

Commission Act, and which contain any of the false, misleading or deceptive representations prohibited in this order, or which are designed for use, or could be used, to carry out or enhance the practices prohibited in this order.

7. Failing to deliver a copy of this order to cease and desist to all operating divisions of the corporate respondent and to all officers, managers, and salesmen, both present and future, of each franchised dealer, distributor, and licensee; and to any other person now engaged or who becomes engaged in the sale of meat or other food products as respondents' agent, representative, or employee; and to secure a signed statement from each of said persons acknowledging receipt of a copy thereof.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Issued: May 24, 1968.

By the Commission.

[SEAL] JOSEPH W. SHEA,
Secretary.

[F.R. Doc. 68-7350; Filed, June 20, 1968;
8:46 a.m.]

Title 8—ALIENS AND NATIONALITY

Chapter I—Immigration and Naturalization Service, Department of Justice

PART 204—PETITION TO CLASSIFY ALIEN AS IMMEDIATE RELATIVE OF A U.S. CITIZEN OR AS A PREFERRED IMMIGRANT

Filing of Visa Petition

Reference is made to the notice of proposed rule making which was published in the FEDERAL REGISTER on May 21, 1968 (33 F.R. 7498), pursuant to section 553 of Title 5 of the United States Code and in which there were set out the terms of a proposed amendment to § 204.1(a) relating to the filing of visa petitions. Representations which were received concerning the proposed rule of May 21, 1968, have been considered. The proposed rule as set out below is hereby adopted:

Paragraph (a) *Relative* of § 204.1 *Petition* is amended by adding the following sentence at the end thereof: "Notwithstanding the fact that the beneficiary may be a native of an independent foreign country of the Western Hemisphere or of the Canal Zone, a petition to accord the beneficiary classification as an immediate relative under section 201 (b) of the Immigration and Nationality Act (including an immediate relative referred to in section 21(e) of the Act of October 3, 1965) shall be filed when the beneficiary is the parent of a United States citizen who is at least 21 years of age, or is the spouse or child of a United States citizen."

The basis and purpose of the above-prescribed rule is to provide for the filing of a visa petition to accord immediate relative status for a beneficiary who is a native of an independent foreign country of the Western Hemisphere or of the Canal Zone on or after July 1, 1968.

This order shall be effective on July 1, 1968. Compliance with the provisions of section 553 of Title 5 of the United States Code (Public Law 89-554, 80 Stat. 383), as to delayed effective date, is unnecessary in this instance because the amendment is an interpretative rule.

(Sec. 103, 66 Stat. 173; 8 U.S.C. 1103)

Dated: June 17, 1968.

RAYMOND F. FARRELL,
Commissioner of
Immigration and Naturalization.

[F.R. Doc. 68-7364; Filed, June 20, 1968;
8:48 a.m.]

Title 21—FOOD AND DRUGS

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

SUBCHAPTER A—GENERAL

PART 3—STATEMENTS OF GENERAL POLICY OR INTERPRETATION

Artificially Red-Dyed Yellow Varieties of Sweetpotatoes

In the FEDERAL REGISTER of March 5, 1968 (33 F.R. 4144), a statement of policy was proposed under which artificially red-dyed yellow varieties of sweetpotatoes would be deemed adulterated within the meaning of section 402(b) of the Federal Food, Drug, and Cosmetic Act and would be subject to appropriate regulatory action.

In response to the proposal, comments (20) were submitted by consumers, associations of sweetpotato growers, individual growers, an agricultural consultant, a farming equipment company, members of Congress, and State authorities. Of these, four favored the policy as proposed, seven recommended that it be expanded to apply to all varieties of sweetpotatoes, and four recommended that it be expanded to apply to all varieties of sweetpotatoes and to white (Irish) potatoes.

Eight of the comments included information indicating that the practice of artificially coloring sweetpotatoes deceives consumers not only as to the variety but also as to the quality of potatoes.

Five of the comments were adverse to the proposal as follows: (1) Objected but gave no reason; (2) stated that a dye is useful to restore the natural coloring of the potato that is removed during the washing process; (3) stated that a dye increases the sale of potatoes; (4) stated that prohibition of such use of dye will result in great loss to the sweetpotato industry; and (5) stated that such use of dye permits the packer to pack a standard and uniform product from potatoes that are naturally different in outward appearance.

The Commissioner of Food and Drugs concludes that:

A. Those who commented adversely on the proposal did not provide sufficient information to support their contentions.

B. Sufficient information is lacking at this time to support an expansion of the proposed policy to cover all sweet and white potatoes.

C. The proposal should be adopted as set forth below.

Accordingly, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (secs. 402(b), 701(a), 52 Stat. 1046-47, 1055; 21 U.S.C. 342(b), 371(a)) and under authority delegated to the Commissioner (21 CFR 2.120), the following new section is added to Part 3:

§ 3.69 Artificially red-dyed yellow varieties of sweetpotatoes.

(a) It has been the practice of some growers, packers, and distributors of yellow varieties of sweetpotatoes to artificially color the skins of such potatoes with a red dye. Surveys made by the Food and Drug Administration and letters received by the Administration from consumers reveal that this practice can deceive those persons who prefer the naturally red varieties of sweetpotatoes. Also, representatives of the red sweetpotato industry have alleged that some consumers refuse to purchase any red sweetpotatoes since they cannot distinguish between the naturally red ones and those artificially colored with red dye.

(b) The Food and Drug Administration concludes, therefore, that yellow varieties of sweetpotatoes artificially colored with a red dye are adulterated within the meaning of section 402(b) of the Federal Food, Drug, and Cosmetic Act.

(c) The Food and Drug Administration will consider appropriate regulatory action regarding such adulterated sweetpotatoes shipped in interstate commerce if the act of adulterating the potatoes occurs after 90 days following the date of publication of this statement of policy in the FEDERAL REGISTER.

(Secs. 402(b), 701(a), 52 Stat. 1046-47, 1055; 21 U.S.C. 342(b), 371(a))

Dated: June 14, 1968.

J. K. KIRK,
Associate Commissioner
for Compliance.

[F.R. Doc. 68-7393; Filed, June 20, 1968;
8:50 a.m.]

SUBCHAPTER B—FOOD AND FOOD PRODUCTS PART 120—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

1-Methoxycarbonyl-1-Propen-2-yl Dimethylphosphate and Its Beta Isomer

No comments were received in response to the notice published in the FEDERAL REGISTER of April 17, 1968 (33

F.R. 5884), proposing establishment of a tolerance of 1 part per million for residues of the insecticide 1-methoxycarbonyl-1-propen-2-yl dimethylphosphate and its beta isomer in or on parsley. Also, no requests were received to refer the proposal to an advisory committee. Accordingly, the Commissioner of Food and Drugs concludes that the proposed amendment should be adopted.

Therefore, by virtue of the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (sec. 408(e), 68 Stat. 514; 21 U.S.C. 346a(e)) and delegated to the Commissioner (21 CFR 2.120), § 120.157 is amended by adding "parsley" to the paragraph "1.0 part per million * * *" which as changed reads as follows:

§ 120.157 1-Methoxycarbonyl-1-propen-2-yl dimethylphosphate and its beta isomer; tolerances for residues.

1.0 part per million in or on alfalfa, artichokes, broccoli, brussels sprouts, cabbage, cauliflower, celery, cherries, clover, collards, corn forage, garden beets (including tops), kale, mustard greens, parsley, peaches, pea vines, plums, raspberries, sorghum forage, sorghum grain, spinach, strawberries, turnip tops.

Any person who will be adversely affected by the foregoing order may at any time with 30 days from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington, D.C. 20201, written objections thereto, preferably in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

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

(Sec. 408(e), 68 Stat. 514; 21 U.S.C. 346a(e))

Dated: June 13, 1968.

J. K. KIRK,
Associate Commissioner
for Compliance.

[F.R. Doc. 68-7394; Filed, June 20, 1968;
8:50 a.m.]

Title 22—FOREIGN RELATIONS

Chapter VI—U.S. Arms Control and Disarmament Agency

PART 601—CONDUCT OF EMPLOYEES

PART 603—STATEMENT OF ORGANIZATION

Miscellaneous Amendments

Paragraph (b) of § 601.735-13 is deleted in its entirety and paragraph (c) is redesignated paragraph (b); footnote 1 to paragraph 4 of § 601.735-35 having been superseded by the amended text of § 601.735-31 is deleted in its entirety; the heading and text of § 601.735-31 are revised to clarify general policy with regard to teaching, lecturing or writing.

§ 601.735-13 Outside employment and other activities.

(b) It is further required that:

(1) The employee's performance in his ACDA position not be adversely affected by the outside work.

(2) The employee's outside work not reflect discredit on the Government or on ACDA.

(3) The employee shall not accept a fee, compensation, gift, payment of expense, or any other thing or monetary value in circumstances in which acceptance may result in, or create the appearance of, conflicts of interest.

§ 601.735-31 General policy.

Employees are encouraged to engage in teaching, lecturing, and writing that is not prohibited by law, the Executive order, this part, or the agency regulations. However, an employee shall not, either for or without compensation, engage in teaching, lecturing, or writing, including teaching, lecturing, or writing for the purpose of the special preparation of a person or class of persons for an examination of the Commission or Board of Examiners for the Foreign Service, that depends on information obtained as a result of his Government employment, except when that information has been made available to the general public or will be made available on request, or when the agency head gives written authorization for use of nonpublic information on the basis that the use is in the public interest. In addition, an employee who is a Presidential appointee covered by section 401(a) of the order shall not receive compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance the subject matter of which is devoted substantially to the responsibilities, programs, or operations of his agency, or which draws substantially on official data or ideas which have not become part of the body of public information.

§ 601.735-35 Writing for publication.

(4) The Public Affairs Adviser shall be responsible for making a final determination on the propriety of publication and, if publication is approved, on the extent of attribution or nonattribution to the Agency, the adequacy of the disclaimer if attribution is made, and the propriety of an honorarium or other form of remuneration if this factor is involved. The Public Affairs Adviser shall obtain the approval of the Office of the General Counsel on the acceptance of an honorarium and may seek the General Counsel's recommendation on other pertinent matters.

(E.O. 11222 of May 8, 1965, 30 F.R. 6469, 3 CFR, 1965 Supp.; 5 CFR 735.104; E.O. 11408 of Apr. 25, 1968, 33 F.R. 6459)

These amendments were approved by the Civil Service Commission on May 21, 1968, to be effective upon publication in the FEDERAL REGISTER.

Part 603 is amended to reflect the dissolution of the Disarmament Advisory Staff. Section 603.13 is revoked in its entirety; §§ 603.5(b) and 603.14 are amended to delete reference to the Disarmament Advisory Staff; and § 603.21 is amended to reflect the addition of responsibilities formerly under the Disarmament Advisory Staff. Part 603 is amended as set out below.

§ 603.5 Organization.

(b) The Agency's program responsibilities are primarily discharged through four bureaus—International Relations Bureau, Weapons Evaluation and Control Bureau, Science and Technology Bureau, and Economics Bureau—each of which is headed by an Assistant Director appointed by the President with the advice and consent of the Senate. The staff element participating in the policy formulation process is the Office of the General Counsel. Other organizational units with staff responsibilities are the Office of the Public Affairs Adviser, and the Executive Staff.

§ 603.13 [Reserved]

§ 603.14 Research Council.

The Council, composed of a Chairman designated by the Director; the heads of the Bureaus of Weapons Evaluation and Control, International Relations, Science and Technology, and Economics; and the heads of the Offices of the General Counsel and the Executive Director.

§ 603.21 The Executive Director.

(e) Serves as the Chairman of the Agency Research Council, responsible for promoting and coordinating the comprehensive and balanced program of research needed by the Government for arms control and disarmament policy formulation.

(f) Serves as or designates the Chairman of the Agency Program Planning Staff, responsible for developing a multi-year financial and program plan to assure that results commensurate with costs ensue from Agency research activities.

(g) Formulates and implements policies and supervisory procedures covering procurement by the Agency to assure uniform application in contractor selection and contract actions.

(h) In collaboration with the Office of the General Counsel and with the project officers of the Bureaus assigned responsibility for contract research projects, prepares Agency contracts for approval and execution by the Director.

(i) Provides reference and information support to all organizational components of the Agency, including such services as the acquisition, storage, retrieval and dissemination of technical information covering all facets of arms control and disarmament.

(j) Prepares reference aids to support research, including bibliographies, information abstracts and extracts, technical accession lists, summaries, indexes, digests, and cataloging services.

(k) Provides a technical library service.

(l) Plans the development, implementation and administration of an information indexing and retrieval program for technical inquiry response.

(m) Administers a records management program, including mail and messenger service.

(n) Monitors information service contracts and reimbursable agreements.

(o) Provides direct support to both internal and external research activities through the development and maintenance of information profiles, continuing direct liaison with other information resources and assistance with identifying and selecting appropriate information for contractor use.

(p) Makes available information to the public pursuant to the Freedom of Information Act.

(q) Revises schedule of fees, or otherwise determines user charges for general Agency application, for information made public under the Freedom of Information Act.

(Sec. 41, 75 Stat. 631, 22 U.S.C. 2581)

These amendments to Part 603 of Title 22 of the Code of Federal Regulations shall become effective as of the date of publication in the FEDERAL REGISTER.

The foregoing amendments to Parts 601 and 603 are approved.

WILLIAM C. FOSTER,
Director.

JUNE 14, 1968.

[F.R. Doc. 68-7328; Filed, June 20, 1968; 8:45 a.m.]

Title 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER A—INCOME TAX

[T.D. 6958]

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

Investment Credit Provisions

On March 20, 1968, notice of proposed rule making with respect to the amendment of the Income Tax Regulations (26 CFR Part 1) under sections 46 and 48 of the Internal Revenue Code of 1954, relating to the investment credit, was published in the FEDERAL REGISTER (33 F.R. 4742). No objection to the rules proposed having been received during the 30-day period prescribed in the notice, the amendment of the regulations as proposed is hereby adopted.

(Secs. 38(b) (76 Stat. 963; 26 U.S.C. 38(b)) and 7805 (68A Stat. 917; 26 U.S.C. 7805) of the Internal Revenue Code of 1954)

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

Approved: June 13, 1968.

STANLEY S. SURREY,
Assistant Secretary
of the Treasury.

In order to conform the Income Tax Regulations (26 CFR Part 1) to the provisions of section 3 of the Act of November 8, 1966 (Public Law 89-800, 80 Stat. 1508), relating to suspension of the investment credit; section 3 of the Act of June 13, 1967 (Public Law 90-26, 81 Stat. 57), relating to restoration of the investment credit; section 201 of the Act of November 13, 1966 (Public Law 89-809, 80 Stat. 1539); and section 2(a) of the Act of December 27, 1967 (Public Law 90-225, 81 Stat. 731), such regulations are amended as follows:

PARAGRAPH 1. Section 1.46 is amended by revising subsections (a) (2) and (b) (1), and deleting subsection (b) (3), of section 46 and by revising the historical note. These revised provisions read as follows:

§ 1.46 Statutory provisions; amount of credit.

SEC. 46. Amount of credit—(a) Determination of amount. * * *

(2) Limitation based on amount of tax. Notwithstanding paragraph (1), the credit allowed by section 38 for the taxable year shall not exceed—

(A) So much of the liability for tax for the taxable year as does not exceed \$25,000, plus

(B) For taxable years ending on or before the last day of the suspension period (as defined in section 48(j)), 25 percent of so much of the liability for tax for the taxable year as exceeds \$25,000, or

(C) For taxable years ending after the last day of such suspension period, 50 percent

of so much of the liability for tax for the taxable year as exceeds \$25,000.

In applying subparagraph (C) to a taxable year beginning on or before the last day of such suspension period and ending after the last day of such suspension period, the percent referred to in such subparagraph shall be the sum of 25 percent plus the percent which bears the same ratio to 25 percent as the number of days in such year after the last day of the suspension period bears to the total number of days in such year. The amount otherwise determined under this paragraph shall be reduced (but not below zero) by the credit which would have been allowable under paragraph (1) for such taxable year with respect to suspension period property but for the application of section 48(h) (1).

(b) Carryback and carryover of unused credits—(1) Allowance of credit. If the amount of the credit determined under subsection (a) (1) for any taxable year exceeds the limitation provided by subsection (a) (2) for such taxable year (hereinafter in this subsection referred to as "unused credit year"), such excess shall be—

(A) An investment credit carryback to each of the 3 taxable years preceding the unused credit year, and

(B) An investment credit carryover to each of the 7 taxable years following the unused credit year,

and shall be added to the amount allowable as a credit by section 38 for such years, except that such excess may be a carryback only to a taxable year ending after December 31, 1961. The entire amount of the unused credit for an unused credit year shall be carried to the earliest of the 10 taxable years to which (by reason of subparagraphs (A) and (B)) such credit may be carried, and then to each of the other 9 taxable years to the extent that, because of the limitation contained in paragraph (2), such unused credit may not be added for a prior taxable year to which such unused credit may be carried.

(3) [Repealed]

[Sec. 46 as added by sec. 2(b), Rev. Act 1962 (76 Stat. 963); as amended by sec. 201(d) (4), Rev. Act 1964 (78 Stat. 32); sec. 3, Act of Nov. 8, 1966 (Public Law 89-800, 80 Stat. 1514); sec. 2(a), Act of Dec. 27, 1967 (Public Law 90-225, 81 Stat. 731)]

PAR. 2. Section 1.46-1 is amended by revising paragraphs (b), (d), (e), (f) (1), (f) (6), and so much of (f) (8) as follows example (1) thereof. These revised provisions read as follows:

§ 1.46-1 Determination of amount.

(b) Limitation based on amount of tax—(1) In general. Notwithstanding the amount of the credit earned for the taxable year, under section 46(a) (2) the credit allowed by section 38 for the taxable year is limited to—

(i) If the liability for tax (as defined in paragraph (c) of this section) is \$25,000 or less, the liability for tax; or

(ii) If the liability for tax is more than \$25,000, then

(a) For a taxable year ending on or before March 9, 1967, the first \$25,000 of the liability for tax plus 25 percent of

the liability for tax in excess of \$25,000, and

(b) For a taxable year ending after March 9, 1967, the first \$25,000 of the liability for tax plus 50 percent of the liability for tax in excess of \$25,000.

However, such \$25,000 amount may be reduced in the case of certain married individuals filing separate returns (see paragraph (e) of this section); corporations which are members of an affiliated group (see paragraph (f) of this section); trusts and estates (see paragraph (c) of § 1.46-6); and organizations to which section 593 applies, regulated investment companies or real estate investment trusts subject to taxation under subchapter M, chapter 1 of the Code, and cooperative organizations described in section 1381(a) (see § 1.46-4). The excess of the credit earned for the taxable year over the limitation described in this paragraph for such taxable year is an unused credit which may be carried back or forward to other taxable years in accordance with § 1.46-2.

(2) *Transitional rule.* In applying subparagraph (1) (ii) (b) of this paragraph to a taxable year beginning on or before March 9, 1967, and ending after such date, the percent referred to in such subparagraph shall be the sum of 25 percent and a portion of 25 percent. The portion shall be determined by multiplying 25 percent by a fraction, the numerator of which is the number of days in such taxable year after March 9, 1967, and the denominator of which is the total number of days in such year. For example: Assume that corporation X has a taxable year beginning January 1, 1967, and ending December 31, 1967. For such year, the percent referred to in subparagraph (1) (ii) (b) is 45.342 percent, that is, 25 percent plus 20.342 percent (25 percent multiplied by 297/365).

(3) *Adjustment for suspension period property.* Under section 46(a)(2), the amount of the limitation based on amount of tax otherwise determined under such section is reduced (but not below zero) by an amount equal to the credit which would have been earned for the taxable year with respect to suspension period property (as defined in section 48(h)(2)), but for the application of section 48(h)(1). The reduction described in the preceding sentence shall be made only for the taxable year in which such suspension period property is placed in service (within the meaning of paragraph (d) of § 1.46-3).

(d) *Examples.* The application of paragraphs (a), (b), and (c) of this section may be illustrated by the following examples:

Example (1). X Corporation's qualified investment for its taxable year ending December 31, 1963, is \$2,050,000. X's credit earned for the taxable year is \$143,500 (7 percent of \$2,050,000). X's income tax for such year, computed without regard to credits against tax or tax imposed by section 531 or 541, is \$190,000. Such amount includes \$5,000 resulting from the application of section 47. X is allowed under section 33 a foreign tax

credit of \$50,000. X's liability for tax is computed as follows:

Liability for tax	
Income tax (including increase in tax under section 47, but before credits and section 531 or 541 tax)	\$190,000
Less:	
Increase in tax resulting from application of section 47	\$5,000
Foreign tax credit	50,000
	55,000
Liability for tax	135,000

Under section 46(a)(2), X's limitation based on amount of tax for the taxable year is \$52,500 (\$25,000 plus 25 percent of \$110,000). X Corporation's credit allowed by section 38 for the taxable year therefore is \$52,500. X has an unused credit for the year of \$91,000 (\$143,500 less \$52,500) which it may carry back or over to other taxable years in accordance with § 1.46-2.

Example (2). Assume the same facts as in example (1), except that X Corporation's taxable year is the fiscal year ending June 30, 1968. X's credit allowed by section 38 for such taxable year is limited to \$80,000 (\$25,000 plus 50 percent of \$110,000), and its unused credit for such year is \$63,500 (\$143,500 less \$80,000).

Example (3). Assume the same facts as in example (2). Assume further that X Corporation places in service on July 1, 1967, a machine which is suspension period property, and that the credit earned by X with respect to the machine for the taxable year would have been \$5,000 but for the provisions of section 48(h)(1). Under section 46(a)(2) the limitation otherwise determined (\$80,000) is reduced by the \$5,000 credit that X would have earned with respect to the machine but for section 48(h)(1). Thus, the credit allowed X Corporation for the taxable year is \$75,000, and X's unused credit for such year is \$68,500 (\$143,500 less \$75,000).

Example (4). Assume the same facts as in example (3), except that the credit earned by X Corporation with respect to the machine would have been \$90,000 but for the provisions of section 48(h)(1). X's credit allowed for the taxable year is zero, since the limitation otherwise determined (\$80,000) is reduced (but not below zero) by the \$90,000 credit that X would have earned with respect to the machine. Therefore, X's unused credit for such year is \$143,500.

(e) *Married individuals.* If a separate return is filed by a husband or wife, the limitation based on amount of tax under paragraph (b) of this section shall be computed by substituting a \$12,500 amount for the \$25,000 amount in applying paragraph (b)(1) of this section. However, this reduction of the \$25,000 amount to \$12,500 applies only if the taxpayer's spouse is entitled to a credit under section 38 for the taxable year of such spouse which ends with, or within, the taxpayer's taxable year. The taxpayer's spouse is entitled to a credit under section 38 either because of investment made in qualified property for such taxable year of the spouse (whether directly made by such spouse or whether apportioned to such spouse, for example, from an electing small business corporation, as defined in section 1371(b)), or because of an investment credit carry-back or carryover to such taxable year.

The determination of whether an individual is married shall be made under the principles of section 143 and the regulations thereunder.

(f) *Apportionment of \$25,000 amount among members of an affiliated group—*

(1) *In general.* In determining the limitation based on amount of tax under section 46(a)(2) in the case of an affiliated group (as defined in subparagraph (5) of this paragraph), the \$25,000 amount specified in such section shall be reduced for each member of the group by apportioning \$25,000 among the members of the group. The apportionment of the \$25,000 amount shall be made for the taxable year of each such member ending with, or within which falls, the last day of the taxable year of the common parent and, except as otherwise provided in this paragraph, shall be made among those corporations which are members of the affiliated group on such last day.

(6) *Affiliated group filing a consolidated return.* In the case of an affiliated group whose members join in filing a consolidated return for a taxable year, see § 1.1502-3(a)(3). If some members of an affiliated group join in filing a consolidated return and other members of such group do not join (such as a corporation exempt from taxation under section 501), then, unless a consent is timely filed apportioning the \$25,000 amount among the group filing the consolidated return and the other members of the affiliated group, each member of the affiliated group (including each member which joins in filing the consolidated return) shall be treated as a separate corporation for purposes of equally apportioning the \$25,000 amount under subparagraph (2)(iii) of this paragraph. In such case, the limitation based on amount of tax for the group filing the consolidated return shall be computed by substituting for the \$25,000 amount the total of the amounts apportioned to each corporation which joins in filing the consolidated return. If the group filing the consolidated return and the other members of the affiliated group adopt an apportionment plan, the group filing the consolidated return shall be treated as a single member for the purpose of applying subparagraph (2)(i) of this paragraph. Thus, for example, only one consent, executed by the common parent, to the apportionment plan is required for the group filing the consolidated return. If any member of the affiliated group which joins in the filing of the consolidated return is an organization to which section 593 applies or a cooperative organization described in section 1381(a), see paragraph (a)(3)(ii) of § 1.1502-3.

(8) *Examples.* * * *

Example (2). Assume the same facts as in example (1), except that P's taxable year ends March 31, 1968 (on which date it owns all the outstanding stock of S) and that S's taxable year ends June 30, 1968. The limitation based on amount of tax for such taxable years is computed using 50 percent rather than 25 percent.

Example (3). F, a domestic corporation exempt from taxation under section 501, files a return for its taxable year ending December 31, 1963, on which date it owns all the stock of P, a domestic corporation. P files a consolidated return as a common parent for its fiscal year ending June 30, 1964, with its two wholly owned domestic subsidiaries, S and A. The membership of the affiliated group is ascertained as of the close of December 31, 1963, the last day of the taxable year of the common parent, F, and accordingly consists of F, P, S, and A. No consent to an apportionment plan is filed. Therefore, each member is apportioned \$6,250 of the \$25,000 amount (\$25,000 divided equally among the four members). The limitation based on amount of tax for the affiliated group filing the consolidated return (P, S, and A) for the year ending June 30, 1964 (the consolidated taxable year within which December 31, 1963, falls) is computed by using \$18,750 instead of the \$25,000 amount. The \$18,750 is arrived at by adding together the \$6,250 amounts apportioned to P, S, and A. If, however, F files a timely consent, it may apportion the entire \$25,000 amount to the group filing the consolidated return (P, S, and A).

Example (4). P, a domestic corporation filing income tax returns on a calendar-year basis, owns all the stock of S, T, and U, all domestic corporations. S, T, and U file separate returns on a calendar-year basis. On June 30, 1963, S is liquidated, and therefore has a short taxable year beginning January 1, 1963, and ending June 30, 1963. S does not waive its right to its equal portion of the \$25,000 amount. For such short taxable year, the \$25,000 amount shall be reduced for S to \$6,250 (\$25,000 divided by 4, the number of corporations in the affiliated group at the close of S's short taxable year). The total amount apportionable to the members of the affiliated group of which P is the common parent for their taxable years ending December 31, 1963, is \$18,750 (\$25,000 minus the \$6,250 apportioned to S for its short taxable year ending June 30, 1963). The \$18,750 amount may be apportioned according to an apportionment plan or, if a plan is not timely filed, will be apportioned equally among P, T, and U.

PAR. 3. Section 1.46-2 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 1.46-2 Carryback and carryover of unused credit.

(a) *Allowance of unused credit as carryback or carryover.*—(1) *In general.* Section 46(b)(1) provides for carrybacks and carryovers of any unused credit. An unused credit is the excess of the credit earned for the taxable year (as defined in paragraph (a) of § 1.46-1) over the limitation based on amount of tax for such taxable year (as determined under paragraph (b) of § 1.46-1). Subject to the limitation contained in paragraph (b) of this section, an unused credit shall be added to the amount allowable as a credit under section 38 for the years to which the unused credit can be carried. The year with respect to which an unused credit arises shall be referred to in this section as the "unused credit year".

(2) *Taxable years to which unused credit may be carried.* Except as provided in subparagraphs (3) and (4) of this paragraph, an unused credit shall be an investment credit carryback to each of the 3 taxable years preceding the unused credit year and an investment credit

carryover to each of the 7 taxable years succeeding the unused credit year, except that an unused credit shall be a carryback only to taxable years ending after December 31, 1961. An unused credit must be carried first to the earliest of the 10 taxable years to which it may be carried, and then to each of the other 9 taxable years (in order of time) to the extent that the unused credit may not be added (because of the limitation contained in paragraph (b) of this section) to the amount allowable as a credit under section 38 for a prior taxable year.

(3) *Fifth taxable year following unused credit year ending on or before December 31, 1966.* If the fifth taxable year following the unused credit year ends on or before December 31, 1966, then the unused credit shall be an investment credit carryover to each of the 5 taxable years succeeding such unused credit year.

(4) *Property used predominantly in a possession of the United States.* The amount of any investment credit carryback to any taxable year ending on or before December 31, 1965, shall be determined without regard to section 48(a)(2)(B)(vii), relating to property used predominantly in a possession of the United States. See paragraph (g)(2)(vii) of § 1.48-1. For example: Assume that corporation X, a calendar year taxpayer, places in service during 1968 property described in section 48(a)(2)(B)(vii); that X's unused credit for 1968 is \$10,000; and that, but for the application of section 48(a)(2)(B)(vii), X's unused credit for 1968 would have been \$7,000. X's investment credit carryback from 1968 to 1965 is limited to \$7,000, and X's 1968 carryback to 1966 is \$3,000 plus any portion of the \$7,000 carried back to 1965 which was not allowed as a credit for such year.

(b) *Limitation on allowance of unused credit.* The amount of the unused credit from any particular unused credit year which may be added to the amount allowable as a credit under section 38 for any of the 3 preceding or 7 succeeding taxable years to which such credit may be carried shall not exceed the amount by which the limitation based on amount of tax for such preceding or succeeding taxable year exceeds the sum of (1) the credit earned for such preceding or succeeding year, and (2) other unused credits carried to such preceding or succeeding year which are attributable to unused credit years prior to the particular unused credit year. Thus, in determining the amount, if any, of an unused credit from a particular unused credit year which shall be added to the amount allowable as a credit for any preceding or succeeding taxable year, the credit earned for such preceding or succeeding taxable year, plus any unused credits originating in taxable years prior to a particular unused credit year, shall first be applied against the limitation based on amount of tax for such preceding or succeeding taxable year. To the extent the limitation based on amount of tax for the preceding or succeeding year exceeds the sum of the credit earned for such year and other unused credits

attributable to years prior to the particular unused credit year, the unused credit from the particular unused credit year shall be added to the amount allowable as a credit under section 38 for such preceding or succeeding year. To the extent that an unused credit cannot be added for a particular preceding or succeeding taxable year because of the limitation contained in this paragraph, such unused credit shall be available as a carryback or carryover to the next succeeding taxable year to which it may be carried.

(c) *Effect of net operating loss carryback from a taxable year ending on or before July 31, 1967.* If the effect of a net operating loss carryback from a taxable year ending on or before July 31, 1967, is to create an unused credit (as defined in paragraph (a)(1) of this section), such unused credit shall not be treated as an investment credit carryback. However, the full amount of the unused credit so arising shall be available for use as an investment credit carryover for the 7 taxable years (5 taxable years in a case in which paragraph (a)(3) of this section applies) following the unused credit year. Thus, assume that a calendar-year taxpayer has a credit earned for 1965 of \$25,000 and a liability for tax of the same amount. If in 1966 such taxpayer has a net operating loss which he carries back to 1965 thereby fully eliminating his taxable income and liability for tax for 1965, then the \$25,000 credit earned (no longer allowable for 1965) becomes an unused credit which, although it may not be treated as an investment credit carryback, shall be carried forward to each of the subsequent years to which it may be carried. On the other hand, if his net operating loss arose in 1967 rather than in 1966, then the \$25,000 unused credit for 1965 would be an investment credit carryback to each of the 3 taxable years preceding 1965 and an investment credit carryover to each of the subsequent years to which it may be carried.

PAR. 4. Section 1.46-4 is amended by revising paragraph (a), paragraph (b)(1), subdivision (ii) of the example in paragraph (b)(3), paragraph (c)(1), and subdivision (ii) of the example in paragraph (c)(3). These revised provisions read as follows:

§ 1.46-4 Limitations with respect to certain persons.

(a) *Mutual savings institutions.* In the case of an organization to which section 593 applies (that is, a mutual savings bank, a cooperative bank, or a domestic building and loan association)—

(1) The qualified investment with respect to each section 38 property shall be 50 percent of the amount otherwise determined under § 1.46-3, and

(2) The \$25,000 amount specified in section 46(a)(2), relating to limitation based on amount of tax, shall be reduced by 50 percent of such amount.

For example, if a domestic building and loan association places in service on January 1, 1963, new section 38 property with a basis of \$30,000 and an estimated useful

life of 6 years, its qualified investment for 1963 with respect to such property computed under § 1.46-3 is \$20,000 (66 2/3 percent of \$30,000). However, under this paragraph such amount is reduced to \$10,000 (50 percent of \$20,000). If an organization to which section 593 applies is a member of an affiliated group (as defined in section 46(a)(5)), the \$25,000 amount specified in section 46(a)(2) shall be reduced in accordance with the provisions of paragraph (f) of § 1.46-1 before such amount is further reduced under this paragraph.

(b) *Regulated investment companies and real estate investment trusts.* (1) In the case of a regulated investment company or a real estate investment trust subject to taxation under subchapter M, chapter 1 of the Code—

(i) The qualified investment with respect to each section 38 property otherwise determined under § 1.46-3, and

(ii) The \$25,000 amount specified in section 46(a)(2), relating to limitation based on amount of tax,

shall be reduced to such person's ratable share of each such amount. If a regulated investment company or a real estate investment trust is a member of an affiliated group (as defined in section 46(a)(5)), the \$25,000 amount specified in section 46(a)(2) shall be reduced in accordance with the provisions of paragraph (f) of § 1.46-1 before such amount is further reduced under this paragraph.

(3) * * *

Example. * * *

(i) Under this paragraph, corporation X's qualified investment for the taxable year 1964 with respect to such property is \$2,000, computed as follows: (a) \$20,000 (qualified investment under § 1.46-3), multiplied by (b) \$10,000 (taxable income), divided by (c) \$100,000 (taxable income plus the deduction for dividends paid). For 1964, the \$25,000 amount specified in section 46(a)(2) is reduced to \$2,500.

(c) *Cooperatives.* (1) In the case of a cooperative organization described in section 1381(a)—

(i) The qualified investment with respect to each section 38 property otherwise determined under § 1.46-3, and

(ii) The \$25,000 amount specified in section 46(a)(2), relating to limitation based on amount of tax,

shall be reduced to such cooperative's ratable share of each such amount. If a cooperative organization described in section 1381(a) is a member of an affiliated group (as defined in section 46(a)(5)), the \$25,000 amount specified in section 46(a)(2) shall be reduced in accordance with the provisions of paragraph (f) of § 1.46-1 before such amount is further reduced under this paragraph.

(3) * * *

Example. * * *

(i) Under this paragraph, cooperative X's qualified investment for the taxable year 1964 with respect to such property is \$2,000, computed as follows: (a) \$20,000 (qualified investment under § 1.46-3), multiplied by (b) \$10,000 (taxable income), divided by (c) \$100,000 (taxable income plus the sum

of the deductions allowed under sections 1382(b), 1382(c), and 522(b)(1)(B)). For 1964, the \$25,000 amount specified in section 46(a)(2) is reduced to \$2,500.

PAR. 5. Section 1.48 is amended by revising clauses (i), (v), and (vi) of, and adding a new clause (vii) to, section 48 (a)(2)(B), and by revising the historical note. These added and revised provisions read as follows:

§ 1.48 Statutory provisions; definitions; special rules.

Sec. 48 Definitions; special rules—(a) Section 38 property. * * *

(2) Property used outside the United States. * * *

(B) Exceptions. * * *

(i) Any aircraft which is registered by the Administrator of the Federal Aviation Agency and which is operated to and from the United States or is operated under contract with the United States;

(v) Any container of a U.S. person which is used in the transportation of property to and from the United States;

(vi) Any property (other than a vessel or an aircraft) of a U.S. person which is used for the purpose of exploring for, developing, removing, or transporting resources from the outer Continental Shelf (within the meaning of section 2 of the Outer Continental Shelf Lands Act, as amended and supplemented; 43 U.S.C., sec. 1331); and

(vii) Any property which is owned by a domestic corporation (other than a corporation entitled to the benefits of section 931 or 934(b)) or by a U.S. citizen (other than a citizen entitled to the benefits of section 931, 932, 933, or 934(c)) and which is used predominantly in a possession of the United States by such a corporation or such a citizen, or by a corporation created or organized in, or under the law of, a possession of the United States.

[Sec. 48 as added by sec. 2(b), Rev. Act 1962 (76 Stat. 963); as amended by sec. 203 (a)(1) and (3)(A), (b), and (c), Rev. Act 1964 (78 Stat. 33, 34); sec. 201(a), Act of Nov. 13, 1966 (Public Law 89-809, 80 Stat. 1575, 1576); sec. 3, Act of June 13, 1967 (Public Law 90-26, 81 Stat. 58)]

PAR. 6. Section 1.48-1 is amended by revising subdivisions (i) and (vi) of paragraph (g)(2) and by adding a new subdivision (vii) immediately after subdivision (vi) of such paragraph. These revised and added provisions read as follows:

§ 1.48-1 Definition of section 38 property.

(g) Property used outside the United States. * * *

(2) Exceptions. * * *

(i) Any aircraft which is registered by the Administrator of the Federal Aviation Agency, and which (a) is operated, whether on a scheduled or non-scheduled basis, to and from the United States, or (b) is placed in service by the taxpayer during a taxable year ending after March 9, 1967, and is operated under contract with the United States: *Provided*, That use of the aircraft under the contract constitutes its principal use outside the United States during the taxable year. The term "to and from the United States" is not intended to exclude an aircraft which makes flights from one

point in a foreign country to another such point, as long as such aircraft returns to the United States with some degree of frequency;

(vi) Any property (other than a vessel or an aircraft) of a U.S. person which is used for the purpose of exploring for, developing, removing, or transporting resources from the outer Continental Shelf (within the meaning of section 2 of the Outer Continental Shelf Lands Act, as amended and supplemented; 43 U.S.C., sec. 1331). Thus for example, offshore drilling equipment may be section 38 property; and

(vii) Any property placed in service after December 31, 1965 which (a) is owned by a domestic corporation (other than a corporation entitled to the benefits of section 931 or 934(b)) or by a United States citizen (other than a citizen entitled to the benefits of section 931, 932, 933, or 934(c)), and (b) is used predominantly in a possession of the United States during the taxable year by such a corporation or such a citizen, or by a corporation created or organized in, or under the law of, a possession of the United States. Thus, property placed in service after December 31, 1965, which is owned by a domestic corporation not entitled to the benefits of section 931 or 934(b), which is leased to a corporation organized under the laws of a U.S. possession, and which is used by such lessee predominantly in a possession of the United States may qualify as section 38 property. However, property which is owned by a corporation not entitled to the benefits of section 931 or 934(b) but which is leased to a domestic corporation entitled to such benefits would not qualify as section 38 property. The determination of whether property is used predominantly in a possession of the United States during the taxable year shall be made under principles similar to those described in subparagraph (1) of this paragraph. For example, if a machine is placed in service in a possession of the United States on July 1, 1966, by a calendar year taxpayer and if it is physically located in such a possession during more than 50 percent of the period beginning on July 1, 1966 and ending on December 31, 1966, then such machine shall be considered used predominantly in a possession of the United States during the taxable year 1966.

PAR. 7. Section 1.48-6 is amended by revising paragraph (c) and subparagraph (3) of the example in paragraph (e). These revised provisions read as follows:

§ 1.48-6 Estates and trusts.

(c) *Limitation based on amount of tax.* In the case of an estate or trust, the \$25,000 amount specified in section 46(a)(2), relating to limitation based on amount of tax, shall be reduced for the taxable year to—

- (1) \$25,000, multiplied by
- (2) The qualified investment with respect to the total bases of new section

38 properties plus the qualified investment with respect to the total cost of used section 38 properties, apportioned to such estate or trust under paragraph (a) of this section, divided by

(3) The qualified investment with respect to the total bases of all new section 38 properties plus the qualified investment with respect to the total cost of all used section 38 properties, apportioned among such estate or trust and its beneficiaries.

For purposes of subparagraph (3) of this paragraph, cost of used section 38 property shall not be considered as apportioned to any beneficiary to the extent that such cost is not taken into account by such beneficiary in computing qualified investment in used section 38 property.

(e) Example. * * *

Example. * * *

(3) In the case of XYZ Trust, the \$25,000 amount specified in section 46(a)(2) is reduced to \$12,500, computed as follows: (i) \$25,000, multiplied by (ii) \$39,000 (qualified investment apportioned to the trust), divided by (iii) \$78,000 (total qualified investment apportioned among such trust (\$39,000), beneficiary A (\$23,400), and beneficiary B (\$15,600)).

[F.R. Doc. 68-7183; Filed, June 20, 1968; 8:45 a.m.]

Title 29—LABOR

Chapter V—Wage and Hour Division, Department of Labor

SUBCHAPTER C—AGE DISCRIMINATION IN EMPLOYMENT

PART 860—INTERPRETATIONS

Pursuant to authority in the Age Discrimination in Employment Act of 1967 (29 U.S.C. 620), 5 U.S.C. 301, and in Secretary's Orders No. 10-68 and No. 11-68, there is hereby added to 29 CFR Chapter V, Subchapter C, a new part numbered 860 entitled "Interpretations", to read as set forth below.

These are interpretative rules, and are thus exempt from section 4 (a) and (c) of the Administrative Procedure Act (5 U.S.C. 533 (a) and (c)). I do not believe such procedure or delay will serve a useful purpose here. Accordingly, these rules will be effective immediately.

The new Part 860 reads as follows:

Sec.	
860.1	Purpose of this part.
860.91	Age discrimination within the age bracket of 40-65.
860.92	Help wanted notices or advertisements.
860.102	Bona fide occupational qualifications.
860.103	Differentiations based on reasonable factors other than age.

AUTHORITY: The provisions of this part are issued under 81 Stat. 602; 29 U.S.C. 620, 5 U.S.C. 301, Secretary's Order No. 10-68, and Secretary's Order No. 11-68.

§ 860.1 Purpose of this part.

This part is intended to provide an interpretative bulletin on the Age Dis-

crimination in Employment Act of 1967 like Subchapter B of this title relating to the Fair Labor Standards Act of 1938. Such interpretations of this Act are published to provide "a practical guide to employers and employees as to how the office representing the public interest in its enforcement will seek to apply it" (Skidmore v. Swift & Co., 323 U.S. 134, 138). These interpretations indicate the construction of the law which the Department of Labor believes to be correct, and which will guide it in the performance of its administrative and enforcement duties under the Act unless and until it is otherwise directed by authoritative decisions of the Courts or concludes, upon reexamination of an interpretation, that it is incorrect.

§ 860.91 Discrimination within the age bracket of 40-65.

(a) Although section 4 of the Act broadly makes unlawful various types of age discrimination by employers, employment agencies, and labor organizations, section 12 limits this protection to individuals who are at least 40 years of age but less than 65 years of age. Thus, for example it is unlawful in situations where this Act applies, for an employer to discriminate in hiring or in any other way by giving preference because of age to an individual 30 years old over another individual who is within the 40-65 age bracket limitation of section 12. Similarly, an employer will have violated the Act, in situations where it applies, when one individual within the age bracket of 40-65 is given job preference in hiring, assignment, promotion or any other term, condition, or privilege of employment, on the basis of age, over another individual within the same age bracket.

(b) Thus, if two men apply for employment to which the Act applies, and one is 42 and the other 52, the personnel officer or employer may not lawfully turn down either one on the basis of his age; he must make his decision on the basis of other factors, such as the capabilities and experience of the two individuals. The Act, however, does not restrain age discrimination between two individuals 25 and 35 years of age.

§ 860.92 Help wanted notices or advertisements.

(a) Section 4(e) of the Act prohibits "an employer, labor organization, or employment agency" from using printed or published notices or advertisements indicating any preference, limitation, specification, or discrimination, based on age.

(b) When help wanted notices or advertisements contain terms and phrases such as "age 25 to 35," "young," "boy," "girl," or others of a similar nature which indicate a preference for a particular age, range of ages, or for a young age group, such a term or phrase discriminates against the employment of older persons and is in violation of the Act, unless it comes within one of the exceptions, such as the one discussed in § 860.102.

(c) However, help wanted notices or advertisements which include a term or

phrase such as "college graduate," or other educational requirement, or specify a minimum age less than 40, such as "not under 18," or "not under 21," are not prohibited by the statute.

(d) The use of the phrase "state age" in help wanted notices or advertisements is not, in itself, a violation of the statute. But because the request that an applicant state his age may tend to deter older applicants or otherwise indicate a discrimination based on age, employment notices or advertisements which include the phrase "state age," or any similar term, will be closely scrutinized to assure that the request is for a permissible purpose and not for purposes proscribed by the statute.

(e) There is no provision in the statute which prohibits an individual seeking employment through advertising from specifying his own age.

§ 860.102 Bona fide occupational qualifications.

(a) Section 4(f)(1) of the Act provides that "It shall not be unlawful for an employer, employment agency, or labor organization * * * to take any action otherwise prohibited under subsections (a), (b), (c), or (e) of this section where age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business * * *"

(b) Whether occupational qualifications will be deemed to be "bona fide" and "reasonably necessary to the normal operation of the particular business", will be determined on the basis of all the pertinent facts surrounding each particular situation. It is anticipated that this concept of a bona fide occupational qualification will have limited scope and application. Further, as this is an exception it must be construed narrowly, and the burden of proof in establishing that it applies is the responsibility of the employer, employment agency, or labor organization which relies upon it.

(c) The following are illustrations of possible bona fide occupational qualifications.

(d) Federal statutory and regulatory requirements which provide compulsory age limitations for hiring or compulsory retirement, without reference to the individual's actual physical condition at the terminal age, when such conditions are clearly imposed for the safety and convenience of the public. This exception would apply, for example, to airline pilots within the jurisdiction of the Federal Aviation Agency. Federal Aviation Agency regulations do not permit airline pilots to engage in carrier operations, as pilots, after they reach age 60.

(e) A bona fide occupational qualification will also be recognized in certain special, individual occupational circumstances, e.g., actors required for youthful or elderly characterizations or roles, and persons used to advertise or promote the sale of products designed for, and directed to appeal exclusively to, either youthful or elderly consumers.