(e) Information in drug labeling and prescription drug advertisements to advise prescribers of a drug of the findings of a panel of the Academy in evaluating a claim as other than "effective" shall be presented in a prominently placed box distinctly set apart from the promotional language.

3. Section 130.9(d) is amended by adding a new subparagraph, as follows:

§ 130.9 Supplemental applications.

* * * * *

(d) * * *

(4) The addition to the package labeling, promotional labeling, or prescription drug advertisements of information adequate to inform the prescriber of a drug of the findings of a panel of the National Academy of Sciences-National Research Council, Drug Efficacy Study Group, with respect to any claim in the labeling evaluated other than "effective," in accordance with § 3.81 of this chapter.

4. Section 146.2(b)(3) is revised to read as follows:

* * * * *

§ 146.2 Requests for certification, check tests and assays, and working standards; information and samples required.

* * * * *

(b) * * *

(3) Before such person makes such change in the facilities and controls used in the manufacture, packaging, or labeling of the drug, he shall submit to the Commissioner for advance approval a full statement describing the proposed change. In the case of a proposal to use revised labeling on or within the drug package or promotional labeling containing information for use of the drug that is not the same in language and emphasis as the approved labeling, the applicant shall submit specimens for advance approval. Advance approval is not required when pursuant to a published FEDERAL REGISTER notice implementing a NAS–NRC drug efficacy study, the package labeling, other promotional labeling, or an advertisement is revised (i) to delete a claim for which there is a lack of substantial evidence of effectiveness, (ii) to modify labeling to be consistent with such notice, or (iii) to add in accord with § 3.81 of this chapter an informative statement of the findings of the National Academy of Sciences-National Research Council, Drug Efficacy Study Group, with respect to any claim in the labeling evaluated as other than "effective."

* * * * *

Effective date. This order shall become effective 30 days after its date of FEDERAL REGISTER publication.

(Secs. 502, 505, 507, 701(a); 52 Stat. 1050–53, as amended; 1055, 59 Stat. 463, as amended; 21 U.S.C. 352, 355, 357, 371(a))

Dated: May 30, 1971.

CHARLES C. EDWARDS,
Commissioner of Food and Drugs.

[FR Doc.71-7914 Filed 6-7-71;8:45 am]

PART 146c—CERTIFICATION OF CHLORTETRACYCLINE (OR TETRACYCLINE) AND CHLORTETRACYCLINE- (OR TETRACYCLINE-) CONTAINING DRUGS

Revocation of Section

In the FEDERAL REGISTER of October 9, 1969 (34 F.R. 15670), the Commissioner of Food and Drugs announced (DESI 12–14 NV) the conclusions of the Food and Drug Administration following evaluation of reports received from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group, on Polyotic (tetracycline hydrochloride crystalline ointment (ophthalmic)), marketed by American Cyanamid Co., Post Office Box 400, Princeton, N.J., 08540.

The Academy concluded that the product is effective for treating ocular infections caused by organisms sensitive to the drug, but invited supplemental new drug applications to revise the labeling for this drug to limit the claims and to present the conditions of use substantially as set forth in said announcement. The Food and Drug Administration concurred with the conclusions of the Academy.

The announcement allowed American Cyanamid Co. 6 months to submit revised labeling or adequate documentation in support of the labeling used for Polyotic Ophthalmic Ointment, and made provisions for a written comment or request for an informal conference from interested persons.

American Cyanamid Co. did not furnish any data to support the labeling used for Polyotic Ophthalmic Ointment. They reported that this product is no longer marketed. No other comments or requests for conference were received.

Accordingly, the Commissioner concludes that the antibiotic regulation should be amended to revoke provisions for the certification of this drug in that the labeling fails to include required precautionary statement. The Commissioner further concludes that the certificates of safety and effectiveness heretofore issued for such drug should be withdrawn on the basis of a nonwarranted hazard.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 507, 512, 59 Stat. 463, as amended, 82 Stat. 343–51; 21 U.S.C. 357, 360b) and under authority delegated to the Commissioner (21 CFR 2.120), Part 146c is amended by deleting paragraph (c)(3) from § 146c.202 *Chlortetracycline hydrochloride ointment; chlortetracycline calcium ointment; chlortetracycline calcium cream; tetracycline hydrochloride ointment (tetracycline hydrochloride in oil suspension); tetracycline ointment (tetracycline cream)*. Certificates of safety and effectiveness issued under these regulations are also revoked.

Any person who would be adversely affected by the removal of any such drug on the market may file within 30 days after publication hereof in the FEDERAL REGISTER objections to this order stating reasonable grounds and requesting a hearing on such objections. A statement of reasonable grounds for a hearing shall identify the claimed errors in the NAS/NRC evaluation and identify any adequate and well-controlled investigations on the basis of which it could reasonably be concluded that the drug would have the effectiveness claimed and would be safe for its intended use.

Objections and requests for a hearing should be filed (preferably in quadruplicate) with the Hearing Clerk, Department of Health, Education, and Welfare, Room 6–62, 5600 Fishers Lane, Rockville, Md. 20852.

Effective date. This order shall become effective 40 days after its date of publication in the FEDERAL REGISTER. If objections are filed the effective date will be extended for a ruling thereon.

(Secs. 507, 512, 59 Stat. 463, as amended, 82 Stat. 343–51; 21 U.S.C. 357, 360b)

Date: May 27, 1971.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.71-7915 Filed 6-7-71;8:45 am]

Title 24—HOUSING AND HOUSING CREDIT

Subtitle A—Office of the Secretary, Department of Housing and Urban Development

[Docket No. R–71–115]

PART 17—ADMINISTRATIVE CLAIMS

Subpart A—Claims Against Government Under Federal Tort Claims Act

MISCELLANEOUS AMENDMENTS

Part 17 of Subtitle A of Title 24 of the Code of Federal Regulations is amended in the following respects:

§ 17.6 [Amended]

(1) Section 17.6, paragraph (a)(5), in the last sentence is revised to read: " * * * The head of the organizational unit will transmit the entire file to the General Counsel."

(2) Section 17.7 is revised to read as follows:

§ 17.7 Authority to adjust, determine, compromise, and settle claims.

The General Counsel, the Deputy General Counsel, and such employees of the Office of the General Counsel as may be designated by the General Counsel, are authorized to consider, ascertain, adjust, determine, compromise, and settle claims pursuant to the Federal Tort Claims Act, 28 U.S.C. 2671, and the regulations contained in 28 CFR Part 14 and in this subpart.

§ 17.10 [Deleted]

(3) Section 17.10 is deleted.

(Sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d))

Effective date. This amendment shall be effective as of June 9, 1971.

GEORGE ROMNEY,
Secretary of Housing and Urban Development.

[FR Doc.71-7945 Filed 6-7-71;8:47 am]

Title 42—PUBLIC HEALTH

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

SUBCHAPTER F—QUARANTINE, INSPECTION, LICENSING

PART 72—INTERSTATE QUARANTINE

Subpart A—Definitions and General Provisions

Subpart G—Land and Air Conveyances: Equipment and Operation

REVISIONS REGARDING DISCHARGE OF WASTES FROM RAILROAD CONVEYANCES AND OTHER MATTERS

In the FEDERAL REGISTER of October 15, 1970 (35 F.R. 16179), the Commissioner of Food and Drugs proposed that the Public Health Service interstate quarantine regulations (42 CFR Part 72) be amended by redefining "communicable disease" in § 72.1(b), by adding two inadvertently omitted diseases, leprosy and relapsing fever, to the list of diseases in § 72.2, and by revising § 72.154 to prohibit discharge of human wastes, garbage, etc., from railroad conveyances except at servicing areas approved by the Commissioner of Food and Drugs. The proposed revision of § 72.154 was in terms of "new railroad conveyances" which were defined as railroad conveyances placed into service after December 31, 1971.

The proposal provided for the filing of comments within 30 days after FEDERAL REGISTER publication and this time was extended to December 14, 1970, by a notice published November 28, 1970 (35 F.R. 18203).

In response, comments were received regarding the proposed revision of § 72.154 suggesting clarifying technical changes, suggesting extension of the scope of the revision to include existing railroad conveyances, and objecting to the cost of equipping all railroad conveyances with retention type equipment.

Having considered the comments, the Commissioner concludes that:

1. The need for regulating such waste discharging has been clearly established.

2. Although the total cost to the railroad industry (and ultimately to passengers and taxpayers) is recognized to be significant, the impact on individual passengers and taxpayers will be minimal.

3. In consideration of the impact on the industry, provision should be made to allow for an extension of time for full compliance in cases of demonstrated need.

4. The revision of § 72.154 should be expanded to cover existing as well as new railroad conveyances and "new" should pertain to conveyances introduced into service after July 1, 1972.

5. The proposal, with changes, should be adopted as set forth below.

Therefore, pursuant to provisions of the Public Health Service Act (sec. 361, 58 Stat. 703; 42 U.S.C. 264) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120), §§ 72.1(b), 72.2, and 72.154 are revised to read as follows:

§ 72.1 General definitions.

* * * * *

(b) *Communicable diseases.* Illnesses due to infectious agents or their toxic products, which may be transmitted from a reservoir to a susceptible host either directly as from an infected person or animal or indirectly through the agency of an intermediate plant or animal host, vector, or the inanimate environment.

§ 72.2 Apprehension and detention of persons with specific diseases.

Regulations prescribed in this part are not applicable to the apprehension, detention, or conditional release of individuals except for the purpose of preventing the introduction, transmission, or spread of the following diseases: Anthrax, chancroid, cholera, dengue, diptheria, granuloma inguinale, infectious encephalitis, favus, gonorrhea, leprosy, lymphogranuloma venereum, meningococcus meningitis, plague, poliomyelitis, psittacosis, relapsing fever, ringworm of the scalp, scarlet fever, streptococcic sore throat, smallpox, syphilis, trachoma, tuberculosis, typhoid fever, typhus, and yellow fever.

* * * * *

§ 72.154 Railroad conveyances; discharge of wastes.

(a) *New railroad conveyances.* Human wastes, garbage, waste water, or other polluting materials shall not be discharged from any new railroad conveyance except at servicing areas approved by the Commissioner of Food and Drugs. In lieu of retention pending discharge at approved servicing areas, human wastes, garbage, waste water, or other polluting materials that have been suitably treated to prevent the spread of communicable diseases may be discharged from such conveyances, except at stations. For the purposes of this section, "new railroad conveyance" means any such conveyance placed into service for the first time after July 1, 1972, and the terms "waste water or other polluting materials" do not include drainage of drinking water taps or lavatory facilities.

(b) *Nonnew railroad conveyances.* Human waste, garbage, waste water, or other polluting materials shall not be discharged from any railroad conveyance after December 31, 1974, except at servicing areas approved by the Commissioner of Food and Drugs. If justified, an extension may be granted by the Commissioner of Food and Drugs, but in no case beyond December 31, 1977. In lieu of retention pending discharge at approved servicing areas, human wastes, garbage, waste water, or other polluting materials that have been suitably treated to prevent the spread of communicable diseases may be discharged from such conveyances, except at stations. The terms "waste water or other polluting materials" do not include drainage of drinking water taps or lavatory facilities.

(c) *Toilets.* When railroad conveyances, occupied or open to occupancy by travelers, are at a station or servicing area, toilets shall be kept locked unless means are provided to prevent contamination of the area or station.

(d) *Requests for approvals or extensions.* Requests for approval of servicing areas or extensions of compliance time under the provisions of this section should be addressed to the Commissioner, Food and Drug Administration, 5600 Fishers Lane, Rockville, Md. 20852.

Effective date. This order shall become effective 30 days after the date of its FEDERAL REGISTER publication.

(Sec. 361, 58 Stat. 703; 42 U.S.C. 264).

Dated: June 1, 1971.

CHARLES C. EDWARDS,
Commissioner of Food and Drugs.

[FR Doc.71-7920 Filed 6-7-71;8:46 am]

Title 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury

[T.D. 7122]

SUBCHAPTER A—INCOME TAX

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

SUBCHAPTER F—PROCEDURE AND ADMINISTRATION

PART 301—PROCEDURE AND ADMINISTRATION

Returns and Annual Reports of Exempt Organizations

In order to conform the Income Tax Regulations (26 CFR Part 1) and the Regulations on Procedure and Administration (26 CFR Part 301) under sections 6033, 6056, and 6104 of the Internal Revenue Code of 1954 to sections 101(d)(1), (2), and (3), 101(e)(1), (2), and (3), and 101(j)(30) and (36) of the Tax Reform Act of 1969 (83 Stat. 519), such regulations are amended as follows:

PARAGRAPH 1. Paragraph (c) of § 1.6001-1 is amended to read as follows:

§ 1.6001-1 Records.

* * * * *

(c) *Exempt organizations.* In addition to such permanent books and records as

are required by paragraph (a) of this section with respect to the tax imposed by section 511 on unrelated business income of certain exempt organizations, every organization exempt from tax under section 501(a) shall keep such permanent books of account or records, including inventories, as are sufficient to show specifically the items of gross income, receipts and disbursements. Such organizations shall also keep such books and records as are required to substantiate the information required by section 6033. See section 6033 and § 1.6033–1.

PAR. 2. Section 1.6033 is amended to read as follows:

SEC. 6033. *Returns by exempt organizations*—(a) *Organizations required to file*—(1) *In general.* Except as provided in paragraph (2), every organization exempt from taxation under section 501(a) shall file an annual return, stating specifically the items of gross income, receipts, and disbursements, and such other information for the purpose of carrying out the internal revenue laws as the Secretary or his delegate may by forms or regulations prescribe, and shall keep such records, render under oath such statements, make such other returns, and comply with such rules and regulations as the Secretary or his delegate may from time to time prescribe; except that, in the discretion of the Secretary or his delegate, any organization described in section 401(a) may be relieved from stating in its return any information which is reported in returns filed by the employer which established such organization.

(2) *Exceptions from filing*—(A) *Mandatory exceptions.* Paragraph (1) shall not apply to—

(i) Churches, their integrated auxiliaries, and conventions or associations of churches,

(ii) Any organization (other than a private foundation, as defined in section 509(a)) described in subparagraph (C), the gross receipts of which in each taxable year are normally not more than $5,000, or

(iii) The exclusively religious activities of any religious order.

(B) *Discretionary exceptions.* The Secretary or his delegate may relieve any organization required under paragraph (1) to file an information return from filing such a return where he determines that such filing is not necessary to the efficient administration of the internal revenue laws.

(C) *Certain organizations.* The organizations referred to in subparagraph (A)(ii) are—

(i) A religious organization described in section 501(c)(3);

(ii) An educational organization described in section 170(b)(1)(A)(ii);

(iii) A charitable organization, or an organization for the prevention of cruelty to children or animals, described in section 501(c)(3), if such organization is supported, in whole or in part, by funds contributed by the United States or any State or political subdivision thereof, or is primarily supported by contributions of the general public;

(iv) An organization described in section 501(c)(3), if such organization is operated, supervised, or controlled by or in connection with a religious organization described in clause (i);

(v) An organization described in section 501(c)(8); and

(vi) An organization described in section 501(c)(1), if such organization is a corporation wholly owned by the United States or any agency or instrumentality thereof, or a wholly owned subsidiary of such a corporation.

(b) *Certain organizations described in section 501(c)(3).* Every organization described in section 501(c)(3) which is subject to the requirements of subsection (a) shall furnish annually information, at such time and in such manner as the Secretary or his delegate may by forms or regulations prescribe, setting forth—

(1) Its gross income for the year,

(2) Its expenses attributable to such income and incurred within the year,

(3) Its disbursements within the year for the purposes for which it is exempt,

(4) A balance sheet showing its assets, liabilities, and net worth as of the beginning of such year,

(5) The total of the contributions and gifts received by it during the year, and the names and addresses of all substantial contributors,

(6) The names and addresses of its foundation managers (within the meaning of section 4946(b)(1)) and highly compensated employees, and

(7) The compensation and other payments made during the year to each individual described in paragraph (6).

(c) *Cross reference.* For provisions relating to statements, etc., regarding exempt status of organizations, see section 6001.

For reporting requirements as to certain liquidations, dissolutions, terminations, and contractions, see section 6043(b). For provisions relating to penalties for failure to file a return required by this section, see section 6652(d).

[Sec. 6033 as amended by sec. 75(b), Technical Amendments Act 1958 (72 Stat. 1661); sec. 101(d), Tax Reform Act 1969 (83 Stat. 519)]

PAR. 3. Section 1.6033–1 is amended by amending the title and by adding a new paragraph (j) at the end thereof. Such amended and added provisions read as follows:

§ 1.6033–1 Returns by exempt organizations; taxable years beginning before January 1, 1970.

* * * * *

(j) *Effective date.* The provisions of this section shall apply with respect to returns filed for taxable years beginning before January 1, 1970.

PAR. 4. There is inserted immediately after section 1.6033–1 the following new section:

§ 1.6033–2 Returns by exempt organizations; taxable years beginning after December 31, 1969.

(a) *In general.* (1) Except as provided in section 6033(a)(2) and paragraph (g) of this section, every organization exempt from taxation under section 501(a) shall file an annual information return specifically setting forth its items of gross income, gross receipts and disbursements, and such other information as may be prescribed in the instructions issued with respect to the return. Except as provided in paragraph (d) of this section, such return shall be filed annually regardless of whether such organization is chartered by, or affiliated or associated with, any central, parent, or other organization.

(2) (i) Except as otherwise provided in this paragraph and paragraph (g) of this section, every organization exempt from taxation under section 501(a), and required to file a return under section 6033 and this section, other than an organization described in section 401(a) or 501(d), shall file its annual return on Form 990. Form 990 consists of several parts, not all of which are required to be completed by all organizations required to file such form. In general, (*a*) organizations (other than private foundations) which have gross receipts for the year of $10,000 or less are required to provide less detailed information about their activities on the Form 990, and (*b*) organizations with gross receipts for the year of more than $10,000, and private foundations, are required to document their activities more thoroughly.

(ii) The information generally required to be furnished by an organization exempt under section 501(a) is:

(*a*) Its gross income for the year. For this purpose, gross income includes tax-exempt income, but does not include contributions, gifts, grants, and similar amounts received. Whether an item constitutes a contribution, gift, grant, or similar amount depends upon all the surrounding facts and circumstances. The computation of gross income shall be made by subtracting the cost of goods sold from all receipts other than gross contributions, gifts, grants, and similar amounts received and nonincludible dues and assessments from members and affiliates.

(*b*) To the extent not included in gross income, its dues and assessments from members and affiliates for the year.

(*c*) Its expenses incurred within the year attributable to gross income.

(*d*) Its disbursements (including prior years' accumulations) made within the year for the purposes for which it is exempt.

(*e*) A balance sheet showing its assets, liabilities, and net worth as of the beginning and end of such year. Detailed information relating to the assets, liabilities, and net worth shall be furnished on the schedule provided for this purpose on the Form 990. Such schedule shall be supplemented by attachments where appropriate.

(*f*) The total of the contributions, gifts, grants and similar amounts received by it during the taxable year, and the names and addresses of all persons who contributed, bequeathed, or devised $5,000 or more (in money or other property) during the taxable year. In the case of a private foundation (as defined in section 509(a)), the names and addresses of all persons who became substantial contributors (as defined in section 507(d)(2)) during the taxable year shall be furnished. In addition, for its first taxable year beginning after December 31, 1969, each private foundation shall furnish the names and addresses of all persons who became substantial contributors before such taxable year. For special rules with respect to contributors and donors, see subdivision (iii) of this subparagraph.

(*g*) The names and addresses of all officers, directors, or trustees (or any person having responsibilities or powers similar to those of officers, directors, or trustees) of the organization, and, in

the case of a private foundation, all persons who are foundation managers, within the meaning of section 4946(b)(1). Organizations described in section 501(c)(3) must also attach a schedule showing the names and addresses of the five employees (if any) who received the greatest amount of annual compensation in excess of $30,000; the total number of other employees who received annual compensation in excess of $30,000; the names and addresses of the five independent contractors (if any) who performed personal services of a professional nature for the organization (such as attorneys, accountants, and doctors, whether such services are performed by such persons in their individual capacity or as employees of a professional service corporation) and who received in excess of $30,000 from the organization for the year for the performance of such services; and the total number of other such independent contractors who received in excess of $30,000 for the year for the performance of such services.

(*h*) A schedule showing the compensation and other payments made during the organization's annual accounting period (or during the calendar year ending within such period) which are includible in the gross income of each individual whose name is required to be listed in (*g*) of this subdivision.

(iii) *Special rules.* In providing the names and addresses of contributors and donors under subdivision (ii)(*f*) of this subparagraph—

(*a*) An organization described in section 501(c)(3) which meets the 33⅓ percent-of-support test of the regulations under section 170(b)(1)(A)(vi) (without regard to whether such organization otherwise qualifies as an organization described in section 170(b)(1)(A)) is required to provide the name and address of a person who contributed, bequeathed, or devised $5,000 or more during the year only if his amount is in excess of 2 percent of the total contributions, bequests and devises received by the organization during the year.

(*b*) An organization other than a private foundation is required to report only the names and addresses of contributors of whom it has actual knowledge. For instance, an organization need not require an employer who withholds contributions from the compensation of employees and pays over to the organization periodically the total amounts withheld, to specify the amounts paid over with respect to a particular employee. In such case, unless the organization has actual knowledge that a particular employee gave more than $5,000 (and in excess of 2 percent if (*a*) of this subdivision is applicable), the organization need report only the name and address of the employer, and the total amount paid over by him.

(*c*) Separate and independent gifts made by one person in a particular year need be aggregated to determine if his contributions and bequests exceed $5,000 (and in excess of 2 percent if (*a*) of this subdivision is applicable), only if such gifts are of $1,000 or more.

(*d*) (*1*) Organizations described in section 501(c)(8) or (10) (and, for taxable years beginning after December 31, 1970, organizations described in section 501(c)(7)) that receive contributions or bequests to be used exclusively for purposes described in section 170(c)(4), 2055(a)(3), or 2522(a)(3), must attach a schedule with respect to all gifts which aggregate more than $1,000 from any one person showing the name of the donor, the amount of the contribution or bequest, the specific purpose for which such amount was received, and the specific use to which such amount was put. In the case of an amount set aside for such purposes, the organization shall indicate the manner in which such amount is held (for instance, whether such amount is commingled with amounts held for other purposes). If the contribution or bequest was transferred to another organization, the schedule must include the name of the transferee organization, a description of the nature of such organization, and a description of the relationship between the transferee and transferor organizations.

(*2*) For taxable years beginning after December 31, 1970, such organizations must also attach a statement showing the total dollar amount of contributions and bequests received for such purposes which are $1,000 or less.

(iv) *Listing of States.* A private foundation is required to attach to its Form 990 a list of all States—

(*a*) To which the organization reports in any fashion concerning its organization, assets, or activities, or

(*b*) With which the organization has registered (or which it has otherwise notified in any manner) that it intends to be, or is, a charitable organization or a holder of property devoted to a charitable purpose.

(3) Every employee's trust described in section 401(a) which is exempt from taxation under section 501(a) shall file an annual return on Form 990–P. The return shall include the information required by paragraph (b)(5)(ii) of § 1.401–1. In addition, the trust must file the information required to be filed by the employer pursuant to the provisions of § 1.404(a)–2, unless the employer has notified the trustee in writing that he has filed or will timely file such information. If the trustee has received such notification from the employer, then such notification, or a copy thereof, shall be retained by the trust as a part of its records.

(b) *Accounting period for filing return.* A return on Form 990 shall be on the basis of the established annual accounting period of the organization. If the organization has no such established accounting period, such return shall be on the basis of the calendar year.

(c) *Returns when exempt status not established.* An organization claiming an exempt status under section 501(a) prior to the establishment of such exempt status under section 501 and § 1.501(a)–1, shall file a Form 990 in accordance with the instructions applicable thereto. In such case the organization must indicate on such Form 990 that the return is being filed in the belief that the organization is exempt under section 501(a), but that the Internal Revenue Service has not yet recognized such exemption.

(d) *Group returns.* (1) A central, parent, or like organization (referred to in this paragraph as "central organization"), exempt under section 501(a) and described in section 501(c) (other than a private foundation), although required to file a separate annual return for itself under section 6033 and paragraph (a) of this section, may file annually, in addition to such separate annual return, a group return on Form 990. Such group return may be filed for two or more of the local organizations, chapters, or the like (referred to in this paragraph as "local organizations") which are (i) affiliated with such central organization at the close of its annual accounting period, (ii) subject to the general supervision or control of the central organization, and (iii) exempt from taxation under the same paragraph of section 501(c) of the Code, although the local organizations are not necessarily exempt under the paragraph under which the central organization is exempt. Such group return may not be filed for a local organization which is a private foundation.

(2) (i) The filing of the group return shall be in lieu of the filing of a separate return by each of the local organizations included in the group return. The group return shall include only those local organizations which in writing have authorized the central organization to include them in the group return, and which have made and filed, with the central organization, their statements, specifically stating their items of gross income, receipts, and disbursements, and such other information relating to them as is required to be stated in the group return. Such an authorization and statement by a local organization shall be made under the penalties of perjury, shall be signed by a duly authorized officer of the local organization in his official capacity, and shall contain the following statement, or a statement of like import: "I hereby declare under the penalties of perjury that this authorization (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is true, correct and complete and made in good faith." Such authorization and statement with respect to a local organization shall be retained by the central organization until the expiration of 6 years after the last taxable year for which a group return filed by such central organization includes such local organization.

(ii) There shall be attached to the group return and made a part thereof a schedule showing the name, address, and employer identification number of each of the local organizations and the total

number thereof included in such return, and a schedule showing the name, address, and employer identification number of each of the local organizations and the total number thereof not included in the group return.

(3) The group return shall be on the basis of the established annual accounting period of the central organization. Where such central organization has no established annual accounting period, such return shall be on the basis of the calendar year. The same income, receipts, and disbursements of a local organization shall not be included in more than one group return.

(4) The group return shall be filed in accordance with these regulations and the instructions issued with respect to Form 990, and shall be considered the return of each local organization included therein. The tax exempt status of a local organization must be established under a group exemption letter issued to the central organization before a group return including the local organization will be considered as the return of the local organization. See § 1.501 (a)–1 for requirements for establishing a tax-exempt status.

(5) In providing the information required by paragraph (a)(2)(ii) (*f*), (*g*), and (*h*) of this section, such information may be provided—

(i) with respect to the central or parent organization on its Form 990, and with respect to the local organizations on separate schedules attached to the group return for the year, or

(ii) on a consolidated basis for all the local organizations and the central or parent organization on the group return.

Such information need be provided only with respect to those local organizations which are not excepted from filing under the provisions of paragraph (g) of this section. A central or parent organization shall indicate whether it has provided such information in the manner described in subdivision (i) or in subdivision (ii) of this subparagraph, and may not change the manner in which it provides such information without the consent of the Commissioner.

(e) *Time and place for filing.* The annual return on Form 990 shall be filed on or before the 15th calendar month following the close of the period for which the return is required to be filed. The annual return on Form 1065 required to be filed by a religious or apostolic association or corporation shall be filed on or before the 15th day of the fourth month following the close of the taxable year for which the return is required to be filed. Each such return shall be filed in accordance with the instructions applicable thereto.

(f) *Penalties and additions to tax.* For penalties and additions to tax for failure to file a return and filing a false or fraudulent return, see sections 6652, 7203, 7206, and 7207.

(g) *Organizations not required to file annual returns.* (1) Annual returns required by this section are not required to be filed by an organization exempt from taxation under section 501(a) which is—

(i) A church, an interchurch organization of local units of a church, a convention or association of churches, or an integrated auxiliary of a church such as a men's or women's organization, religious school, mission society, or youth group;

(ii) An exclusively religious activity of any religious order;

(iii) An organization (other than a private foundation) the gross receipts of which in each taxable year are normally not more than $5,000 (as described in subparagraph (3) of this paragraph);

(iv) A mission society sponsored by or affiliated with one or more churches or church denominations, more than one-half of the activities of which society are conducted in, or directed at persons in foreign countries;

(v) A State institution, the income of which is excluded from gross income under section 115(a); or

(vi) An organization described in section 501(c)(1).

(2) The provisions of section 6033(a) relieving certain specified types of organizations exempt from taxation under section 501(a) from filing annual returns do not abridge or impair in any way the powers and authority of district directors or directors of service centers provided for in other provisions of the Code and in regulations thereunder to require the filing of returns or notices by such organizations. See section 6001 and § 1.6001–1.

(3) For purposes of subparagraph (1)(iii) of this paragraph, the gross receipts (as defined in subparagraph (4) of this paragraph) of an organization are normally not more than $5,000 if—

(i) In the case of an organization which has been in existence for 1 year or less, the organization has received, or donors have pledged to give, gross receipts of $7,500 or less during the first taxable year of the organization,

(ii) In the case of an organization which has been in existence for more than one but less than 3 years, the average of the gross receipts received by the organization in its first 2 taxable years is $6,000 or less, and

(iii) In the case of an organization which has been in existence for 3 years or more, the average of the gross receipts received by the organization in the immediately preceding 3 taxable years, including the year for which the return would be required to be filed, is $5,000 or less.

(4) For purposes of this paragraph and paragraph (a)(2) of this section, "gross receipts" means the gross amount received by the organization during its annual accounting period from all sources without reduction for any costs or expenses including, for example, cost of goods or assets sold, cost of operations, or expenses of earning, raising, or collecting such amounts. Thus "gross receipts" includes, but is not limited to, (i) the gross amount received as contributions, gifts, grants, and similar amounts without reduction for the expenses of raising and collecting such amounts, (ii) the gross amount received as dues or assessments from members or affiliated organizations without reduction for expenses attributable to the receipt of such amounts, (iii) gross sales or receipts from business activities (including business activities unrelated to the purpose for which the organization qualifies for exemption, the net income or loss from which may be required to be reported on Form 990–T), (iv) the gross amount received from the sale of assets without reduction for cost or other basis and expenses of sale, and (v) the gross amount received as investment income, such as interest, dividends, rents, and royalties.

(5) The Commissioner may relieve any organization or class of organizations from filing, in whole or in part, the annual return required by this section where he determines that such returns are not necessary for the efficient administration of the internal revenue laws.

(h) *Records, statements, and other returns of tax-exempt organizations.* (1) An organization which is exempt from taxation under section 501(a) and is not required to file annually an information return on Form 990 shall immediately notify in writing the district director for the internal revenue district in which its principal office is located of any changes in its character, operations, or purpose for which it was originally created.

(2) Every organization which is exempt from tax, whether or not it is required to file an annual information return, shall submit such additional information as may be required by the Internal Revenue Service for the purpose of inquiring into its exempt status and administering the provisions of subchapter F (section 501 and following), chapter 1 of subtitle A of the Code, section 6033, and chapter 42 of subtitle D of the Code. See section 6001 and § 1.6001–1 with respect to the authority of the district directors or directors of service centers to require such additional information and with respect to the books of account or records to be kept by such organizations.

(3) An organization which has established its exemption from taxation under section 501(a), including an organization which is relieved under section 6033 and this section from filing annual returns of information, is not relieved of the duty of filing other returns of information. See, for example, sections 6041, 6043, and 6051 and the regulations thereunder.

(i) *Unrelated business tax returns.* In addition to the foregoing requirements of this section, certain organizations otherwise exempt from tax under section 501(a) which are subject to tax on unrelated business taxable income are also required to file returns on Form 990–T. See paragraph (e) of § 1.6012–2 and paragraph (a)(5) of § 1.6012–3 for requirements with respect to such returns.

(j) *Special rule for private foundations.* A private foundation shall attach to each copy of the annual report required by section 6056 which its foundation managers send to a State Attorney General a copy of the Form 990, and a copy of the Form 4720, if any, filed by the foundation with the Internal Revenue Service for the year. For provisions relating to annual reports, see section 6056 and the regulations thereunder.

(k) *Effective date.* The provisions of this section shall apply with respect to returns filed for taxable years beginning after December 31, 1969.

PAR. 5. There are inserted immediately after § 1.6052–2 the following new sections:

§ 1.6056 Statutory provisions; annual reports by private foundations.

Sec. 6056. *Annual reports by private foundations*—(a) *General.* The foundation managers (within the meaning of section 4946(b)) of every organization which is a private foundation (within the meaning of section 509(a)) having at least $5,000 of assets at any time during a taxable year shall file an annual report as of the close of the taxable year at such time and in such manner as the Secretary or his delegate may by regulations prescribe.

(b) *Contents.* The foundation managers of the private foundation shall set forth in the annual report required under subsection (a) the following information:

(1) Its gross income for the year,

(2) Its expenses attributable to such income and incurred within the year,

(3) Its disbursements (including administrative expenses) within the year,

(4) A balance sheet showing its assets, liabilities, and net worth as of the beginning of the year,

(5) An itemized statement of its securities and all other assets at the close of the year, showing both book and market value,

(6) The total of the contributions and gifts received by it during the year,

(7) An itemized list of all grants and contributions made or approved for future payment during the year, showing the amount of each such grant or contribution, the name and address of the recipient, any relationship between any individual recipient and the foundation's managers or substantial contributors, and a concise statement of the purpose of each such grant or contribution,

(8) The address of the principal office of the foundation and (if different) of the place where its books and records are maintained,

(9) The names and addresses of its foundation managers (within the meaning of section 4946(b)), and

(10) A list of all persons described in paragraph (9) that are substantial contributors (within the meaning of section 507(d)(2)) or that own 10 percent or more of the stock of any corporation of which the foundation owns 10 percent or more of the stock, or corresponding interests in partnerships or other entities, in which the foundation has a 10 percent or greater interest.

(c) *Form.* The annual report may be prepared in printed, typewritten, or any other legible form the foundation chooses. The Secretary or his delegate shall provide forms which may be used by a private foundation for purposes of the annual report.

(d) *Special rules.* (1) The annual report required to be filed under this section is in addition to and not in lieu of the information required to be filed under section 6033 (relating to returns by exempt organizations) and shall be filed at the same time as such information.

(2) A copy of the notice required by section 6104(d) (relating to public inspection of private foundations' annual reports), together with proof of publication thereof, shall be filed by the foundation managers together with the annual report.

(3) The foundation managers shall furnish copies of the annual report required by this section to such State officials and other persons, at such times and under such conditions, as the Secretary or his delegate may by regulations prescribe.

§ 1.6056–1 Annual reports by private foundations.

(a) *Annual reports*—(1) *In general.* The foundation managers (as defined in section 4946(b)) of every organization (including a trust described in section 4947(a)(1)) which is (or is treated as) a private foundation (as defined in section 509(a)) the assets of which are at least $5,000 at any time during a taxable year shall file an annual report setting forth the information described in subparagraphs (2) and (3) of this paragraph.

(2) *Form an annual report, time and place of filing.* The annual report required by this paragraph may be in printed, typewritten, or other form, provided that it readily and legibly discloses the information required by section 6056 and this section. Form 990–AR, Annual Report of Private Foundation, may be used for this purpose. The annual report shall be filed at the place specified in the instructions applicable to Form 990 at the same time as such form.

(3) *Foundation managers not using Form 990–AR.* Foundation managers not choosing to use Form 990–AR as the annual report required by this paragraph shall file a report in accordance with subparagraphs (1) and (2) of this paragraph, setting forth the information required by section 6056(b) and in accordance with the instructions applicable to Form 990–AR. For purposes of section 6056(b)(1), gross income shall be as defined in the regulations under section 6033(b)(1), and for purposes of section 6056(b)(2), expenses attributable to such income shall be as defined in the regulations under section 6033(b)(2). For purposes of section 6056(b)(7), the term "relationship" shall include, but is not limited to, any case in which an individual recipient of a grant or contribution by a private foundation is (i) a member of the family (as defined in section 4946(d)) of a substantial contributor or foundation manager of such foundation, (ii) a partner of such substantial contributor or foundation manager, or (iii) an employee of such substantial contributor or foundation manager or of an organization which is effectively controlled (directly or indirectly) by one or more such substantial contributors or foundation managers (within the meaning of section 4946(a)(1)(H)(i) and the regulations thereunder). For purposes of section 6056(b)(7) and (9), the business address of an individual grant recipient or foundation manager may be used by the foundation in its annual report in lieu of the home address of such recipient or manager. For purposes of section 6056(b)(9), the term "foundation managers" shall have the same meaning as such term has in section 6033(b)(6).

(4) *Notice to public of availability of annual report.* A copy of the notice required by section 6104(d) (relating to public inspection of private foundations' annual reports), and proof of publication thereof, shall be filed with the annual report required by this paragraph. A copy of such notice as published, and a statement signed by a foundation manager stating that such notice was published, setting forth the date of publication and the publication in which it appeared, shall be sufficient proof of publication for purposes of this subparagraph.

(b) *Special rules*—(1) *Manner of making annual report available for public inspection.* The foundation managers of a private foundation may satisfy the requirement that the annual report be made available for public inspection at the foundation's principal office by furnishing a copy free of charge to persons who request inspection in the manner and at the time prescribed therefor in section 6104(d) and the regulations thereunder.

(2) *Furnishing copies to libraries and depositories.* The Commissioner may designate one or more appropriate libraries or depositories to which the foundation managers will be required to send copies of their annual reports, in addition to, and not in lieu of, filing such annual reports with the Internal Revenue Service and making such annual reports available for public inspection at the principal office of the foundation.

(3) *Furnishing of copies to State officers.* The foundation managers of a private foundation shall furnish a copy of the annual report required by section 6056 and this section to the Attorney General of (i) each State which the foundation is required to list as an attachment to the Form 990 pursuant to § 1.6033–2(a)(2)(iv), (ii) the State in which is located the principal office of the foundation, and (iii) the State in which the foundation was incorporated or created. The annual report shall be sent to each Attorney General described in subdivision (i), (ii), or (iii) of this subparagraph at the same time as it is sent to the Internal Revenue Service. Upon request the foundation managers shall also furnish a copy of the annual report to the Attorney General or other appropriate State officer (within the meaning of section 6104(c)(2)) of any State. The foundation managers shall attach to each copy of the annual report sent to State officers under this subparagraph a copy of the Forms 990 and 4720, if any, filed by the foundation for the year.

(c) *Special rules for certain foreign organizations.* The provisions of paragraphs (a)(4), (b)(1) and (3) of this section shall not apply with respect to an organization described in section 4948(b). The foundation managers of such organizations are not required to publish

notice of availability of the annual report for inspection, to make the annual report available at the principal office of the foundation for public inspection under section 6104(d), or to send copies of the annual report to State officers. Such foundation managers may be required to furnish copies of their annual reports to libraries and depositories in accordance with the provisions of paragraph (b)(2) of this section.

PAR. 6. Section 301.6033 is amended to read as follows:

§ 301.6033 Statutory provisions; returns by exempt organizations.

Sec. 6033. *Returns by exempt organizations*—(a) *Organizations required to file*—(1) *In general.* Except as provided in paragraph (2), every organization exempt from taxation under section 501(a) shall file an annual return, stating specifically the items of gross income, receipts, and disbursements, and such other information for the purpose of carrying out the internal revenue laws as the Secretary or his delegate may by forms or regulations prescribe, and shall keep such records, render under oath such statements, make such other returns, and comply with such rules and regulations as the Secretary or his delegate may from time to time prescribe; except that, in the discretion of the Secretary or his delegate, any organization described in section 401(a) may be relieved from stating in its return any information which is reported in returns filed by the employer which established such organization.

(2) *Exceptions from filing*—(A) *Mandatory exceptions.* Paragraph (1) shall not apply to—

(i) Churches, their intergrated auxiliaries, and conventions or associations of churches,

(ii) Any organization (other than a private foundation, as defined in section 509(a)) described in subparagraph (C), the gross receipts of which in each taxable year are normally not more than $5,000, or

(iii) The exclusively religious activities of any religious order.

(B) *Discretionary exceptions.* The Secretary or his delegate may relieve any organization required under paragraph (1) to file an information return from filing such a return where he determines that such filing is not necessary to the efficient administration of the internal revenue laws.

(C) *Certain organizations.* The organizations referred to in subparagraph (A)(ii) are—

(i) A religious organization described in section 501(c)(3);

(ii) An educational organization described in section 170(b)(1)(A)(ii);

(iii) A charitable organization, or an organization for the prevention of cruelty to children or animals, described in section 501(c)(3), if such organization is supported, in whole or in part, by funds contributed by the United States or any State or political subdivision thereof, or is primarily supported by contributions of the general public;

(iv) An organization described in section 501(c)(3), if such organization is operated, supervised, or controlled by or in connection with a religious organization described in clause (i);

(v) An organization described in section 501(c)(8); and

(vi) An organization described in section 501(c)(1), if such organization is a corporation wholly owned by the United States or any agency or instrumentality thereof, or a agency or instrumentality thereof, or a wholly owned subsidiary or such a corporation.

(b) *Certain organizations described in section 501(c)(3).* Every organization described in section 501(c)(3) which is subject to the requirements of subsection (a) shall furnish annually information, at such time and in such manner as the Secretary or his delegate may by forms or regulations prescribe, setting forth—

(1) Its gross income for the year,

(2) Its expenses attributable to such income and incurred within the year,

(3) Its disbursements within the year for the purposes for which it is exempt,

(4) A balance sheet showing its assets, liabilities, and net worth as of the beginning of such year,

(5) The total of the contributions and gifts received by it during the year, and the names and addresses of all substantial contributors,

(6) The names and addresses of its foundation managers (within the meaning of section 4946(b)(1)) and highly compensated employees, and

(7) The compensation and other payments made during the year to each individual described in paragraph (6).

(c) *Cross reference.* For provisions relating to statements, etc., regarding exempt status of organizations, see section 6001.

For reporting requirements as to certain liquidations, dissolutions, terminations, and contractions, see section 6043(b). For provisions relating to penalties for failure to file a return required by this section, see section 6652(d).

[Sec. 6033 as amended by sec. 75(b), Technical Amendments Act 1958 (72 Stat. 1661); sec. 101(d), Tax Reform Act 1969 (83 Stat. 519)]

PAR. 7. Section 301.6104 is amended by revising section 6104(b), by adding new sections 6104 (c) and (d), and by revising the historical note. These revised and added provisions read as follows:

§ 301.6104 Statutory provisions; publicity of information required from certain exempt organizations and certain trusts.

SEC. 6104. *Publicity of information required from certain exempt organizations and certain trusts.* * * *

* * * * *

(b) *Inspection of annual information returns.* The information required to be furnished by sections 6033, 6034, and 6056, together with the names and addresses of such organizations and trusts, shall be made available to the public at such times and in such places as the Secretary or his delegate may prescribe. Nothing in this subsection shall authorize the Secretary or his delegate to disclose the name or address of any contributor to any organization or trust (other than a private foundation, as defined in section 509(a)) which is required to furnish such information.

(c) *Publication to State officials*—(1) *General rule.* In the case of any organization which is described in section 501(c)(3) and exempt from taxation under section 501(a), or has applied under section 508(a) for recognition as an organization described in section 501(c)(3), the Secretary or his delegate at such times and in such manner as he may by regulations prescribe shall—

(A) Notify the appropriate State officer of a refusal to recognize such organization as an organization described in section 501(c)(3), or of the operation of such organization in a manner which does not meet, or no longer meets, the requirements of its exemption,

(B) Notify the appropriate State officer of the mailing of a notice of deficiency of tax imposed under section 507 or chapter 42, and

(C) At the request of such appropriate State officer, make available for inspection and copying such returns, filed statements, records, reports, and other information, relating to a determination under subparagraph (A) or (B) as are relevant to any determination under State law.

(2) *Appropriate State officer.* For purposes of this subsection, the term "appropriate State officer" means the State attorney general, State tax officer, or any State official charged with overseeing organizations of the type described in section 501(c)(3).

(d) *Public inspection of private foundations' annual reports.* The annual report required to be filed under section 6056 (relating to annual reports by private foundations) shall be made available by the foundation managers for inspection at the principal office of the foundation during regular business hours by any citizen on request made within 180 days after the publication of notice of its availability. Such notice shall be published, not later than the day prescribed for filing such annual report (determined with regard to any extension of time for filing), in a newspaper having general circulation in the county in which the principal office of the private foundation is located. The notice shall state that the annual report of the private foundation is available at its principal office for inspection during regular business hours by any citizen who requests it within 180 days after the date of such publication, and shall state the address of the private foundation's principal office and the name of its principal manager.

[Sec. 6104 as amended by sec. 75(a), Technical Amendments Act 1958 (72 Stat. 1660), secs. 101(e) and 101(j)(36), Tax Reform Act 1969 (83 Stat. 523)]

PAR. 8. Section 301.6104–2 is amended to read as follows:

§ 301.6104–2 Publicity of information on certain information returns and annual reports.

(a) *In general.* The following information, together with the name and address of the organization or trust furnishing such information, shall be a matter of public record:

(1) Except as otherwise provided in section 6104 and the regulations thereunder, the information furnished on Forms 990, 990–P, and 4720.

(2) The information furnished pursuant to section 6034 (relating to returns by certain trusts) on Form 1041–A.

(3) The information furnished on the annual report required by section 6056 (relating to annual reports of private foundations). The names, addresses, and amounts of contributions or bequests of contributors to an organization other than a private foundation shall not be made available for public inspection under section 6104(b). The names, addresses, and amounts of contributions or bequests of persons who are not citizens of the United States to a foreign organization described in section 4948(b) shall not be made available for public inspection under section 6104(b).

(b) *Place of inspection.* Information furnished on the public portion of returns and annual reports (as described in paragraph (a) of this section) shall

be available to any person in the National Office, Office of the Director, Public Information Division, Internal Revenue Service, Washington, D.C. 20224, in the Office of the Director, Mid-Atlantic Regional Service Center, Philadelphia, Pa., and in the office of the district director of the district serving the principal place of business of the organization.

(c) *Procedure for public inspection*—(1) *Requests for inspection.* The information furnished on Form 990, Form 990–P, Form 4720, Form 1041–A and the annual report required by section 6056 shall be available for public inspection under section 6104(b) only upon request. If inspection at the National Office is desired, the request shall be made in writing to the Commissioner of Internal Revenue, Attention: Director, Public Information Division, Washington, D.C. 20224. Requests for inspection in the office of a district director or Director of the Mid-Atlantic Regional Service Center shall be made in writing to the district director or Director of the Regional Service Center. All requests for inspection must include the name and address of the organization which filed the return or report, the type of return or report, and the taxable year for which filed.

(2) *Time and extent of inspection.* A person requesting public inspection in the manner specified in subparagraph (1) of this paragraph shall be notified by the Internal Revenue Service when the material he desires to inspect will be made available for his inspection. Information on Form 990, Form 990–P, Form 4720, Form 1041–A, and the annual report required by section 6056 will be made available for public inspection at such reasonable and proper times, and under such conditions, that will not interfere with their use by the Internal Revenue Service and will not exclude other persons from inspecting them. In addition, the Commissioner, director of the regional service center, or district director may limit the number of returns to be made available to any person for inspection on a given date. Inspection will be allowed only in the presence of an internal revenue officer or employee and only during the regular hours of business of the Internal Revenue Service office.

(3) *Returns available.* Returns filed before January 1, 1970, shall be available for public inspection only pursuant to the provisions of section 6104 in effect for such years. The information furnished on all returns and reports filed after December 31, 1969, pursuant to the requirements of section 6033, 6034, or 6056, shall be available for public inspection in accordance with the provisions of section 6104.

(4) *Copies.* Notes may be taken of the material opened for inspection under this section. Copies may be made manually or photographically in the National Office subject to reasonable supervision by the Public Information Division with regard to the facilities and equipment to be employed; and copies may be made manually but not photographically in the offices of the district directors or directors of regional service centers (except that copies may be made photographically at the Mid-Atlantic Regional Service Center). Copies of the material opened for inspection will be furnished by the Internal Revenue Service to any person making request therefor. Request for such copies shall be made in the same manner as requests for inspection (see subparagraph (1) of this paragraph) to the office of the Internal Revenue Service in which such material is available for inspection as provided in paragraph (b) of this section. If made at the time of inspection, the request for copies need not be in writing. Any copies furnished will be certified upon request. The Commission may prescribe a reasonable fee for furnishing copies of information pursuant to this section.

PAR. 9. There is inserted immediately after § 301.6104–2, as amended, the following new sections:

§ 301.6104–3 Disclosure of certain information to State officers.

(a) *Notification of determinations*—(1) *Automatic notification.* Upon making a determination described in paragraph (c) of this section, the Internal Revenue Service will notify the Attorney General and the principal tax officer of each of the following States of such determination without application or request by such State officer—

(i) In the case of any organization described in section 501(c)(3), the State in which the principal office of the organization is located (as shown on the last-filed Form 990, or on the application for exemption if no Form 990 has been filed), and the State in which the organization was incorporated, or if a trust, in which it was created, and

(ii) In the case of a private foundation, each State which the organization was required to list as an attachment to its last-filed Form 990 pursuant to § 1.6033–2(a)(2)(iv).

(2) *Applications for notification by other State officers.* Other officers of States described in subparagraph (1) of this paragraph, and officers of States not described in such subparagraph, may request that they be notified (either generally or with respect to a particular organization or type of organization) of determinations described in paragraph (c) of this section. In such cases, these State officers must show that they are appropriate State officers within the meaning of section 6104(c)(2). The required showing may be made by presenting a letter from the Attorney General of the State setting forth (i) the functions and authority of the State officer under State law, and (ii) sufficient facts for the Internal Revenue Service to determine that such officer is an appropriate State officer within the meaning of section 6104(c)(2).

(3) *Manner of notification.* A State officer who is entitled to be notified of a determination under this paragraph will be notified by sending him a copy of the communication from the Internal Revenue Service to the organization which informs such organization of the determination.

(b) *Inspection by State Officers*—(1) *In general.* After a determination described in paragraph (c) of this section has been made, appropriate State officers within the meaning of section 6104(c)(2) may inspect the material described in subparagraph (3) of this paragraph. Such material may be inspected at an office of the Internal Revenue Service which will be designated upon receipt of a request for inspection; the location of such office will be determined with due consideration of the needs of the Internal Revenue Service and the needs of the State officer entitled to inspect.

(2) *State officers who may inspect material.* Any State officer entitled to be notified of a determination without application (under paragraph (a)(1) of this section) may inspect the material described in subparagraph (3) of this paragraph upon demonstrating that he is so entitled. Any State officer who has in fact been notified by the Internal Revenue Service of a determination may inspect such material without further demonstration, unless it shall be determined by the Internal Revenue Service that such officer was not entitled to be so notified. Other State officers must demonstrate to the satisfaction of the Internal Revenue Service that they are entitled to be notified under paragraph (a)(2) of this section before they may inspect such material.

(3) *Material which may be inspected.* (i) Except as provided in subdivision (ii) of this subparagraph, a State officer who is so entitled under subparagraphs (1) and (2) of this paragraph will be permitted to inspect and copy all returns, filed statements, records, reports, and other information relating to a determination described in paragraph (c) of this section which is relevant to a determination under State law, and which is in the hands of the Internal Revenue Service.

(ii) The following material will not be made available for inspection by State officers under section 6104(c) and this section—

(*a*) Interpretations by the Internal Revenue Service or other federal agency of federal laws (including the Internal Revenue Code of 1954 and its predecessors) which would not otherwise be made available to State officers under section 6103(b),

(*b*) Reports of informers, or any other material which would disclose the identity, or threaten the safety or anonymity, of an informer,

(*c*) Returns of persons (other than those exempt from taxation) which would not be available under section 6103(b) to the State officer requesting inspection, or

(*d*) Other material the disclosure of which the Commissioner has determined would prejudice the proper administration of the internal revenue laws.

(4) *Statement by State officer.* Before any State officer will be permitted to inspect material described in this paragraph, he must submit a statement to the Internal Revenue Service that he intends to use such material solely in fulfilling his functions under State law relating to organizations of the type described in section 501(c)(3); material is made available to State officers under this section in reliance on such statements. For provisions relating to penalties for misuse of information which is made available under section 6104(c) and this section, see 18 U.S.C. 1001.

(c) *Determinations defined.* For purposes of this section, a determination means a final determination by the Internal Revenue Service that—

(1) An organization is refused recognition as an organization described in section 501(c)(3), or has been operated in such a manner that it will not, or will no longer, be recognized as meeting the requirements for exemption under that section, or

(2) A deficiency of tax exists under section 507 or chapter 42.

For purposes of this paragraph, a determination by the Internal Revenue Service is not final until all administrative review with respect to such determination has been completed. For purposes of this section, a waiver of restrictions on assessment and collection of deficiency in tax is treated as a final determination that a deficiency of tax exists when such waiver has been finally accepted by the Internal Revenue Service. For example, a final determination that a deficiency of tax exists under section 507 or chapter 42 is made when the organization is sent a notice of deficiency with respect to such tax.

(d) *Effective date.* The provisions of this section apply with respect to all determinations made after December 31, 1969.

§ 301.6104–4 Public inspection of private foundations' annual reports.

(a) *In general.* The annual report which a private foundation must file under section 6056 shall be made available by its foundation managers for inspection at its principal office during regular business hours by any citizen on request made within 180 days after the publication of notice of the availability of such report. Such notice shall be published not later than the day prescribed for filing such report (determined with regard to any extension of time for filing) in a newspaper having general circulation in the county in which the foundation's principal office is located. The notice shall state that the annual report is available at the foundation's principal office for inspection during regular business hours by any citizen who requests inspection within 180 days after the date of such publication, and shall state the address of the foundation's principal office and the name of its principal manager.

(b) *Definitions and special rules*—(1) *Principal office.* For purposes of the notice described in section 6104(d), a private foundation may designate in addition to its principal office, or (if the foundation has no principal office or none other than the residence of a substantial contributor or foundation manager) in lieu of such office, any other location at which its annual report shall be made available in the manner and at the time prescribed therefor in section 6104(d).

(2) *Newspaper having general circulation.* The term "newspaper having general circulation" in section 6104(d) shall include any newspaper or journal which is permitted to publish statements in satisfaction of State statutory requirements relating to transfers of title to real estate or other similar legal notices.

(3) *Principal manager.* A private foundation may furnish the name of its "principal manager" in the notice required by section 6104(d) by furnishing the name of the individual foundation manager who is responsible for publishing such notice or for making the annual report available for inspection under section 6104(d).

(c) *Cross-reference.* For additional rules with respect to private foundations' annual reports and their public inspection, see section 6056 and the regulations thereunder.

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

HAROLD T. SWARTZ,
Acting Commissioner of Internal Revenue.

Approved: May 24, 1971.

JOHN S. NOLAN,
Acting Assistant Secretary of the Treasury.

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[T.D. 7125]

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

Extension of Transitional Period for Pooled Income Funds

In order to extend the transitional period in which certain funds may conform to the requirements of section 6422(c)(5) of the Internal Revenue Code of 1954, and to modify the rule on severance of the value of a remainder interest from a pooled income fund, the Income Tax Regulations (26 CFR Part 1) are hereby amended as follows:

PARAGRAPH 1. Section 1.642(c)–5 is amended by revisin gparagraph (b)(8) to read as follows:

§ 1.642(c)–5 Definition of pooled income fund.

* * * * *

(b) *Requirements for qualification as a pooled income fund.* * * *

(8) *Termination of life income interest.* Upon the termination of the income interest retained or created by any donor, the trustee shall sever from the fund an amount equal to the value of the remainder interest in the property upon which the income interest is based. The value of the remainder interest for such purpose may be either (i) its value as of the determination date next succeeding the termination of the income interest or (ii) its value as of the date on which the last regular payment was made before the death of the beneficiary if the income interest is terminated on such payment date. The amount so severed from the fund must either be paid to, or retained for the use of, the designated public charity, as provided in the governing instrument. However, see subparagraph (3) of this paragraph for rules relating to commingling of property.

* * * * *

PAR. 2. Section 1.642(c)–7 is amended by revising paragraphs (a)(2) and (c)(1) to read as follows:

§ 1.642(c)–7 Transitional rules with respect to pooled income funds.

(a) *In general.* * * *

(2) *Severance of a portion of a fund.* Any portion of a fund created before May 7, 1971, which consists of property transferred to such fund after July 31, 1969, may be severed from such fund consistently with the principles of paragraph (c)(2) of this section and established before January 1, 1972, as a separate pooled income fund, provided that on and after the date of severance the severed fund meets all the requirements of section 642(c)(5) and § 1.642(c)–5. A separate fund which is established pursuant to this subparagraph shall be treated as provided in paragraph (d) of this section for the period beginning on the day of the first transfer of property which becomes part of the separate fund and ending the day before the day on which the separate fund meets the requirements of section 642(c)(5) and § 1.642(c)–5.

* * * * *

(c) *Amendment requirements.* (1) A fund described in paragraph (a)(1) of this section and possessing the initial characteristics described in paragraph (b) of this section on the date prescribed therein shall be treated as a pooled income fund if it is amended to meet all the requirements of section 642(c)(5) and § 1.642(c)–5 before January 1, 1972, or, if later, on or before the 30th day after the date on which any judicial proceedings commenced before January 1, 1972, which are required to amend its governing instrument or any other instrument which does not permit it to meet such requirements, become final. However, see paragraph (d) of this section for limitation on the period in which a claim for credit or refund may be filed.

* * * * *

Because publication of this Treasury decision at an early date is necessary to

facilitate compliance with the requirements for qualifying as a pooled income fund, it is hereby found impracticable to issue this Treasury decision with notice and public procedure thereon under 5 U.S.C., section 553(b), or subject to the effective date limitation of 5 U.S.C. section 553(d).

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

[SEAL] RANDOLPH W. THROWER,
Commissioner of Internal Revenue.

Approved: June 4, 1971.

EDWIN S. COHEN,
Assistant Secretary of the Treasury.

[FR Doc.71-8064 Filed 6-7-71;10:28 am]

Title 46—SHIPPING

Chapter II—Maritime Administration, Department of Commerce

SUBCHAPTER C—REGULATIONS AFFECTING SUBSIDIZED VESSELS AND OPERATORS

[General Order 13, Rev.]

PART 251—APPLICATIONS FOR SUBSIDIES AND OTHER DIRECT FINANCIAL AID

Applications for Operating-Differential Subsidy

Effective upon the date of publication hereof in the FEDERAL REGISTER (6-9-71) the heading of this part is changed to read as set forth above, and § 251.11 is revised to read as follows:

§ 251.11 Applications under Title VI, Merchant Marine Act, 1936, as amended.

(a) Applications under title VI of the Act for subsidy to aid in the operation of vessels in the foreign commerce of the United States shall be filed on Form MA-632 in accordance with the instructions annexed thereto.

(b) Copies of Form MA-632 may be obtained on request from the Secretary, Maritime Subsidy Board, Washington, D.C., 20235.

Dated: June 1, 1971.

By Order of the Maritime Subsidy Board.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc.71-8046 Filed 6-7-71;9:27 am]

Proposed Rule Making

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 53]

FAILURE TO DISTRIBUTE INCOME

Notice of Proposed Rule Making

Notice is hereby given that the regulations set forth in tentative form in the attached appendix 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, preferably in quintuplicate, to the Commissioner of Internal Revenue, attention: CC:LR:T, Washington, D.C. 20224, by July 8, 1971. 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 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 by July 8, 1971. 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 section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] RANDOLPH W. THROWER,
Commissioner of Internal Revenue.

The following regulations are prescribed in order to conform the Excise Tax Regulations (26 CFR Part 53) to section 4942 of the Internal Revenue Code of 1954, relating to taxes on failure to distribute income, as added by section 101(b) of the Tax Reform Act of 1969 (83 Stat. 502). Except where otherwise specifically provided, these regulations are applicable for taxable years beginning after December 31, 1969.

PARAGRAPH 1. The following new sections are added immediately after §53.4941–:

DISTRIBUTION OF FOUNDATION INCOME

Sec.

53.4942 Statutory provision; taxes on failure to distribute income.
53.4942(a)–1 Taxes for failure to distribute income.
53.4942(a)–2 Computation of undistributed income.
53.4942(a)–3 Qualifying distributions defined.

§ 53.4942 Statutory provisions; taxes on failure to distribute income.

SEC. 4942. *Taxes on failure to distribute income*—(a) *Initial tax.* There is hereby imposed on the undistributed income of a private foundation for any taxable year, which has not been distributed before the first day of the second (or any succeeding) taxable year following such taxable year (if such first day falls within the taxable period), a tax equal to 15 percent of the amount of such income remaining undistributed at the beginning of such second (or succeeding) taxable year. The tax imposed by this subsection shall not apply to the undistributed income of a private foundation—

(1) For any taxable year for which it is an operating foundation (as defined in subsection (j)(3)), or

(2) To the extent that the foundation failed to distribute any amount solely because of an incorrect valuation of assets under subsection (e), if—

(A) The failure to value the assets properly was not willful and was due to reasonable cause,

(B) Such amount is distributed as qualifying distributions (within the meaning of subsection (g)) by the foundation during the allowable distribution period (as defined in subsection (j)(4)),

(C) The foundation notifies the Secretary or his delegate that such amount has been distributed (within the meaning of subparagraph (B)) to correct such failure, and

(D) Such distribution is treated under subsection (h)(2) as made out of the undistributed income for the taxable year for which a tax would (except for this paragraph) have been imposed under this subsection.

(b) *Additional tax.* In any case in which an initial tax is imposed under subsection (a) on the undistributed income of a private foundation for any taxable year, if any portion of such income remains undistributed at the close of the correction period, there is hereby imposed a tax equal to 100 percent of the amount remaining undistributed at such time.

(c) *Undistributed income.* For purposes of this section, the term "undistributed income" means, with respect to any private foundation for any taxable year as of any time, the amount by which—

(1) The distributable amount for such taxable year, exceeds

(2) The qualifying distributions made before such time out of such distributable amount.

(d) *Distributable amount.* For purposes of this section, the term "distributable amount" means, with respect to any foundation for any taxable year, an amount equal to—

(1) The minimum investment return or the adjusted net income (whichever is higher), reduced by

(2) The sum of the taxes imposed on such private foundation for the taxable year under subtitle A and section 4940.

(e) *Minimum investment return.*

(1) *In general.* For purposes of subsection (d), the minimum investment return for any private foundation for any taxable year is the amount determined by multiplying—

(A) The excess of (i) the aggregate fair market value of all assets of the foundation other than those being used (or held for use) directly in carrying out the foundation's exempt purpose over (ii) the acquisition indebtedness with respect to such assets (determined under section 514(c)(1), but without regard to the taxable year in which the indebtedness was incurred), by

(B) The applicable percentage for such year, determined under paragraph (3).

(2) *Valuation.* For purposes of paragraph (1)(A), the fair market value of securities for which market quotations are readily available shall be determined on a monthly basis. For all other assets, the fair market value shall be determined at such times and in such manner as the Secretary or his delegate shall by regulations prescribe.

(3) *Applicable percentage.* For purposes of paragraph (1)(B), the applicable percentage for taxable years beginning in 1970 is 6 percent. The applicable percentage for any taxable year beginning after 1970 shall be determined and published by the Secretary or his delegate and shall bear a relationship to 6 percent which the Secretary or his delegate determines to be comparable to the relationship which the money rates and investment yields for the calendar year immediately preceding the beginning of the taxable year bear to the money rates and investment yields for the calendar year 1969.

(4) *Transitional rules*—

For special rules applicable to organizations created before May 27, 1969, see section 101(1)(3) of the Tax Reform Act of 1969.

(f) *Adjusted net income*—

(1) *Defined.* For purposes of subsection (d), the term "adjusted net income" means the excess (if any) of—

(A) The gross income for the taxable year (determined with the income modifications provided by paragraph (2)), over

(B) The sum of the deductions (determined with the deduction modifications provided by paragraph (3)) which would be allowed to a corporation subject to the tax imposed by section 11 for the taxable year.

(2) *Income modifications.* The income modifications referred to in paragraph (1)(A) are as follows:

(A) Section 103 (relating to interest on certain governmental obligations) shall not apply,

(B) Capital gains and losses from the sale or other disposition of property shall be taken into account only in an amount equal to any net short-term capital gain for the taxable year; and

(C) There shall be taken into account—

(i) Amounts received or accrued as repayments of amounts which were taken into account as a qualifying distribution within the meaning of subsection (g)(1)(A) for any taxable year;

(ii) Notwithstanding subparagraph (B), amounts received or accrued from the sale or other disposition of property to the extent that the acquisition of such property was taken into account as a qualifying distribution (within the meaning of subsection (g)(1)(B)) for any taxable year; and

(iii) Any amount set aside under subsection (g)(2) to the extent it is determined that such amount is not necessary for the purposes for which it was set aside.

(3) *Deduction modifications.* The deduction modifications referred to in paragraph (1)(B) are as follows:

(A) No deduction shall be allowed other than all the ordinary and necessary expenses paid or incurred for the production or collection of gross income or for the management, conservation, or maintenance of property held for the production of such income and the allowances for depreciation and depletion determined under section 4940(c)(3)(B), and

(B) Section 265 (relating to expenses and interest relating to tax-exempt interest) shall not apply.

(4) *Tranistional rule.* For purposes of paragraph (2)(B), the basis (for purposes of determining gain) of property held by a private foundation on December 31, 1969, and continuously thereafter to the date of its disposition, shall be deemed to be not less than the fair market value of such property on December 31, 1969.

(g) *Qualifying distributions defined.*

(1) *In general.* For purposes of this section, the term "qualifying distribution" means—

(A) Any amount (including administrative expenses) paid to accomplish one or more purposes described in section 170(c)(2)(B), other than any contribution to (i) an organization controlled (directly or indirectly) by the foundation or one or more disqualified persons (as defined in section 4946) with respect to the foundation, except as provided in paragraph (3), or (ii) a private foundation which is not an operating foundation (as defined in subsection (j)(3)), except as provided in paragraph (3), or

(B) Any amount paid to acquire an asset used (or held for use) directly in carrying out one or more purposes described in section 170(c)(2)(B).

(2) *Certain set-asides.* Subject to such terms and conditions as may be prescribed by the Secretary or his delegate, an amount set aside for a specific project which comes within one or more purposes described in section 170(c)(2)(B) may be treated as a qualifying distribution, but only if, at the time of the set-aside, the private foundation establishes to the satisfaction of the Secretary or his delegate that—

(A) The amount will be paid for the specific project within 5 years, and

(B) The project is one which can be better accomplished by such set-aside than by immediate payment of funds.

For good cause shown, the period for paying the amount set aside may be extended by the Secretary or his delegate.

(3) *Certain contributions to section 501(c)(3) organizations.* For purposes of this section, the term "qualifying distribution" includes a contribution to a section 501(c)(3) organization described in paragraph (1)(A)(i) or (ii) if—

(A) Not later than the close of the first taxable year after its taxable year in which such contribution is received, such organization makes a distribution equal to the amount of such contribution and such distribution is a qualifying distribution (within the meaning of paragraph (1) or (2), without regard to this paragraph) which is treated under subsection (h) as a distribution out of corpus (or would be so treated if such section 501(c)(3) organization were a private foundation which is not an operating foundation), and

(B) The private foundation making the contribution obtains adequate records or other sufficient evidence from such organization showing that the qualifying distribution described in subparagraph (A) has been made by such organization.

(h) *Treatment of qualifying distributions.*

(1) *In general.* Except as provided in paragraph (2), any qualifying distribution made during a taxable year shall be treated as made—

(A) First out of the undistributed income of the immediately preceding taxable year (if the private foundation was subject to the tax imposed by this section for such preceding taxable year) to the extent thereof,

(B) Second out of the undistributed income for the taxable year to the extent thereof, and

(C) Then out of corpus.

For purposes of this paragraph, distributions shall be taken into account in the order of time in which made.

(2) *Correction of deficient distributions for prior taxable years, etc.* In the case of any qualifying distribution which (under paragraph (1)) is not treated as made out of the undistributed income of the immediately preceding taxable year, the foundation may elect to treat any portion of such distribution as made out of the undistributed income of a designated prior taxable year or out of corpus. The election shall be made by the foundation at such time and in such manner as the Secretary or his delegate shall by regulations prescribe.

(i) *Adjustment of distributable amount where distributions during prior years have exceeded income.*

(1) *In general.* If, for the taxable years in the adjustment period for which an organization is a private foundation—

(A) The aggregate qualifying distributions treated (under subsection (h)) as made out of the undistributed income for such taxable year or as made out of corpus (except to the extent subsection (g)(3) with respect to the recipient private foundation or section 170(b)(1)(E)(ii) applies) during such taxable years, exceed

(B) The distributable amounts for such taxable years (determined without regard to this subsection),

then, for purposes of this section (other than subsection (h)), the distributable amount for the taxable year shall be reduced by an amount equal to such excess.

(2) *Taxable years in adjustment period.* For purposes of paragraph (1), with respect to any taxable year of a private foundation the taxable years in the adjustment period are the taxable years (not exceeding five) beginning after December 31, 1969, and immediately preceding the taxable year.

(j) *Other definitions.* For purposes of this section—

(1) *Taxable period.* The term "taxable period" means, with respect to the undistributed income for any taxable year, the period beginning with the first day of the taxable year and ending on the date of mailing of a notice of deficiency with respect to the tax imposed by subsection (a) under section 6212.

(2) *Correction period.* The term "correction period" means, with respect to any private foundation for any taxable year, the period beginning with the first day of the taxable year and ending 90 days after the date of mailing of a notice of deficiency (with respect to the tax imposed by subsection (b)) under section 6212, extended by—

(A) Any period in which a deficiency cannot be assessed under section 6213(a), and

(B) Any other period which the Secretary or his delegate determines is reasonable and necessary to permit a distribution of undistributed income under this section.

* * * * *

(4) *Allowable distribution period.* The term "allowable distribution period" means, with respect to any private foundation, the period beginning with the first day of the first taxable year following the taxable year in which the incorrect valuation (described in subsection (a)(2)) occurred and ending 90 days after the date of mailing of a notice of deficiency (with respect to the tax imposed by subsection (a)) under section 6212 extended by—

(A) Any period in which a deficiency cannot be assessed under section 6213(a), and

(B) Any other period which the Secretary or his delegate determines is reasonable and necessary to permit a distribution of undistributed income under this section.

(5) *Functionally related business.* The term "functionally related business" means—

(A) A trade or business which is not an unrelated trade or business (as defined in section 513), or

(B) An activity which is carried on within a larger aggregate of similar activities or within a larger complex of other endeavors which is related (aside from the need of the organization for income or funds or the use it makes of the profits derived) to the exempt purposes of the organization.

[Sec. 4942 as added by sec. 101(b), Tax Reform Act 1969 (83 Stat. 502)]

§ 53.4942(a)–1 Taxes for failure to distribute income.

(a) *Imposition of tax*—(1) *Initial tax.* Except as provided in paragraph (b) of this section, section 4942(a) imposes an excise tax of 15 percent on the undistributed income (as defined in section 4942(c) and paragraph (a) of § 53.4942(a)–2) of a private foundation for any taxable year which has not been distributed before the first day of the second (or any succeeding) taxable year following such taxable year (if such first day falls within the taxable period as defined in paragraph (c)(1) of this section). For purposes of section 4942 and this section, the term "distributed" means distributed as qualifying distributions under section 4942(g). See section 4942(h)(2) and paragraph (d)(3) of § 53.4942(a)–3 with respect to correction of deficient distributions for prior taxable years.

(2) *Additional tax.* In any case in which an initial excise tax is imposed by section 4942(a) and subparagraph (1) of this paragraph on the undistributed income of a private foundation for any taxable year, section 4942(b) imposes an additional excise tax on any portion of such income remaining undistributed at the close of the correction period (as defined in section 4942(j)(2) and paragraph (c)(3) of this section). The tax imposed by section 4942(b) and this subparagraph is equal to 100 percent of the amount remaining undistributed at the close of the correction period. Payment of such tax with respect to the undistributed income of the foundation for any taxable year is in addition to, and not in lieu of, making the distribution of such undistributed income as required by section 4942. See section 507(a)(2) and the regulations thereunder.

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

Example (1). M, as private foundation, uses the calendar year as its taxable year. At the end of 1971, M has undistributed income (as defined in section 4942(c) and paragraph (a) of § 53.4942(a)–2) for 1971 of $50,000. As of January 1, 1973, $40,000 of such sum is still undistributed and on August 15, 1973, a notice of deficiency with respect to the excise tax imposed under subparagraph (1) of

this paragraph is mailed under section 6212 (a) to M. Thus, under the given facts, an initial excise tax of $6,000 (15 percent of $40,000) is imposed upon M.

Example (2). Assume the facts as stated in Example (1), except that as of November 13, 1973 (the close of the correction period), there remains undistributed income of $20,000 from 1971. Hence, an additional excise tax of $20,000 (100 percent of $20,000) is imposed under subparagraph (2) of this paragraph.

Example (3). Assume the facts as stated in Example (1), except that the notice of deficiency is not mailed to M until September 1, 1974, and as of January 1, 1974, only $10,000 of the $50,000 of undistributed income with respect to 1971 is undistributed. Therefore, initial excise taxes of $6,000 (15 percent of $40,000, M's undistributed income from 1971, as of January 1, 1973) and $1,500 (15 percent of $10,000, M's undistributed income from 1971, as of January 1, 1974 are imposed under subparagraph (1) of this paragraph.

Example (4). Assume the facts as stated in Example (3) and that at the end of the correction period, November 30, 1974, the $10,000 of undistributed income from 1971 remains undistributed. Thus, an additional tax of $10,000 (100 percent of $10,000, M's undistributed income from 1971, as of November 30, 1974, the last day of the correction period) is imposed under subparagraph (2) of this paragraph.

(b) *Exceptions.* The initial excise tax imposed by section 4942(a) and paragraph (a)(1) of this section shall not apply to the undistributed income of a private foundation—

(1) For any taxable year for which it is an operating foundation (as defined in section 4942(j)(3) and the regulations thereunder), or

(2) To the extent that the foundation failed to distribute any amount solely because of incorrect valuation of assets under section 4942(e)(2) and paragraph (c)(2) of § 53.4942(a)-2, if—

(i) The failure to value the assets properly was not willful and was due to reasonable cause,

(ii) Such amount is distributed as qualifying distributions (within the meaning of section 4942(g) and paragraph (a) of § 53.4942(a)-3) by the foundation during the allowable distribution period (as defined in seciton 4942(j)(4) and paragraph (c)(2) of this section),

(iii) The foundation notifies the Commissioner or his delegate that such amount has been distributed (within the meaning of subdivision (ii) of this subparagraph) to correct such failure, and

(iv) Such distribution is treated under section 4942(h)(2) and paragraph (d)(3) of § 53.4942(a)-3 as made out of the undistributed income for the taxable year for which a tax would (except for this subparagraph) have been imposed under paragraph (a) of this section.

For purposes of subparagraph (2)(i) of this paragraph, the terms "willful" and "due to reasonable cause" shall have the same meaning as in section 4945(a)(2) and the regulations thereunder. Failure to value an asset properly shall be regarded as "not willful" and "due to reasonable cause" whenever, under all the facts and circumstances, the foundation can show that it has made all reasonable efforts in good faith to value such asset in accordance with the provisions of paragraph (c)(2) of § 53.4942(a)-2. The provisions of this paragraph may be illustrated by the following example:

Example. In 1976 M, a private foundation which was established in 1975 and is a calendar year taxpayer, incorrectly values its assets under section 4942(e) in a manner which is not willful and is due to reasonable cause. As a result of the incorrect valuation of assets, $20,000 which should be distributed with respect to 1976 is not distributed, and as of January 1, 1978, such amount is still undistributed. On March 29, 1978, a notice of deficiency with respect to the excise tax imposed under paragraph (a)(1) of this section is mailed under section 6212(a) to M. On May 5, 1978 (within the allowable distribution period), M makes a qualifying distribution of $20,000 which is treated under section 4942(h)(2) and paragraph (d)(3) of § 53.4942(a)-3 as made out of M's undistributed income for 1976. M notifies the Commissioner or his delegate of its action. Under the stated facts, an initial excise tax of $3,000 (15 percent of $20,000) would (except for this subparagraph) have been imposed by paragraph (a)(1) of this section, but since all of the requirements of this subparagraph are satisfied no tax is imposed under paragraph (a)(1) of this section.

(c) *Certain periods*—(1) *Taxable period.* (i) Section 4942(j)(1) provides that the term "taxable period" means, with respect to the undistributed income of a private foundation for any taxable year, the period beginning with the first day of the taxable year and ending on the date of mailing of a notice of deficiency under section 6212(a) with respect to the initial excise tax imposed under section 4942(a) and paragraph (a)(1) of this section. For example, M, a private foundation which uses the calendar year as its taxable year, has $15,000 of undistributed income for 1971. A notice of deficiency is mailed under section 6212 (a) to M on March 1, 1973. With respect to the undistributed income of M for 1971, the taxable period began on January 1, 1971, and ended on March 1, 1973.

(ii) Where a notice of deficiency referred to in subdivision (i) of this subparagraph is not mailed because there is a waiver of the restrictions on assessment and collection of a deficiency, or because the deficiency is paid, the date of filing of the waiver or the date of such payment, respectively, shall be treated as the end of the taxable period.

(2) *Allowable distribution period.* (i) Section 4942(j)(4) provides that the term "allowable distribution period" means, with respect to any private foundation, the period beginning with the first day of the first taxable year following the taxable year in which the incorrect valuation of foundation assets (described in paragraph (b)(2) of this section) occurred and ending 90 days after the date of mailing of a notice of deficiency under section 6212(a) with respect to the initial excise tax imposed by paragraph (a)(1) of this section. This period shall be extended by any period in which a deficiency cannot be assessed under section 6213(a), and any other period which the Commissioner or his delegate determines is reasonable and necessary to permit a distribution of undistributed income under section 4942.

(ii) Where a notice of deficiency referred to in subdivision (i) of this subparagraph is not mailed because there is a waiver of the restrictions on assessment and collection of a deficiency, or because the deficiency is paid, the date of filing of the waiver or the date of such payment, respectively, shall be treated as the end of the allowable distribution period.

(3) *Correction period*—(i) *In general.* (*a*) For purposes of section 4942 the term "correction period" means, with respect to any private foundation for any taxable year, the period beginning with the first day of the taxable year and ending 90 days after the date of mailing of a notice of deficiency under section 6212(a) with respect to the additional excise tax imposed under section 4942(b) and paragraph (a)(2) of this section. This period shall be extended by any period in which a deficiency cannot be assessed under section 6213(a) and by any other period which the Commissioner or his delegate determines is reasonable and necessary to permit a distribution of undistributed income under section 4942.

(*b*) Where a notice of deficiency referred to in (*a*) of this subdivision is not mailed because there is a waiver of the restrictions on assessment and collection of a deficiency, or because the deficiency is paid, the date of filing of the waiver or the date of such payment, respectively, shall be treated as the end of the correction period.

(ii) *Extension of correction period.* Except as provided in subdivision (iii) of this subparagraph, the Commissioner or his delegate ordinarily will not extend the correction period under this subparagraph unless the following factors are present:

(*a*) The foundation or an appropriate State officer (as defined in section 6104 (c)(2)) is in good faith actively seeking to take adequate corrective action;

(*b*) Adequate corrective action cannot reasonably be expected to result during the unextended correction period; and

(*c*) The failure to distribute appears to have been an isolated occurrence which is unlikely to recur in the future.

(iii) *Claim for refund.* If a foundation files a claim for refund with respect to a tax imposed under section 4942(a)(1) within the unextended correction period, the Commissioner shall extend the correction period during the pendency of the claim. If such claim is denied, the correction period will be extended by an additional 90 days to permit the foundation to file a suit or proceeding referred to in section 7422(b) with respect to such claim or to make the required correction. If such suit or proceeding is filed, the correction period will be extended during the pendency of such suit or proceeding.

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

Example (1). In 1975 private foundation M made an error in valuing its assets which was not willful and was due to reasonable cause. The error caused M not to distribute $25,000 that should have been distributed with respect to 1975. M uses the calendar year as its taxable year. On March 1, 1978, a notice of deficiency with respect to the excise taxes imposed under paragraphs (a)(1) and (2) of this section was mailed under section 6212(a) to M. With respect to the undistributed income for 1975, the "taxable period" is the period from January 1, 1975, through March 1, 1978, and the "allowable distribution period" is the period from January 1, 1976, through May 30, 1978 (90 days after the mailing of the notice of deficiency).

Example (2). Assume the facts as stated in Example (1), except that the Commissioner or his delegate determines that it is reasonable and necessary to extend the period for distribution through June 15, 1978. Thus, the "allowable distribution period" is from January 1, 1976, through June 15, 1978.

Example (3). Assume the facts as stated in Example (1). The "correction period" is from January 1, 1975, through May 30, 1978, unless M has filed a petition in the Tax Court contesting such deficiency or a claim for refund before May 30, 1978.

§ 53.4942(a)-2 Computation of undistributed income.

(a) *Undistributed income.* For purposes of section 4942, the term "undistributed income" means, with respect to any private foundation for any taxable year as of any time, the amount by which—

(1) The distributable amount (as defined in section 4942(d) and paragraph (b) of this section) for such taxable year exceeds

(2) The qualifying distributions (as defined in section 4942(g) and § 53.4942(a)-3) made before such time out of such distributable amount.

(b) *Distributable amount.* For purposes of section 4942, the term "distributable amount" means, with respect to any private foundation for any taxable year, an amount equal to the higher of the minimum investment return (as defined in section 4942(e) and paragraph (c) of this section) or the adjusted net income (as defined in section 4942(f) and paragraph (d) of this section), reduced by the sum of the taxes imposed on such private foundation for such taxable year under subtitle A of the Code and section 4940.

(c) *Minimum investment return*—(1) *In general*—(i) *Assets held for production of income.* For purposes of section 4942(d) and paragraph (b) of this section, the "minimum investment return" for any private foundation for any taxable year is the amount determined by multiplying—

(a) The excess of the aggregate fair market value of all assets of the foundation, other than those used (or held for use) directly in carrying out the foundation's exempt purpose, over the amount of the acquisition indebtedness with respect to such assets (determined under section 514(c)(1), but without regard to the taxable year in which the indebtedness was incurred), by

(b) The applicable percentage (as defined in section 4942(e)(3) and subparagraph (3) of this paragraph) for such year.

For purposes of (a) of this subdivision, the aggregate fair market value of all assets of the foundation shall include the average of the fair market values on a monthly basis of securities for which market quotations are readily available (within the meaning of subparagraph (2)(i) of this paragraph), the average of the foundation's cash balances on a monthly basis, and the fair market value of all other assets (within the meaning of subparagraphs (2) (ii) and (iii) of this paragraph) for the period of time during the year for which they are held by the foundation. For purposes of section 4942 and this subdivision, an asset is used (or held for use) directly in carrying out the foundation's exempt purpose only if the asset is actually used by the foundation in the carrying on of the charitable, educational or other similar function which gives rise to the exempt status of the foundation, or the foundation owns the asset and establishes to the satisfaction of the Commissioner or his delegate that its immediate use in such exempt functions is not practical (based on the facts and circumstances of the particular case) and that definite plans exist to commerce such use within a reasonable period of time. Consequently, assets which are held for the production of income or for investment (for example, stocks, bonds, interest-bearing notes, endowment funds, or real estate leased to other organizations) are not being used (or held for use) directly in carrying out such exempt functions, even though the income from such assets is used to carry out such exempt functions. Whether an asset is held for the production of income or for investment rather than being used (or held for use) directly by the foundation to carry out such exempt functions is a question of fact. For example, an office building used for the purpose of providing offices for employees engaged in the management of endowment funds of the foundation is not being used (or held for use) directly by the foundation to carry out its charitable, educational, or other similar exempt function. Real estate purchased by the foundation for use in carrying out its charitable, educational, or other similar exempt function may be considered as used (or held for use) directly to carry out such exempt function even though the property, in whole or in part, is leased for a limited period of time during which arrangements are made for its conversion to the use for which it was acquired, provided such income-producing use of the property does not last longer than 1 year.

(ii) *Certain assets excluded.* For purposes of this paragraph, the assets taken into account under section 4942(e)(1)(A)(i) shall not include the following:

(a) Administrative assets, such as office equipment and supplies which are used by employees or consultants of the foundation, to the extent such assets are devoted to and used directly in the administration of the foundation's charitable, educational or other similar activities,

(b) Real estate or the portion of a building used by the foundation directly in its charitable, educational or other similar activities.

(c) Physical facilities used in such activities, such as paintings owned by the foundation and hung in a museum, fixtures in classrooms, research facilities and related equipment,

(d) Any interest of the foundation in a trust described in section 4947(a)(1), except for income of corpus which, although not actually reduced to the foundation's possession, has been constructively received by the foundation, as where it has been credited to the foundation's account, set apart for the foundation, or otherwise made available so that the foundation may draw upon it at any time or could have drawn upon it if notice of intention to withdraw had been given,

(e) Any future interest (such as a vested or contingent remainder) of a foundation in the income or corpus of a trust described in section 4947(a)(2) until all intervening interests in, and rights to the actual possession or enjoyment of, such income or corpus have expired (however, if a foundation has a current interest in the income of a trust described in section 4947(a)(2), the assets to which such income is attributable shall be taken into account under section 4942(e)(1)(A)(i)),

(f) Any pledge to the foundation of money or property (whether or not the pledge may be legally enforced), and

(g) Any interest in a functionally related business (as defined in subdivision (iii) of this subparagraph) or in a program-related investment (as defined in section 4944(c)).

(iii) *Functionally related business.* The term "functionally related business" means—

(a) A trade or business which is not an unrelated trade or business (as defined in section 513), or

(b) An activity which is carried on within a larger aggregate of similar activities or within a larger complex of other endeavors which is related (aside from the need of the organization for income or funds or the use it makes of the profits derived) to the exempt purposes of the organization.

The provisions of this subdivision may be illustrated by the following examples:

Example (1). X, a private foundation, maintains a community of historic value which is open to the general public. For the convenience of the public, X, through a wholly owned, separately incorporated, taxable entity, maintains a restaurant and hotel in such community. Such facilities are within the larger aggregate of activities which makes available for public enjoyment the various buildings of historic interest and which is related to X's exempt purpose. Thus, the operation of the restaurant and hotel under such circumstances constitutes a functionally related business.

Example (2). Y, a private foundation, as part of its medical research program under section 501(c)(3), publishes a medical

journal in furtherance of its exempt purposes. Space in the journal is sold for commercial advertising. Notwithstanding the fact that the advertising activity may be subject to the tax imposed by section 511, such activity is within a larger complex of endeavors which makes available to the scientific community and the general public developments with respect to medical research and is therefore a functionally related business.

(2) *Valuation of assets*—(i) *Certain securities.* For purposes of subparagraph (1)(i) of this paragraph, a private foundation may use any reasonable method to determine the fair market value on a monthly basis of securities for which market quotations are readily available, as long as such method is consistently used. For purposes of this subparagraph, market quotations are readily available if a security is:

(*a*) Listed on the New York Stock Exchange, the American Stock Exchange, or any city or regional exchange in which quotations appear on a daily basis, including foreign securities listed on a recognized foreign national or regional exchange;

(*b*) Regularly traded in the national or regional over-the-counter market, for which published quotations are available; or

(*c*) Locally traded, for which quotations can readily be obtained from established brokerage firms.

The term "securities" includes, but is not limited to, common and preferred stocks, bonds, and mutual fund shares.

(ii) *Other assets.* For purposes of this paragraph, with respect to all assets other than cash or assets described in subdivision (i) or (iii) of this subparagraph, a private foundation shall obtain an accurate independent appraisal of fair market value by a person who is not a disqualified person with respect to the foundation. The foundation shall retain a copy of the independent appraisal in its records. Such valuation shall be made at least once after December 31, 1969, and before the first day of the first taxable year of the foundation beginning after December 31, 1971. For purposes of this paragraph, the most recent valuation must be used, and such valuation may be used only for the taxable year in which it is made and the four immediately succeeding taxable years. Thus, a subsequent valuation must be made before the close of the fifth taxable year following the taxable year in which the most recent valuation was made. For purposes of section 4942, assets shall be valued in accordance with §§ 20.2031–1 through 20.2031–9, except where inconsistent with the provisions of this paragraph or the regulations under section 4942(j)(3).

(iii) *Certain unique assets.* For the valuation of assets which are unique and for which neither a ready market value nor standard valuation methods exist, see § 53.4942(b)–3(5).

(iv) *Income for taxable year.* For purposes of this paragraph, an amount equal to gross income for the taxable year (determined with the income modifications provided by section 4942(f)(2)) shall not be included in the aggregate fair market value of all assets of the foundation at any time during such year. However, to avoid a double exclusion, to the extent that:

(*a*) Deductions have been taken into account under section 4942(f)(1)(B) before such time which are properly allocable to such gross income, or

(*b*) Qualifying distributions have been made before such time out of the undistributed income of the foundation for such year under section 4942(h),

an amount equal to such deductions and such qualifying distributions shall be included in such aggregate fair market value of all assets of the foundation.

(3) *Applicable percentage*—(i) *In general.* For purposes of section 4942(e)(1)(B) and subparagraph (1)(i)(*b*) of this paragraph, except as provided in subdivision (ii) of this subparagraph, the applicable percentage is 6 percent for any taxable year—

(*a*) Beginning in calendar year 1970, or

(*b*) Beginning in a calendar year following 1970, unless another percentage has been determined and published by the Secretary or his delegate.

The determination that a new applicable percentage is to be used for taxable years beginning in a specific calendar year will be published by March 1 of such calendar year. The latest published percentage shall apply for any taxable year beginning in the calendar year with respect to which publication is made and for any subsequent taxable year. The applicable percentage shall bear a relationship to 6 percent which the Secretary or his delegate determines to be comparable to the relationship which the average yield on 5-year Treasury securities for the calendar year immediately preceding the beginning of the taxable year bears to the average yield on 5-year Treasury securities for the calendar year 1969. Any adjustment in the applicable percentage shall be made only to the nearest one-half of one percent.

(ii) *Transitional rule.* In the case of organizations organized before May 27, 1969, section 4942 shall, for all purposes other than the determination of the minimum investment return under section 4942(j)(3)(B)(ii) (relating to operating foundations), for taxable years—

(*a*) Beginning before January 1, 1972, apply without regard to section 4942(e).

(*b*) Beginning in 1972, apply with an applicable percentage which is the lesser of 4½ percent or three-fourths of the applicable percentage prescribed in subdivision (i) of this subparagraph for 1972,

(*c*) Beginning in 1973, apply with an applicable percentage which is the lesser of 5 percent or five-sixths of the applicable percentage prescribed in subdivision (i) of this subparagraph for 1973, and

(*d*) Beginning in 1974, apply with an applicable percentage which is the lesser of 5½ percent or eleven-twelfths of the applicable percentage prescribed in subdivision (i) of this subparagraph for 1974.

(d) *Adjusted net income*—(1) *Definition.* For purposes of section 4942(d) and paragraph (b) of this section, the term "adjusted net income" means the excess (if any) of—

(i) The gross income for the taxable year (including gross income from any unrelated trade or business) determined with the income modifications provided by section 4942(f)(2) and subparagraphs (2) and (5) of this paragraph, over

(ii) The sum of the deductions (including deductions directly connected with the carrying on of any unrelated trade or business), determined with the deduction modifications provided by section 4942(f)(3) and subparagraph (3) of this paragraph, which would be allowed to a corporation subject to the tax imposed by section 11 for the taxable year.

In computing the income includible under this paragraph as gross income and the deductions allowable under this paragraph from such income, the principles of subtitle A shall be utilized to the extent they are applicable to the definitions contained herein. Except as otherwise provided in this paragraph, no exclusions or deductions from gross income or credits against tax are allowable under this paragraph. For purposes of subdivision (i) of this subparagraph, the term "gross income" does not include gifts, grants, or contributions received by the private foundation but does include income from a functionally related business (as defined in paragraph (c)(1)(iii) of this section).

(2) *Income modifications.* The income modifications referred to in section 4942(f)(1)(A) and subparagraph (1)(i) of this paragraph are as follows:

(i) Section 103 (relating to interest on certain governmental obligations) shall not apply. Hence, interest which would have been excluded from gross income by section 103 shall be included in gross income.

(ii) Capital gains and losses from the sale or other disposition of property shall be taken into account only in an amount equal to any net short-term capital gain (as defined in section 1222(5)) for the taxable year. Long-term capital gain or loss is not included in the computation of adjusted net income. Any net short-term capital loss for a given taxable year shall not be taken into account in computing adjusted net income for such year or in computing net short-term capital gain for purposes of determining adjusted net income for prior or future taxable years regardless of whether the foundation is a corporation or a trust.

(iii) There shall be included in gross income for the taxable year—

(*a*) Amounts received or accrued as repayments of amounts which were taken into account as a qualifying distribution within the meaning of section 4942(g)(1)(A) and paragraph (a)(1)(i) of § 53.4942(a)–3 for any taxable year,

(b) Notwithstanding section 4942(f)(2)(B) and subdivision (ii) of this subparagraph, amounts received or accrued from the sale or other disposition of property to the extent that the acquisition of such property was taken into account as a qualifying distribution (within the meaning of section 4942(g)(1)(B) and paragraph (a)(1)(ii) of § 53.4942(a)-3 for any taxable year), and

(c) Any amount set aside under section 4942(g)(2) and paragraph (b) of § 53.4942(a)-3 to the extent it is determined that such amount is not necessary for the purposes for which it was set aside.

For purposes of this subparagraph, a distribution of property for purposes described in section 170(c)(1) or (2)(B) shall not be treated as a sale or other disposition of property. For purposes of this subdivision, any amounts described in (a), (b), or (c) of this subdivision shall be included in full in gross income for the taxable year without regard to any basis in such amounts.

(3) *Deduction modifications*—(i) *In general.* For purposes of computing adjusted net income under subparagraph (1) of this paragraph, no deduction shall be allowed other than all the ordinary and necessary expenses paid or incurred for the production or collection of gross income or for the management, conservation, or maintenance of property held for the production of such income, except as provided in subdivision (ii) of this subparagraph. Such expenses include that portion of a private foundation's operating expenses which is paid or incurred for the production or collection of gross income. Operating expenses include compensation of officers, other salaries and wages of employees, interest, and rent and taxes. Where only a portion of the property produces (or is held for the production of) income subject to the provisions of section 4942, and the remainder of the property is used for exempt purposes, the deductions allowed by this subparagraph shall be apportioned between the exempt and nonexempt uses. However, this subdivision does not allow deductions which are not paid or incurred for the purposes herein prescribed. Thus, for example, the deductions prescribed by the following sections are not allowable: (a) The charitable contributions deduction prescribed under sections 170 and 642(c); (b) the net operating loss deduction prescribed under section 172; and (c) the special deductions prescribed under Part VIII, subchapter B, chapter 1.

(ii) *Special rules.* For purposes of computing adjusted net income under subparagraph (1) of this paragraph: (a) The allowances for depreciation and depletion as determined under section 4940(c)(3)(B) and the regulations thereunder shall be taken into account, and (b) section 265 (relating to expenses and interest relating to tax-exempt interest) shall not apply.

(4) *Basis.* (i) For purposes of subparagraph (2)(ii) of this paragraph, the basis for purposes of determining gain from the sale or other disposition of property shall be the greater of:

(a) Fair market value on December 31, 1969, plus or minus all adjustments after December 31, 1969, and before the date of disposition under the rules of Part II of subchapter O of chapter 1, provided that the property was held by the private foundation on December 31, 1969, and continuously thereafter to the date of disposition, or

(b) Basis as determined under the rules of Part II of subchapter O of chapter 1, subject to the provisions of section 4940(c)(3)(B) (and without regard to section 362(c)).

(ii) For purposes of determining loss from the sale or other disposition of property, basis as determined in subdivision (i)(b) of this subparagraph shall apply.

(iii) The provisions of this subparagraph may be illustrated by the following examples:

Example (1). A cash basis private foundation purchased certain depreciable real property on December 1, 1969. On December 31, 1969, the fair market value of such property was $100,000 and its basis was $102,000. The property was sold on January 2, 1970, for $105,000. Because fair market value on December 31, 1969, $100,000, is less than basis as determined by Part II of subchapter O of chapter 1, $102,000, a short-term gain of $3,000 is recognized (*i.e.*, sale price of $105,000 less the greater of the two possible bases) for purposes of section 4942(f)(2)(B).

Example (2). Assume the facts as stated in Example (1) except that the sale price was $95,000. Because the sale price was $7,000 less than the basis for loss ($102,000 as determined by the application of subdivision (ii) of this subparagraph), there is a capital loss of $7,000 which may be deducted against short-term capital gains for 1970 (if any) in determining net short-term capital gain.

Example (3). A cash basis private foundation purchased unimproved land on December 1, 1969. On December 31, 1969, the fair market value of such property was $110,000 and its basis was $102,000. The property was sold on January 2, 1970, for 105,000. Fair market value on December 31, 1969, $110,000, exceeds basis as determined by Part II of subchapter O of chapter 1, $102,000, and will be used for purposes of determining gain. Because the basis for purposes of determining gain exceeds the sale price, there is no gain. Because the basis for purposes of determining loss ($102,000) is less than sale price, there is no loss.

(5) *Treatment of certain distributions in redemption of stock.* For purposes of applying section 4942(f) and this paragraph, any distribution made to a private foundation by a disqualified person (as defined in section 4946(a)) in redemption of stock held by such private foundation in a business enterprise shall be treated as not essentially equivalent to a dividend under section 302(b)(1) if all of the following conditions are satisfied:

(i) Such redemption is of stock which was owned by a private foundation on May 26, 1969 (or which is acquired by a private foundation under the terms of a trust which was irrevocable on May 26, 1969, or under the terms of a will executed on or before such date, which are in effect on such date and at all times thereafter);

(ii) Such foundation is required to dispose of such property in order not to be liable for tax under section 4943 (relating to taxes on excess business holdings); and

(iii) Such foundation receives in return an amount which equals or exceeds the fair market value of such property at the time of such disposition or at the time a contract for such disposition was previously executed in a transaction which would not constitute a prohibited transaction (within the meaning of section 503(b) or the corresponding provisions of prior law). In the case of a disposition before January 1, 1975, section 4943 shall be applied without taking section 4943(c)(4) into account.

(e) *Certain transitional rules.* In the case of organizations organized before May 27, 1969, section 4942 shall—

(1) Not apply to an organization to the extent its income is required to be accumulated pursuant to the mandatory terms (as in effect on May 26, 1969, and at all times thereafter) of an instrument executed before May 27, 1969, with respect to the transfer of income producing property to such organization, except that section 4942 shall apply to such organization if the organization would have been denied exemption if section 504(a) had not been repealed, or would have had its deductions under section 642(c) limited if section 681(c) had not been repealed. In applying the preceding sentence, in addition to the limitations contained in section 504(a) or 681(c) before its repeal, section 504(a)(1) or 681(c)(1) shall be treated as not applying to an organization to the extent its income is required to be accumulated pursuant to the mandatory terms (as in effect on January 1, 1951, and at all times thereafter) of an instrument executed before January 1, 1951, with respect to the transfer of income producing property to such organization before such date, if such transfer was irrevocable on such date, and

(2) Not apply to an organization which is prohibited by its governing instrument or other instrument from distributing capital or corpus to the extent the requirements of section 4942 are inconsistent with such prohibition.

With respect to taxable years beginning after December 31, 1971, subparagraphs (1) and (2) of this paragraph shall apply only during the pendency of any judicial proceeding by the private foundation which is necessary to reform, or to excuse such foundation from compliance with, its governing instrument or any other instrument (as in effect on May 26, 1969) in order to comply with the provisions of section 4942, and in the case of subparagraph (1) of this paragraph for all periods after the termination of such judicial proceeding during which the governing instrument or any other

instrument does not permit compliance with such provisions. For purposes of the preceding sentence, a judicial proceeding will be treated as pending only if the foundation is diligently pursuing its judicial remedies and there is no unreasonable delay in such proceeding for which the private foundation is responsible.

§ 53.4942(a)–3 Qualifying distributions defined.

(a) *In general.* (1) For purposes of section 4942 and §§ 53.4942(a)–1 through 53.4942(a)–3, the term "qualifying distribution" means—

(i) Any amount (including program-related investments, as defined in section 4944(c) and the regulations thereunder, and reasonable and necessary administrative expenses) paid to accomplish one or more purposes described in section 170(c)(2)(B), other than any contribution to an organization described in (*a*) or (*b*) of this subdivision:

(*a*) An organization controlled (directly or indirectly) by the contributing private foundation or one or more disqualified persons (as defined in section 4946) with respect to such foundation, except as provided in section 4942(g)(3) and paragraph (c) of this section. An organization is "controlled" by a foundation or one or more disqualified persons with respect to the foundation if any of such persons may, by aggregating their votes or positions of authority, require the donee organization to make an expenditure, or prevent the donee organization from making an expenditure. The "controlled" organization need not be a private foundation; it may be any type of exempt or nonexempt organization including a school, hospital, operating foundation, or social welfare organization.

(*b*) A private foundation which is not an operating foundation (as defined in section 4942(j)(3) and the regulations thereunder), except as provided in section 4942(g)(3) and paragraph (c) of this section.

For purposes of this subdivision, the payment of any tax imposed under chapter 42 shall not be treated as a qualifying distribution.

(ii) Any amount paid to acquire an asset used (or held for use) directly in carrying out one or more purposes described in section 170(c)(2)(B). See paragraph (c)(1)(i) of § 53.4942–(a)–2 for the definition of "used (or held for use)".

(iii) Any amount set aside within the meaning of section 4942(g)(2) and paragraph (b) of this section.

For purposes of section 4942, the amount of a qualifying distribution of property is the fair market value of such property on the date such qualifying distribution is made. For purposes of this section, purposes described in section 170(c)(2)(B) shall be treated as including purposes described in section 170(c)(1), and the amount of an organization's qualifying distributions will be determined solely on the cash receipts and disbursements method of accounting described in section 446(c)(1). For purposes of this subparagraph, if a private foundation borrows money in a particular taxable year to make expenditures for a charitable or other similar purpose and the loan is not repaid until a subsequent taxable year, then a qualifying distribution (if any) is treated as "paid" when each expenditure of the borrowed funds for such purpose is made, rather than when the loan is repaid, except as provided in subparagraph (2) of this paragraph.

(2) For purposes of subparagraph (1) of this paragraph, if a private foundation has borrowed money in a taxable year commencing before January 1, 1970, to make expenditures for a specific charitable, or other similar, purpose and the loan is not fully repaid until a subsequent taxable year, then any repayments of the loan principal after December 31, 1969, may be treated as qualifying distributions but in an amount not in excess of the portion of the total original loan principal which the foundation demonstrates was expended for charitable or other similar purposes before January 1, 1970.

For purposes of subparagraphs (1) and (2) of this paragraph, any payment of interest on such loan shall be treated as a deduction under section 4942(f)(1)(B) and (3) in the year in which it is paid.

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

Example (1). M, a private foundation which uses the calendar year as its taxable year, makes the following payments in 1970: (i) A payment of $44,000 to five employees for conducting a foundation program of educational grants for research and study; (ii) $20,000 for various items of overhead, 10 percent of which is attributable to the activities of the employees mentioned in payment (i) of this example and the other 90 percent of which is attributable to administrative expenses which were not paid to accomplish any section 170(c)(2)(B) purpose; and (iii) a $100,000 general purpose grant paid to an educational institution described in section 170(b)(1)(A)(ii) which is not controlled by M or any disqualified persons with respect to M. Payments (i) and (ii) are qualifying distributions to the extent of $46,000 ($44,000 of salaries and 10 percent of the overhead, both of which are reasonable administrative expenses paid to accomplish section 170(c)(2)(B) purposes). Payment (iii) is also a qualifying distribution, since it is a contribution for section 170(c)(2)(B) purposes to an organization which is not described in subdivision (*a*) or (*b*) of subparagraph (1)(i) of this paragraph. The other 90 percent of payment (ii) may constitute deductions under section 4942(f)(1)(B) and (3) if they otherwise qualify under such section.

Example (2). On February 21, 1972, N, a private foundation which uses the calendar year as its taxable year, pays $500,000 for real property on which it plans to build hospital facilities to be used for medical care and education. The real property produces no income and the hospital facilities will not be constructed until 1974 according to the set-aside plan submitted to and approved by the Commissioner pursuant to paragraph (b) of this section. The purchase of the land is a qualifying distribution under either subdivision (ii) or subdivision (iii) of subparagraph (1) of this paragraph. If, however, the property were to produce rental income for more than 12 months before construction is begun, then such purchase would not constitute a qualifying distribution under subdivision (ii) of subparagraph (1) of this paragraph, but would be a qualifying distribution under subdivision (iii) of subparagraph (1) of this paragraph if the requirements of paragraph (b) of this section were satisfied.

Example (3). In 1971, X, a private foundation engaged in holding paintings and exhibiting them to the public, purchases an additional building to be used to exhibit the paintings. Such expenditure is a qualifying distribution under subparagraph (1)(ii) of this paragraph. In 1975, X sells the building. Under paragraph (d)(2)(iii)(*b*) of § 53.4942(a)–2, all of the proceeds of the sale (less direct costs of the sale) are included in the foundation's adjusted net income for 1975.

Example (4). In January 1969, M, a private foundation, borrowed $10 million to give to N, a private college, for the construction of a science center. M borrowed the money from X, a commercial bank. M is to repay X at the rate of $1.1 million per year ($1 million principal and $0.1 million interest) for 10 years, beginning in January 1970. M distributed $5 million of the borrowed funds to N in February 1969 and the other $5 million in March 1970. For purposes of this section, the first $5 million of principal repayments (*i.e.*, the principal repayments due in January of 1970, 1971, 1972, 1973, and 1974) constitute qualifying distributions. In addition, the payment of $5 million to N in March 1970 constitutes a qualifying distribution. Each payment of interest ($0.1 million annually) is treated as a deduction under section 4942(f)(1)(B) and (3) in the year in which it is made.

(b) *Certain set-asides.* (1) An amount set-aside for a specific project which is for one or more of the purposes described in section 170(c)(2)(B) may be treated as a qualifying distribution, but only if, at the time of the set-aside, the private foundation establishes to the satisfaction of the Commissioner or his delegate that—

(i) The amount will actually be paid for the specific project within 60 months from the date of the first set-aside, and

(ii) The project is one which can be better accomplished by such set-aside than by the immediate payment of funds.

A "specific project" (within the meaning of this subparagraph) includes, but is not limited to, situations where relatively long-term grants or expenditures must be made in order to assure the continuity of particular charitable projects or program-related investments as defined in section 4944(c), or where grants are made as part of a matching-grant program. Such term may include, for example, a plan to erect a building to house the direct charitable activity of the foundation (for example, a museum building in which paintings are to be hung), even though the exact location and architectural plans have not been finalized; a plan to purchase an additional group of paintings offered for sale only as a unit which requires an expenditure of more than 1 year's income; or a plan to fund a

specific research program which is of sufficient magnitude as to require an accumulation prior to commencement of the research, even though not all of the details of the program have been finalized. For good cause shown, the period for paying the amount set aside may be extended by the Commissioner or his delegate. For purposes of this subparagraph, the Commissioner or his delegate shall in all events either approve or disapprove a set-aside in writing.

(2) The approval by the Commissioner or his delegate must be applied for not later than the end of the taxable year in which the amount is actually set aside. An otherwise proper set-aside will not be a qualifying distribution under subparagraph (1) of this paragraph with respect to a specific taxable year if approval by the Commissioner of his delegate is not sought prior to the end of the taxable year in which the amount is actually set aside.

(3) To obtain approval by the Commissioner or his delegate for a set-aside, the foundation must write to Commissioner of Internal Revenue, T:MS:EO, 1111 Constitution Avenue NW., Washington, DC 20224, stating specifically—

(i) The nature and purposes of the specific project and the amount of the set-aside for which such approval is requested:

(ii) The amounts and approximate dates of any planned additions to the set-aside after its initial establishment;

(iii) The reasons why the project can be better accomplished by such set-aside than by the immediate payment of funds;

(iv) A detailed description of the project, including estimated costs, sources of any future funds expected to be used for completion of the project, and the location or locations (general or specific) of any physical facilities to be acquired or constructed as part of the project; and

(v) A statement by an appropriate foundation manager (as defined in section 4946(b)) that the amounts to be set aside will actually be paid for the specific project within a specified period of time which ends not more than 60 months after the date of the first set-aside; or a statement showing good cause why the period for paying the amount set aside should be extended (including a showing that the proposed project could not be divided into two or more projects covering periods of no more than 60 months each) and setting forth the extension of time requested.

(4) A set-aside approved by the Commissioner or his delegate shall be evidenced by the entry of a dollar amount on the books and records of a private foundation as a pledge or obligation to be paid at a future date or dates. Any amount which is set aside shall be taken into account for purposes of determining the foundation's minimum investment return under section 4942(e)(1)(A)(i) and paragraph (c)(1) of § 53.4942(a)-2, and any income attributable to such set-aside shall be taken into acount in computing adjusted net income under section 4942(f) and paragraph (d) of § 53.4942(a)-2.

(5) For purposes of section 4943, any interest in a business enterprise will be treated as disposed of by a private foundation at the time of the actual disposition of such interest, rather than at the time of a set-aside of such interest which is properly made pursuant to this paragraph.

(c) *Certain contributions to section 501(c)(3) organizations.* (1) For purposes of section 4942 and §§ 53.4942(a)-1 through 53.4942(a)-3, the term "qualifying distribution" includes (in the year in which it is paid) a contribution to a section 501(c)(3) organization described in section 4942(g)(1)(A) (i) or (ii) and paragraph (a)(1)(i) (*a*) or (*b*) of this section if—

(i) Not later than the close of the first taxable year after its taxable year in which such contribution is received, such donee organization makes a distribution equal to the full amount of such contribution and such distribution is a qualifying distribution (within the meaning of paragraph (a) of this section, without regard to this paragraph) which is treated under section 4942(h) and paragraph (d) of this section as a distribution out of corpus (or would be so treated if such section 501(c)(3) organization were a private foundation which is not an operating foundation), and

(ii) The private foundation making the contribution obtains adequate records or other sufficient evidence from such donee organization (such as a statement by an appropriate officer, director, or trustee of such donee organization) showing (*a*) that the qualifying distribution described in section 4942(g)(3)(A) and subdivision (i) of this subparagraph has been made by such organization, (*b*) the names and addresses of the recipients of such distribution and the amount received by each, and (*c*) that the distribution is treated as a distribution out of corpus under section 4942(h) and paragraph (d) of this section (or would be so treated if the donee organization were a private foundation which is not an operating foundation).

For purposes of this paragraph, all amounts contributed to a specific section 501(c)(3) organization described in section 4942(g)(1)(A) (i) or (ii) within any one taxable year of such organization shall be treated (with respect to the contributing private foundation) as one "contribution". If subdivision (i) or (ii) of this subparagraph is not satisfied with respect to any contribution within the meaning of this subparagraph, no portion of such contribution shall be treated as a qualifying distribution. In order for a donee organization to meet the distribution requirements of subdivision (i) of this subparagraph, it must, not later than the close of the first taxable year after its taxable year in which any contributions are received, distribute (within the meaning of this subparagraph) an amount equal in value to 100 percent of all contributions received in such year and have no remaining undistributed income for such year. For purposes of this subparagraph, the term "contributions" means all contributions, whether of cash or property, and the fair market value of contributed property determined on the date of the contribution must be used in determining whether an amount equal in value to 100 percent of all contributions received has been distributed.

(2) The provisions of subparagraph (1) of this paragraph may be illustrated by the following examples:

Example (*1*). M, a private foundation, makes a contribution out of 1971 income to X, another private foundation which is not an operating foundation. The contribution is the only one received by X in its 1972 taxable year. In its 1973 taxable year, X makes a qualifying distribution to an art museum maintained by an operating foundation in an amount equal to the amount of the contribution received from M. X also distributes all of its undistributed income for 1972 and 1973 for other charitable purposes. Under the provisions of section 4942(h) and paragraph (d) of this section, such distribution to the museum is treated as a distribution out of corpus. Thus, M's contribution to X is a qualifying distribution out of M's 1971 income provided M obtains adequate records or other sufficient evidence from X showing the nature and amount of the distribution made by X, the identity of the recipient, and the fact that the distribution is treated as made out of corpus. If X's qualifying distributions during 1973 had been equal only to M's contribution to X and X's undistributed income for 1972, X could have made an election under section 4942(h)(2) and paragraph (d)(3) of this section to treat the amount distributed in excess of its 1972 undistributed income as a distribution out of corpus and in that manner satisfied the requirements of section 4942(g)(3) and this paragraph.

Example (*2*). Assume the facts stated in Example (1), except that X is a private college controlled by disqualified persons with respect to M and that the records which X furnishes to M show that the distribution would have been treated as made out of corpus if X were a private nonoperating foundation. The result is the same as in Example (1).

Example (*3*). Assume the facts stated in Example (1), except that the records obtained by M from X are not sufficient to show the amounts distributed or the identities of the recipients of the distributions. The contribution by M to X will be a qualifying distribution only if M can obtain other sufficient evidence (such as statements from officers or employees of X or from the recipients) showing the facts required by subparagraph (1)(ii) of this paragraph.

(3) A contribution by a private foundation to a recipient organization which the recipient uses to make payments to another organization (the secondary recipient) shall not be regarded as a contribution by the private foundation to the secondary recipient if the foundation does not earmark the use of the contribution for any named secondary recipient and does not retain power to cause the selection of the secondary recipient by the organization to which such foundation has made the contribution. For purposes of this subparagraph, a contribution described herein shall not be regarded as a contribution by the

foundation to the secondary recipient even though such foundation has reason to believe that certain organizations would derive benefits from such contribution so long as the original recipient organization exercises control, in fact, over the selection process and actually makes the selection completely independently of such foundation.

(4) For purposes of section 4942, a distribution to a private foundation which is not an operating foundation and which is not controlled (directly or indirectly) by the distributing foundation or one or more disqualified persons (as defined in section 4946 and the regulations thereunder) with respect to the distributing foundation will be treated as a distribution to an operating foundation if—

(i) Such distribution is pursuant to a written commitment which was binding on May 26, 1969, and at all times thereafter,

(ii) Such distribution is made for one or more of the purposes described in section 170(c)(2)(B), and

(iii) Such distribution is to be paid out to the recipient private foundation on or before December 31, 1974.

For purposes of this subparagraph, a written commitment will be considered to have been binding prior to May 27, 1969, only if the amount and nature of the distribution and the name of the recipient foundation were entered in the records of the distributing foundation, or were otherwise adequately evidenced, prior to May 27, 1969, or notice of the distribution was communicated in writing to such recipient prior to May 27, 1969.

(d) *Treatment of qualifying distributions.* (1) Except as provided in subparagraph (3) of this paragraph, any qualifying distribution made during a taxable year shall be treated as made—

(i) First out of the undistributed income (as defined in section 4942(c) and paragraph (a) of § 53.4942(a)–2) of the immediately preceding taxable year (if the private foundation was subject to the initial excise tax imposed by paragraph (a)(1) of § 53.4942(a)–1 for such preceding taxable year) to the extent thereof;

(ii) Second out of the undistributed income for the taxable year to the extent thereof; and

(iii) Then out of corpus.

(2) The provisions of subparagraph (1) of this paragraph may be illustrated by the following example:

Example. M, a private foundation which was created in 1968 and which uses the calendar year as its taxable year, has distributable amounts and qualifying distributions for 1970 through 1977 as follows:

	1970	1971	1972	1973
Distributable amount	$100	$100	$100	$100
Qualifying distribution	0	100	250	100

	1974	1975	1976	1977
Distributable amount	$100	$100	$100	$100
Qualifying distribution	100	100	100	------

In 1971 the qualifying distribution of $100 is treated under subparagraph (1)(i) of this paragraph as made out of the $100 of undistributed income for 1970. The qualifying distribution of $250 in 1972 is treated as made: (i) $100 out of the undistributed income for 1971 under subparagraph (1)(i) of this paragraph; (ii) $100 out of the undistributed income for 1972 under subparagraph (1)(ii) of this paragraph; and (iii) $50 out of corpus in 1972 under subparagraph (1)(iii) of this paragraph. The qualifying distribution of $100 in each of the years 1973 through 1976 is treated as made out of the undistributed income for each of those respective years under subparagraph (1)(ii) of this paragraph. See paragraph (e) of this section for adjustment of M's distributable amount for 1977 for purposes of §§ 53.4942(a)–1 through 53.4942(a)–3 (other than this paragraph).

(3) In the case of any qualifying distribution which (under subparagraph (1) of this paragraph) is not treated as made out of the undistributed income of the immediately preceding taxable year, the foundation may elect to treat any portion of such distribution as made out of the undistributed income of a designated prior taxable year or out of corpus. Such election must be made (by filing a statement with the Commissioner or his delegate) on or before the date prescribed for filing the foundation's return under section 6033 (determined with regard to any extension of time for filing) with respect to the taxable year in which such qualifying distribution is made, and the election is effective as of the date such statement is filed. The statement must contain a declaration by an appropriate foundation manager (within the meaning of section 4946(b)(1)) that the foundation is making an election under section 4942(h)(2) of the Code, and it must specify whether the distribution is made out of the undistributed income of a designated prior taxable year (or years) or is made out of corpus. Any election described in this subparagraph may be revoked in whole or in part (by filing a statement with the Commissioner or his delegate) on or before the date prescribed for filing the foundation's return under section 6033 (determined with regard to any extension of time for filing) with respect to the taxable year in question. Such statement must contain a declaration by an appropriate foundation manager (within the meaning of section 4946(b)(1)) that the foundation is revoking an election under section 4942(h)(2) in whole or in part, and it must specify the election or part thereof being revoked. For purposes of elections made under this subparagraph, see § 1.9100–1 relating to extensions of time for making certain elections.

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

Example. M, a private foundation which uses the calendar year as its taxable year, has undistributed income of $300 for 1971, $100 for 1972, and $400 for 1973. On January 14, 1973, M makes its first qualifying distribution in 1973 when it sets aside (within the meaning of paragraph (b) of this section) $700 for construction of a hospital. M notifies the Commissioner or his delegate in writing on March 20, 1973, that it is making an election under section 4942(h)(2), and that its distribution of January 14 (to the extent it exceeds undistributed income for 1972) is to be applied first against undistributed income for 1971. On February 24, 1973, a notice of deficiency with respect to the tax imposed under paragraph (a)(1) of § 53.4942(a)–1 in regard to M's undistributed income for 1971 was mailed to M under section 6212(a). Thus, under the given facts, an initial excise tax of $45 (15 percent of $300) is imposed under paragraph (a)(1) of § 53.4942(a)–1. Since M made the election described above, the $300 of undistributed income for 1971 is treated as distributed during the correction period (as defined in paragraph (c)(3) of § 53.4942(a)–1), and therefore no additional tax will be imposed. In addition, $300 ($700 minus $400) of the $700 qualifying distribution is treated as made out of undistributed income for 1973.

(e) *Adjustment of distributable amount where distributions during prior years have exceeded income.* (1) If for the taxable years in the adjustment period (as defined in subparagraph (2) of this paragraph) for which an organization is a private foundation—

(i) The aggregate qualifying distributions treated (under section 4942(h) and paragraph (d) of this section) as made out of the undistributed income for such taxable years or as made out of corpus during such taxable years, exceed

(ii) The distributable amounts for such taxable years (determined without regard to this paragraph),

then, for purposes of §§ 53.4942(a)–1 through 53.4942(a)–3 (other than paragraph (d) of this section), the distributable amount for the taxable year shall be reduced by an amount equal to such excess. Amounts distributed by an organization in satisfaction of section 170(b)(1)(E)(ii) or 4942(g)(3)(A) are not to be taken into account under subdivision (i) of this subparagraph.

(2) For purposes of subparagraph (1) of this paragraph, the taxable years in the adjustment period are—

(i) With respect to any taxable year of a private foundation beginning before January 1, 1975, the taxable years beginning after December 31, 1969, and immediately preceding the taxable year in question, and

(ii) With respect to any taxable year of a private foundation beginning after December 31, 1974, the 5 taxable years immediately preceding the taxable year in question.

Thus, an excess (within the meaning of subparagraph (1) of this paragraph) for any 1 taxable year cannot be carried forward for more than 5 taxable years.

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

Example (1). Assume the facts as stated in the example in paragraph (d)(2) of this section. Thus, for the taxable year 1977, for purposes of subparagraph (1)(i) of this paragraph, the aggregate qualifying distributions with respect to the taxable years in the adjustment period (1972 through 1976) which are treated under section 4942(h) and paragraph (d) of this section as made out of undistributed income or corpus for such years are $550, computed as follows:

Year	Distributable amount	Qualifying distributions: Out of undistributed income	Qualifying distributions: Out of corpus
1972	$100	$100	$50
1973	100	100	
1974	100	100	
1975	100	100	
1976	100	100	
Total	500	500	50

Since for the taxable years 1972 through 1976, the excess of the aggregate qualifying distributions over the aggregate distributable amounts is $50, under the provisions of subparagraph (1) of this paragraph M's distributable amount ($100) for 1977 is reduced to $50, except for purposes of paragraph (d) of this section. If, however, M became a private foundation for the first time on January 1, 1974, then under the stated facts there would be no reduction in M's distributable amount for 1977 because, for M's taxable years 1974 through 1976, the aggregate of M's qualifying distributions treated as made out of undistributed income or corpus for such years would not exceed the distributable amounts for such years.

Example (2). Assume the facts as stated in Example (1), except that in 1975 M receives a contribution of $200 from X, a private foundation which controls M (within the meaning of section 4942(g)(1)(A)(i)), and M distributes such contribution out of corpus in 1976 in satisfaction of section 4942(g)(3)(A). In this case, the result is the same as in Example (1), since such additional $200 distribution out of corpus is excluded from the computation by section 4942(i)(1)(A) and subparagraph (1) of this paragraph.

Example (3). Assume the facts as stated in Example (1), except that in 1977 M has a qualifying distribution of $75 and in 1978 M has a distributable amount of $100. For purposes of section 4942(h) and paragraph (d) of this section, the $100 distributable amount for 1977 is not reduced under section 4942(i). Thus, the $75 qualifying distribution in 1977 is treated as made out of the $100 of undistributed income for 1977, and no part of such qualifying distribution is treated as made out of corpus in 1977. For the taxable year 1978, the adjustment period is 1973 through 1977. The aggregate qualifying distributions in the adjustment period which are described in subparagraph (1)(i) of this paragraph are $475, the sum of $100 in each of the years 1973 through 1976 and $75 in 1977. The distributable amounts in the adjustment period which are described in subparagraph (1)(ii) of this paragraph are $500 ($100 in each of the years 1973 through 1977), because the distributable amount of $100 for 1977 is determined without regard to any reduction under section 4942(i). Thus, there is no excess (within the meaning of subparagraph (1) of this paragraph) with respect to the taxable year 1978.

[FR Doc.71-7831 Filed 6-7-71;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[25 CFR Part 131]

PROTECTION OF ENVIRONMENT, CONSERVATION AND LAND USE REQUIREMENTS

Leasing and Permitting

MAY 28, 1971.

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Commissioner of Indian Affairs by 230 DM 2 (32 F.R. 13938).

Notice is hereby given that it is proposed to revise section 131.11 of Part 131, Subchapter L, Chapter I, of Title 25 of the Code of Federal Regulations. This revision is proposed pursuant to the authority contained in sections 161, 463, and 465 of the Revised Statutes (5 U.S.C. 301; 25 U.S.C. 2 and 9).

The purpose of this revision is to extend the conservation and land use requirements of 25 CFR 131.11 to include provisions for the protection of the environment as mandatory requirements to be included in leases or permits granted or approved under Part 131.

Since this revision will impose environmental protection restrictions on the use of lands leased or permitted under Part 131, public comment and expression are deemed advisable. Accordingly, all persons who desire to submit comments, views, or arguments in connection with the proposed revision shall file the same with the Bureau of Indian Affairs, Washington, D.C. 20242, no later than 30 days after publication of this notice in the FEDERAL REGISTER.

Section 131.11 of Chapter I, Title 25 of the Code of Federal Regulations is revised to read as follows:

§ 131.11 Protection of environment, conservation and land use requirements.

Leases granted or approved under this part shall contain provisions to assure compliance with applicable air and water quality standards; to conserve and protect the environment; and to avoid, minimize or correct hazards to the public health and safety. The lessee will be required to provide adequate measures to avoid, control, minimize or correct erosion, contamination, or other abuses and damages to the environment within or without the leased premises that may result from or have been caused by operations conducted on the leased premises.

(a) Farming and grazing operations shall be conducted in accordance with recognized principles of good practice, conservation, and prudent management. Land use stipulations or conservation plans to define such use and the measures necessary for the conservation, protection and control of the environment shall be incorporated in and made a part of the lease.

(b) Commercial and industrial developments shall be constructed and operations conducted on the leased premises to control and minimize environmental pollution and abuses. Leases shall contain provisions for the lessee to submit, for advance approval, general and comprehensive plans of any proposed construction or developments for the use and conduct of operations as authorized for the leased premises prior to the lessee commencing any actual construction or development activities. Such plans, including architects' designs, construction specifications, machinery or equipment installation and operation or specifications for other operations or developments, shall provide measures necessary to protect, control or abate environmental pollution or abuses and avoid, minimize, or correct hazards to the public health and safety. The duly authorized representative of the Secretary shall cause a technical examination of the plans to be made, and he may either approve or formulate requirements which the lessee must meet prior to approval.

(c) Other uses as authorized by leases issued under this part shall conform to the requirements and provisions formulated by the authorized representative of the Secretary for each such use as adapted to local conditions and the environmental factors which are in need of protection and control measures.

ERNEST STEVENS,
Acting Commissioner.

[FR Doc.71-7924 Filed 6-7-71;8:46 am]

DEPARTMENT OF AGRICULTURE

Consumer and Marketing Service

[7 CFR Part 915]

AVOCADOS GROWN IN SOUTH FLORIDA

Notice of Correction and Extension of Time for Filing Written Data, Views, or Arguments

Pursuant to the provisions of the marketing agreement, as amended, and Order No. 915, as amended (7 CFR Part 915), a notice of proposed rule making was published in the May 29, 1971 issue of the FEDERAL REGISTER (36 F.R. 9871) regarding proposed size, quality, and maturity requirements for avocados grown in South Florida. Interested persons were afforded the opportunity to submit written data, views, or arguments not later than June 5, 1971.

The proposed handling requirements, designated as § 915.313 Avocado Regulation 13, as published, contains errors in Table 1 of paragraph (a)(2) with respect to the permissible shipment dates for certain weights or diameters of the Wagner, Schmidt, and Itzamma (incorrectly listed as Itsamma) varieties. Paragraph (a)(6) also contains errors as to shipment dates with respect to the Booth 8 variety. The applicable shipment dates and minimum weights or diameters for the aforesaid named varieties in Table 1 of paragraph (a)(2) and in paragraph (a)(6) are corrected to read as follows:

§ 915.313 Avocado Regulation 13.

(a) *Order.* * * *
(2) * * *