an election in accordance with subparagraph (3) of this paragraph to use the method of allocation provided in subparagraph (2) (i) of this paragraph in conjunction with paragraph (a) (1) of § 1.1552-1. For 1966, the corporations had the following taxable incomes or losses computed as if separate returns were actually filed for such year:

P	-----	0
S1	-----	\$2,000
S2	-----	(1,000)

Assuming that each member's portion of consolidated taxable income attributable to it is the same as its taxable income computed as if separate returns were actually filed (see paragraph (a) (1) of § 1.1552-1), the tax liability of the group for the year (assuming a 22-percent rate) is \$220, all of which is allocated to S1. S1 accordingly reduces its earnings and profits in the amount of \$220, irrespective of who actually pays the tax liability. If S1 pays the \$220 tax liability there will be no further effect upon the income, earnings, and profits, or the basis of stock of any member. If, however, P pays the \$220 tax liability (and such payment is not in fact a loan from P to S1), then P shall be treated as having made a contribution to the capital of S1 in the amount of \$220. On the other hand, if S2 pays the \$220 tax liability (and such payment is not in fact a loan from S2), then S2 shall be treated as having made a distribution with respect to its stock to P in the amount of \$220, and P shall be treated as having made a contribution to the capital of S1 in the amount of \$220. (See paragraph (b) (2) of § 1.1552-1.)

(ii) For the 1967 taxable year, P, S1, and S2 had the following taxable incomes computed as if separate returns were actually filed, but without regard to any carryover from 1966:

P	-----	0
S1	-----	\$1,000
S2	-----	3,000

Assuming that each member's portion of the consolidated taxable income attributable to it is the same as its taxable income computed as if separate returns were actually filed, the tax liability of the group for 1967 is \$880; \$440 is allocated to S1 and \$440 is allocated to S2, determined as follows: If S2 had filed separate returns for 1966 and 1967 it would have had no tax liability for 1966 and a tax liability for 1967 of \$440 (taking into account a \$1,000 net operating loss

carryover from 1966). Thus, \$440 is the maximum amount which may be allocated to S2 for 1967, pursuant to the method of allocation elected by the group. The entire excess of \$220 (which would otherwise be allocated to S2 under § 1.1552-1(a) (1)) is allocated to S1 because S1 had a \$220 reduction in tax liability, as determined under subparagraph (2) (i) (b) of this paragraph. Such reduction is the excess of S1's 1966 and 1967 tax liabilities on a separate return basis (\$660) over its allocated portion of the tax liability of the group for 1966 (\$220) plus the amount allocated to it for 1967 under § 1.1552-1(a) (1) (\$220). The effect of the allocation of \$440 to S1 and \$440 to S2 is determined under § 1.1552-1(b) (2).

Example (2). Assume the same facts as in example (1) except that the group elected in accordance with subparagraph (3) of this paragraph to use the method of allocation provided in subparagraph (2) (ii) of this paragraph, choosing a fixed percentage of 100 percent under subparagraph (2) (ii) (b) of this paragraph. Assume also that the taxable incomes and losses of the corporations shown in example (1) would be the same amount if computed as provided in paragraph (a) (2) (ii) of § 1.1552-1. Thus, for 1966, \$440 is allocated to S1 (the \$220 tax liability of the group, and an additional \$220 pursuant to subparagraph (2) (ii) (b) of this paragraph). The earnings and profits of S1 are reduced in the amount of \$440, and the earnings and profits of S2 are increased in the amount of \$220 because the \$220 allocated to S1 which is in addition to the tax liability of the group is attributable to deductions of S2. If S1 pays the \$220 tax liability of the group and pays \$220 to S2, no further adjustments will be made, as a result of the 1966 tax liability, to the income, earnings and profits, or basis of stock of any member. If S1 pays the \$220 tax liability of the group, and pays the other \$220 to P instead of S2, because, for example, of an agreement among P, S1, and S2, S2 is treated as having made a distribution with respect to its stock to P in the year that S1 makes the payment to P. See paragraph (b) (2) of § 1.1552-1.

For 1967, \$220 is allocated to S1 and \$660 is allocated to S2. No additional amounts are allocated pursuant to subparagraph (2) (ii) (b) of this paragraph.

PAR. 2. Section 1.1552 is amended by revising section 1552(a) (3) and by adding a historical note. These amended provisions and the historical note read as follows:

§ 1.1552 Statutory provisions; earnings and profits.

SEC. 1552 Earnings and profits—(a) General rule. * * *

(3) The tax liability of the group (excluding the tax increases arising from the consolidation) shall be allocated on the basis of the contribution of each member of the group to the consolidated taxable income of the group. Any tax increases arising from the consolidation shall be distributed to the several members in direct proportion to the reduction in tax liability resulting to such members from the filing of the consolidated return as measured by the difference between their tax liabilities determined on a separate return basis and their tax liabilities based on their contributions to the consolidated taxable income.

[Sec. 1552 as amended by sec. 234(b) (8), Rev. Act 1964 (78 Stat. 116)]

PAR. 3. Section 1.1552-1 is amended to read as follows:

§ 1.1552-1 Earnings and profits.

(a) *General rule.* For the purpose of determining the earnings and profits of each member of an affiliated group which is required to be included in a consolidated return for such group filed for a taxable year beginning after December 31, 1953, and ending after August 16, 1954, the tax liability of the group shall be allocated among the members of the group in accordance with one of the following methods, pursuant to an election under paragraph (c) of this section:

(1) (i) The tax liability of the group shall be apportioned among the members of the group in accordance with the ratio which that portion of the consolidated taxable income attributable to each member of the group having taxable income bears to the consolidated taxable income.

(ii) For consolidated return years beginning after December 31, 1965, a member's portion of the tax liability of the group under the method of allocation provided by subdivision (i) of this subparagraph is an amount equal to the tax liability of the group multiplied by a fraction, the numerator of which is the taxable income of such member, and the denominator of which is the sum of the taxable incomes of all the members. For purposes of this subdivision the taxable income of a member shall be the separate taxable income determined under § 1.1502-12, adjusted for the following items taken into account in the computation of consolidated taxable income:

(a) The portion of the consolidated net operating loss deduction, the consolidated charitable contributions deduction, the consolidated dividends received deduction, the consolidated section 247 deduction, and the consolidated section 922 deduction, attributable to such member;

(b) Such member's net capital gain (determined without regard to any net capital loss carryover attributable to such member);

(c) Such member's net capital loss and section 1231 net loss, reduced by the portion of the consolidated net capital loss attributable to such member; and

(d) The portion of any consolidated net capital loss carryover attributable to such member which is absorbed in the taxable year.

If the computation of the taxable income of a member under this subdivision results in an excess of deductions over gross income, then for purposes of this subdivision such member's taxable income shall be zero.

(2) (i) The tax liability of the group shall be allocated to the several members of the group on the basis of the percentage of the total tax which the tax of such member if computed on a separate return would bear to the total amount of the taxes for all members of the group so computed.

(ii) For consolidated return years beginning after December 31, 1965, a member's portion of the tax liability of the group under the method of allocation provided by subdivision (i) of this subparagraph is an amount equal to the tax liability of the group multiplied by a

fraction, the numerator of which is the separate return tax liability of such member, and the denominator of which is the sum of the separate return tax liabilities of all the members. For purposes of this subdivision the separate return tax liability of a member is its tax liability computed as if it has filed a separate return for the year except that—

(a) Gains and losses on intercompany transactions shall be taken into account as provided in § 1.1502-13 as if a consolidated return had been filed for the year;

(b) Gains and losses relating to inventory adjustments shall be taken into account as provided in § 1.1502-18 as if a consolidated return had been filed for the year;

(c) Transactions with respect to stock, bonds, or other obligations of members shall be reflected as provided in § 1.1502-14 as if a consolidated return had been filed for the year;

(d) Excess losses shall be included in income as provided in § 1.1502-19 as if a consolidated return had been filed for the year;

(e) In the computation of the deduction under section 167, property shall not lose its character as new property as a result of a transfer from one member to another member during the year;

(f) A dividend distributed by one member to another member during the year shall not be taken into account in computing the deductions under section 243(a)(1), 244(a), 245, or 247 (relating to deductions with respect to dividends received and dividends paid);

(g) Basis shall be determined under §§ 1.1502-31 and 1.1502-32, and earnings and profits shall be determined under § 1.1502-33, as if a consolidated return had been filed for the year;

(h) Subparagraph (2) of § 1.1502-3 (f) shall apply as if a consolidated return had been filed for the year; and

(i) For purposes of subtitle A of the Code, the surtax exemption of the member shall be an amount equal to \$25,000 divided by the number of members. (However, if for the taxable year some or all of the members are component members of a controlled group of corporations (within the meaning of section 1563) and if there are other such component members who do not join in filing the consolidated return for such year, the amount to be divided among the members filing the consolidated return shall be (in lieu of \$25,000) the sum of the amounts apportioned to the component members which join in filing the consolidated return (as determined under § 1.1561-2(a)(2) or § 1.1561-3, whichever is applicable).)

If the computation of the separate return tax liability of a member under this subdivision does not result in a positive tax liability, then for purposes of this subdivision such member's separate return tax liability shall be zero.

(3) (i) The tax liability of the group (excluding the tax increases arising from the consolidation) shall be allocated on the basis of the contribution of each

member of the group to the consolidated taxable income of the group. Any tax increases arising from the consolidation shall be distributed to the several members in direct proportion to the reduction in tax liability resulting to such members from the filing of the consolidated return as measured by the difference between their tax liabilities determined on a separate return basis and their tax liabilities (determined without regard to the 2-percent increase provided by section 1503(a) and paragraph (a) of § 1.1502-30A for taxable years beginning before Jan. 1, 1964) based on their contributions to the consolidated taxable income.

(ii) For consolidated return years beginning after December 31, 1965, a member's portion of the tax liability of the group under the method of allocation provided by subdivision (i) of this subparagraph shall be determined by—

(a) Allocating the tax liability of the group in accordance with subparagraph (1)(ii) of this paragraph, but

(b) The amount of tax liability allocated to any member shall not exceed the separate return tax liability of such member, determined in accordance with subparagraph (2)(ii) of this paragraph, and

(c) The sum of the amounts which would be allocated to the members but for (b) of this subdivision (ii) shall be apportioned among the other members in direct proportion to, but limited to, the reduction in tax liability resulting to such other members. Such reduction for any member shall be the excess, if any, of (1) its separate return tax liability determined in accordance with subparagraph (2)(ii) of this paragraph, over (2) the amount allocated to such member under (a) of this subdivision (ii).

If any amount remains after being apportioned among members with a reduction in tax liability to the extent of such reduction, as provided in (c) of this subdivision (ii), such remaining amount shall, notwithstanding (b) of this subdivision (ii), be allocated to the members in accordance with the fractions determined under subparagraph (1)(ii) of this paragraph.

(4) The tax liability of the group shall be allocated in accordance with any other method selected by the group with the approval of the Commissioner. No method of allocation may be approved under this subparagraph which may result in the allocation of a positive tax liability for a taxable year, among the members who are allocated a positive tax liability for such year, in a total amount which is more or less than the tax liability of the group for such year. (However, see paragraph (d) of § 1.1502-33.)

(b) *Application of rules.*—(1) *Tax liability of the group.* For purposes of section 1552 and this section, the tax liability of the group for a taxable year shall consist of the Federal income tax liability of the group for such year determined in accordance with § 1.1502-2 or § 1.1502-30A, whichever is applicable. Thus, in the case of a carryback of a loss

or credit to such year, although the earnings and profits of the members of the group may not be adjusted until the subsequent taxable year from which the loss or credit was carried back, the effect of the carryback, for purposes of this section, shall be determined by allocating the amount of the adjustment as a part of the tax liability of the group for the taxable year to which the loss or credit is carried. For example, if a consolidated net operating loss is carried back from 1969 to 1967, the allocation of the tax liability of the group for 1967 shall be recomputed in accordance with the method of allocation used for 1967, and the changes resulting from such recomputation shall, for accrual method taxpayers, be reflected in the earnings and profits of the appropriate members in 1969.

(2) *Effect of allocation.* The amount of tax liability allocated to a corporation as its share of the tax liability of the group, pursuant to this section, shall (i) result in a decrease in the earnings and profits of such corporation in such amount, and (ii) be treated as a liability of such corporation for such amount. If the full amount of such liability is not paid by such corporation, pursuant to an agreement among the members of the group or otherwise, the amount which is not paid will generally be treated as a distribution with respect to stock, a contribution to capital, or a combination thereof, as the case may be.

(c) *Method of election.* The election under paragraph (a) (1), (2), or (3) of this section shall be made not later than the time prescribed by law for filing the first consolidated return of the group for a taxable year beginning after December 31, 1953, and ending after August 16, 1954 (including extensions thereof). If the group elects to allocate its tax liability in accordance with the method prescribed in paragraph (a) (1), (2), or (3) of this section, a statement shall be attached to the return stating which method is elected. Such statement shall be made by the common parent corporation and shall be binding upon all members of the group. In the event that the group desires to allocate its tax liability in accordance with any other method pursuant to paragraph (a) (4) of this section, approval of such method by the Commissioner must be obtained within the time prescribed above. If such approval is not obtained in such time, the group shall allocate in accordance with the method prescribed in paragraph (a) (1) of this section. The request shall state fully the method which the group wishes to apply in apportioning the tax liability. An election once made shall be irrevocable and shall be binding upon the group with respect to the year for which made and for all future years for which a consolidated return is filed or required to be filed unless the Commissioner authorizes a change to another method prior to the time prescribed by law for filing the return for the year in which such change is to be effective. However, each group may make a new election to use any one of the methods prescribed in paragraph (a) (1), (2), or

(3) of this section for its first consolidated return year beginning after December 31, 1965, or in conjunction with an election under paragraph (d) of § 1.1502-33, irrespective of its previous method of allocation under this section. If such new election is not made in conjunction with an election under paragraph (d) of § 1.1502-33 it shall be effective for the first consolidated return year beginning after December 31, 1965, and all succeeding years. (See paragraph (d) (3) of § 1.1502-33 for the method of making such new election in conjunction with an election under paragraph (d) of § 1.1502-33.) Any other such new election shall be made within the time prescribed by law for filing the consolidated return for the first taxable year beginning after December 31, 1965 (including extensions thereof), or within 60 days after (insert date these regulations are published in final form in the FEDERAL REGISTER), whichever is later. Such new election (which is not in conjunction with an election under paragraph (d) of § 1.1502-33) shall be made by attaching a statement to the consolidated return for the first taxable year beginning after December 31, 1965, or if such election is made within the time prescribed above but after such return is filed, by filing a statement with the district director with whom such return was filed.

(d) *Failure to elect.* If a group fails to make an election in its first consolidated return, or any other election, in accordance with paragraph (c) of this section, the method prescribed under paragraph (a) (1) of this section shall be applicable and shall be binding upon the group in the same manner as if an election had been made to so allocate.

(e) *Definitions.* Except as otherwise provided in this section, the terms used in this section shall have the same meaning as provided in the regulations under section 1502.

(f) *Example.* The provisions of this section may be illustrated by the following example:

Example. Corporation P is the common parent owning all of the stock of corporation S1 and S2, members of an affiliated group. A consolidated return is filed for the taxable year ending December 31, 1966, by P, S1, and S2. For 1966 such corporations had the following taxable incomes or losses computed in accordance with paragraph (a) (1) (ii) of this section:

P	-----	0
S1	-----	\$2,000
S2	-----	(1,000)

The group has not made an election under paragraph (c) of this section or paragraph (d) of § 1.1502-33. Accordingly, the method of allocation provided by paragraph (a) (1) of this section is in effect for the group. Assuming that the consolidated taxable income is equal to the sum of the members taxable income and losses, or \$1,000, the tax liability of the group for the year (assuming a 22-percent rate) is \$220, all of which is allocated to S1. S1 accordingly reduces its earnings and profits in the amount of \$220, irrespective of who actually pays the tax liability. If S1 pays the \$220 tax liability there will be no further effect upon the income, earnings and profits, or the basis of stock of any member. If, however, P pays the \$220 tax liability (and such payment is not in fact a loan from

P to S1), then P shall be treated as having made a contribution to the capital of S1 in the amount of \$220. On the other hand, if S2 pays the \$220 tax liability (and such payment is not in fact a loan from S2), then S2 shall be treated as having made a distribution with respect to its stock to P in the amount of \$220, and P shall be treated as having made a contribution to the capital of S1 in the amount of \$220.

[F.R. Doc. 68-1898; Filed, Feb. 14, 1968; 8:48 a.m.]

DEPARTMENT OF LABOR

Office of Federal Contract Compliance

[41 CFR Ch. 60]

OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS

Notice of Proposed Rule Making

Chapter 60 of Title 41 of the Code of Federal Regulations was originally issued by the President's Committee on Equal Employment Opportunity for the purpose of implementing Executive Order 10925 (3 CFR, 1959-63 Comp., p. 448) which provided for the promotion and insurance of equal employment opportunity on Government contracts for all persons without regard to race, creed, color, or national origin. Subsequently, the Committee revised this part in order to implement, in addition, Executive Order 11114 (3 CFR, 1959-63 Comp., p. 774) which provided certain amendments to Executive Order 10925 and extended its requirements to certain contracts for construction financed with assistance from the Federal Government. Parts II and III of Executive Order 11246 (30 F.R. 12319, Sept. 28, 1965) vested in the Secretary of Labor the functions related to Government contracts and federally assisted construction contracts previously exercised by the President's Committee on Equal Employment Opportunity. Section 201 of Executive Order 11246 provides that the Secretary of Labor shall adopt rules, regulations, and orders as he deems necessary and appropriate to achieve the purposes of the order. Temporary regulations were adopted effective October 24, 1965 (30 F.R. 13441), continuing in effect the previous regulations of the President's Committee on Equal Employment Opportunity, and orders were issued effective June 1, 1966 (31 F.R. 6881), and May 9, 1967 (32 F.R. 7439). Permanent regulations which include the substance of these orders and accomplish other amendments and revisions are proposed herein.

Persons interested in the proposals are hereby invited to submit written data, views, or argument concerning them. Such statements should be filed by mail not later than March 15, 1968, with the Director of the Office of Federal Contract Compliance, U.S. Department of Labor, 14th and Constitution Avenue NW., Washington, D.C. 20210.

It is proposed to revoke Orders No. (C-1) and (C-2) of the President's Committee on Equal Employment Opportunity, dated June 12, 1961, and the orders