

Rules and Regulations

Title 21—FOOD AND DRUGS

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

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 121—FOOD ADDITIVES

Subpart F—Food Additives Resulting From Contact With Containers or Equipment and Food Additives Otherwise Affecting Food

DIISONONYL ADIPATE

The Commissioner of Food and Drugs, having evaluated the data in a petition (FAP 1B2693) filed by Esso Research and Engineering Co., Post Office Box 45, Linden, NJ 07036, and other relevant material, concludes that the food additive regulations should be amended, as set forth below, to provide for the safe use of diisononyl adipate as a plasticizer in vinyl chloride homo- and/or copolymer films for food contact use.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1)) and under authority delegated to the Commissioner (21 CFR 2.120), § 121.2511 is amended in paragraph (b) by alphabetically inserting a new item in the list of substances, as follows:

§ 121.2511 Plasticizers in polymeric substances.

(b) List of substances:

Limitations

Diisononyl adipate.

For use only:

1. At levels not exceeding 24 percent by weight of permitted vinyl chloride homo- and/or copolymers used in contact with nonfatty, nonalcoholic foods. The average thickness of such polymers in the form in which they contact food shall not exceed 0.005 inch.
2. At levels not exceeding 24 percent by weight of permitted vinyl chloride homo- and/or copolymers used in contact under conditions of use F and G described in table 2 of § 121.2526(c) with fatty, nonalcoholic foods having a fat and oil content not exceeding a total of 30 percent by weight. The average thickness of such polymers in the form in which they contact food shall not exceed 0.005 inch.

Any person who will be adversely affected by the foregoing order may at any time within 30 days after its date of

publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 6-88, 5600 Fishers Lane, Rockville, Md. 20852, written objections thereto in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof. Received objections may be seen in the above office during working hours, Monday through Friday.

Effective date. This order shall become effective on its date of publication in the FEDERAL REGISTER (10-17-72).

(Sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1))

Dated: October 10, 1972.

ROBERT C. BRANDENBURG,
Acting Associate Commissioner
for Compliance.

[FR Doc.72-17649 Filed 10-16-72;8:48 am]

SUBCHAPTER C—DRUGS

PART 135a—NEW ANIMAL DRUGS FOR OPHTHALMIC AND TOPICAL USE

Neomycin Sulfate, Hydrocortisone Acetate, Tetracaine Hydrochloride Ear Ointment, Veterinary

The Commissioner of Food and Drugs has evaluated a supplemental new animal drug application (10-524V) filed by The Upjohn Co., Kalamazoo, Mich. 49001, proposing the safe and effective use of an ear ointment containing neomycin sulfate and other drugs for the treatment of dogs and cats. The supplemental application is approved.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347; 21 U.S.C. 360b(i)) and under authority delegated to the Commissioner (21 CFR 2.120), Part 135a is amended by adding a new section as follows:

§ 135a.31 Neomycin sulfate, hydrocortisone acetate, tetracaine hydrochloride ear ointment, veterinary.

(a) **Specifications.** The product contains 5 milligrams of neomycin sulfate, equivalent to 3.5 milligrams of neomycin base, 5 milligrams of hydrocortisone acetate, and 5 milligrams of tetracaine hydrochloride in each gram of ointment.

(b) **Sponsor.** See Code No. 037 in § 135.501(c) of this chapter.

(c) **Conditions of use.** (1) It is indicated for treating acute otitis externa and, to a lesser degree, chronic otitis externa in dogs and cats. In treatment of ear canker and other inflammatory conditions of the external ear canal, a quantity of ointment sufficient to fill the external ear canal may be applied one to three times daily.

(2) Tetracaine and neomycin have the potential to sensitize. Care should be taken to observe animals being treated for evidence of hypersensitivity or allergy to the product. If such signs are noted, therapy with the product should be stopped. Incomplete response or exacerbation of corticosteroid responsive lesions may be due to the presence of nonsusceptible organisms or to prolonged use of antibiotic-containing preparations resulting in overgrowth of nonsusceptible organisms, particularly *Monilia*.

(3) Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Effective date. This order shall be effective upon publication in the FEDERAL REGISTER (10-17-72).

(Sec. 512(i), 82 Stat. 347; 21 U.S.C. 360b(i))

Dated: October 10, 1972.

C. D. VAN HOUWELING,
Director,
Bureau of Veterinary Medicine.

[FR Doc.72-17650 Filed 10-16-72;8:48 am]

PART 135b—NEW ANIMAL DRUGS FOR IMPLANTATION OR INJECTION

Ketamine Hydrochloride Injection

The Commissioner of Food and Drugs has evaluated supplemental new animal drug applications (45-290V) filed by Parke-Davis & Co., Joseph Campau at the River, Detroit, Mich. 48232, and (43-304V) filed by Bristol Laboratories, Post Office Box 657, Syracuse, N.Y. 13201, proposing the safe and effective use of ketamine hydrochloride injection for restraint in subhuman primates. The supplemental applications are approved.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347; 21 U.S.C. 360b(i)) and under authority delegated to the Commissioner (21 CFR 2.120), Part 135b is amended in § 135b.28 by revising paragraph (e) as follows:

§ 135b.28 Ketamine hydrochloride injection, veterinary.

(e) **Conditions of use.** (1) In cats: (i) It is used for restraint or as the sole anesthetic agent in diagnostic or minor,

brief surgical procedures that do not require skeletal muscle relaxation.

(i) It is administered intramuscularly at a recommended dose that ranges from 5 to 15 milligrams per pound of body weight depending on the effect desired.

(2) In subhuman primates: (i) It is used for restraint.

(ii) It is administered intramuscularly at a recommended dose that ranges from 3 to 15 milligrams per kilogram of body weight depending upon the species, general condition, and age of the subject.

(3) Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Effective date. This order shall be effective upon publication in the FEDERAL REGISTER (10-17-72).

(Sec. 512(i), 82 Stat. 347; 21 U.S.C. 360b(1))

Dated: October 11, 1972.

C. D. VAN HOUWELING,
Director,
Bureau of Veterinary Medicine.

[FR Doc.72-17646 Filed 10-16-72;8:48 am]

PART 135c—NEW ANIMAL DRUGS IN ORAL DOSAGE FORMS

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

Tetracycline Hydrochloride

The Commissioner of Food and Drugs has evaluated a new animal drug appli-

cation (65-064V) filed by E. R. Squibb & Sons, New Brunswick, N.J. 08903, proposing the safe and effective use of tetracycline hydrochloride capsules in dogs. The application is approved.

The drug is subject to batch certification under the provisions of section 512(n) of the act, and accordingly Part 146c is amended to provide that the drug under its approved labeling shall be dispensed on a prescription basis.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 512 (i) and (n), 82 Stat. 347 and 350-351; 21 U.S.C. 360b (i) and (n)) and under authority delegated to the Commissioner (21 CFR 2.120), Parts 135c and 146c are amended as follows:

1. Part 135c is amended in § 135c.34 by revising paragraph (b) and by adding a new table 3 to paragraph (e) as follows:

§ 135c.34 Tetracycline oral veterinary.

(b) *Sponsor.* (1) See Code Nos. 030 and 037 in § 135.501(c) of this chapter for conditions of use provided in Tables 1 and 2 of paragraph (e) of this section.

(2) See Code No. 035 in § 135.501(c) of this chapter for conditions of use provided for in table 3 of paragraph (e) of this section.

(e) *Conditions of use.* * * *

TABLE 3—IN CAPSULES

Milligrams per capsule	Limitations	Indications for use
Tetracycline...	250 For dogs; as tetracycline hydrochloride; administer orally 25 mg. per lb. of body weight per day given in divided doses every 6 hours; treatment should be continued until symptoms of the disease have subsided and the temperature is normal for 48 hours; not for use in animals which are raised for food production; Federal law restricts this drug to use by or on the order of a licensed veterinarian.	For treatment of infections caused by organisms sensitive to tetracycline hydrochloride, such as bacterial gastroenteritis due to <i>E. coli</i> and urinary tract infections due to <i>Staphylococcus spp.</i> and <i>E. coli</i> .

2. Part 146c is amended by revising § 146c.204(c) (2) to read as follows:

§ 146c.204 Chlortetracycline hydrochloride capsules, tetracycline hydrochloride capsules; tetracycline capsules; tetracycline phosphate complex capsules.

(c) * * *

(2) It is packaged for dispensing and intended solely for veterinary use. Its

label and labeling shall bear the statement "Warning: Not for use in animals which are raised for food production" and shall comply with all of the requirements prescribed by subparagraph (1) of this paragraph, except that in lieu of the statement "Caution: Federal law prohibits dispensing without a prescription," each package shall include information containing directions and warnings adequate for the veterinary use

of the drug by the laity in all cases except those in which the veterinary prescription statement is required by regulations under Part 135c. In those cases, the veterinary prescription statement shall comply with the requirements prescribed by § 1.106(c) of this chapter.

Effective date. This order shall be effective upon publication in the FEDERAL REGISTER (10-17-72).

(Secs. 512 (i), (n), 82 Stat. 347, 350-351; 21 U.S.C. 360b (i), (n))

Dated: October 10, 1972.

C. D. VAN HOUWELING,
Director,
Bureau of Veterinary Medicine.

[FR Doc.72-17647 Filed 10-16-72;8:48 a.m.]

[DESI 50015]

PART 148i—NEOMYCIN SULFATE

Confirmation of Order Revoking Provisions for Certification of Neomycin Palmitate—Hydrocortisone Acetate—Trypsin—Chymotrypsin Ointment

An order was published in the FEDERAL REGISTER of March 8, 1972 (37 F.R. 4959), amending the antibiotic drug regulations to repeal provisions for certification of neomycin palmitate-hydrocortisone acetate-trypsin-chymotrypsin ointment. The order amended Part 148i by revising the section heading and paragraph (a) (1) of § 148i.33.

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 502, 507, 52 Stat. 1050-51, as amended, 59 Stat. 463, as amended; 21 U.S.C. 352, 357) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120), notice is given that no objections were filed to the above-identified order. Accordingly, the amendment promulgated thereby became effective April 17, 1972.

Dated: October 10, 1972.

ROBERT C. BRANDENBURG,
Acting Associate Commissioner
for Compliance.

[FR Doc.72-17648 Filed 10-16-72;8:48 am]

Title 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER A—INCOME TAX

[T.D. 7212]

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

Private Foundation Defined

On November 20, 1970, notice of proposed rule making with respect to promulgation of regulations which relate to the definition of a private foundation under section 509 of the Internal Revenue Code of 1954 was published in the *FEDERAL REGISTER* (35 F.R. 17845). A public hearing on these proposed regulations was held on June 28, 1971. After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the Income Tax Regulations (26 CFR Part 1) are amended as follows:

PARAGRAPH 1. There are inserted immediately before § 1.511-1, the following new sections:

§ 1.509(a) Statutory provisions; private foundation defined; general rule.

Sec. 509. *Private foundation defined*—(a) *General rule.* For purposes of the purposes of this title, the term "private foundation" means a domestic or foreign organization described in section 501(c)(3) other than—

(1) An organization described in section 170(b)(1)(A) (other than in clauses (vii) and (viii));

(2) An organization which—

(A) Normally receives more than one-third of its support in each taxable year from any combination of—

(i) Gifts, grants, contributions, or membership fees, and

(ii) Gross receipts from admissions, sales of merchandise, performance of services, or furnishing of facilities, in an activity which is not an unrelated trade or business (within the meaning of section 513), not including such receipts from any person, or from any bureau or similar agency of a governmental unit (as described in section 170(c)(1)), in any taxable year to the extent such receipts exceed the greater of \$5,000 or 1 percent of the organization's support in such taxable year, from persons other than disqualified persons (as defined in section 4946) with respect to the organization, from governmental units described in section 170(c)(1), or from organizations described in section 170(b)(1)(A) (other than in clauses (vii) and (viii)), and

(B) Normally receives not more than one-third of its support in each taxable year from gross investment income (as defined in subsection (e));

(3) An organization which—

(A) Is organized, and at all times thereafter is operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more specified organizations described in paragraph (1) or (2),

(B) Is operated, supervised, or controlled by or in connection with one or more organizations described in paragraph (1) or (2), and

(C) Is not controlled directly or indirectly by one or more disqualified persons (as defined in section 4946) other than foundation

managers and other than one or more organizations described in paragraph (1) or (2); and

(4) An organization which is organized and operated exclusively for testing for public safety.

For purposes of paragraph (3), an organization described in paragraph (2) shall be deemed to include an organization described in sections 501(c)(4), (5), or (6) which would be described in paragraph (2) if it were an organization described in section 501(c)(3).

[Sec. 509(a), as added by sec. 101(a), Tax Reform Act 1969 (83 Stat. 496)]

§ 1.509(a)-1 Definition of private foundation.

In general. Section 509(a) defines the term "private foundation" to mean any domestic or foreign organization described in section 501(c)(3) other than an organization described in section 509(a)(1), (2), (3), or (4). Organizations which fall into the categories excluded from the definition of "private foundation" are generally those which either have broad public support or actively function in a supporting relationship to such organizations. Organizations which test for public safety are also excluded.

§ 1.509(a)-2 Exclusion for certain organizations described in section 170(b)(1)(A).

(a) *General rule.* Organizations described in section 170(b)(1)(A) (other than in clauses (vii) and (viii)) are excluded from the definition of "private foundation" by section 509(a)(1). For the requirements to be met by organizations described in section 170(b)(1)(A) (i) through (vi), see § 1.170A-9 (a) through (e) and paragraph (b) of this section. For purposes of this section, the parenthetical language "other than in clauses (vii) and (viii)" used in section 509(a)(1) means "other than an organization which is described only in clause (vii) or (viii)." For purposes of this section, an organization may qualify as a section 509(a)(1) organization regardless of the fact that it does not satisfy section 170(c)(2) because:

(1) Its funds are not used within the United States or its possessions, or

(2) It was created or organized other than in, or under the law of, the United States, any State or territory, the District of Columbia, or any possession of the United States.

(b) *Medical research organizations.* In order to qualify under section 509(a)(1) as a medical research organization described in section 170(b)(1)(A)(iii), an organization must meet the requirements of section 170(b)(1)(A)(iii) and § 1.170A-9(c)(2), except that, solely for purposes of classification as a section 509(a)(1) organization, such organization need not be committed to spend every contribution for medical research before January 1 of the fifth calendar year which begins after the date such contribution is made.

§ 1.509(a)-3 Broadly, publicly supported organizations.

(a) *In general.* (1) Section 509(a)(2) excludes certain types of broadly, public-

ly supported organizations from private foundation status. An organization will be excluded under section 509(a)(2) if it meets the one-third support test under section 509(a)(2)(A) and the one-third gross investment income test under section 509(a)(2)(B).

(2) An organization will meet the one-third support test if it normally (within the meaning of paragraph (c), (d), or (e) of this section) receives more than one-third of its support in each taxable year from any combination of:

(i) Gifts, grants, contributions, or membership fees, and

(ii) Gross receipts from admissions, sales of merchandise, performance of services, or furnishing of facilities, in an activity which is not an unrelated trade or business (within the meaning of section 513), subject to certain limitations described in paragraph (b) of this section.

from permitted sources. For purposes of this section, governmental units, organizations described in section 509(a)(1) and persons other than disqualified persons with respect to the organization shall be referred to as permitted sources. For purposes of this section, the amount of support received from the sources described in subdivisions (i) and (ii) of this subparagraph (subject to the limitations referred to in this subparagraph) will be referred to as the numerator of the one-third support total amount of support received (as defined in section 509(d)) will be referred to as the denominator of the one-third support fraction. For purposes of section 509(a)(2), paragraph (f) of this section distinguishes gifts and contributions from gross receipts; paragraph (g) of this section distinguishes grants from gross receipts; paragraph (h) of this section defines membership fees; paragraph (i) of this section defines "any bureau or similar agency of a governmental unit"; paragraph (j) of this section describes the treatment of certain indirect forms of support; paragraph (k) of this section describes the method of accounting for support; paragraph (l) of this section describes the treatment of gross receipts from section 513(a)(1), (2), or (3) activities; and paragraph (m) of this section distinguishes gross receipts from gross investment income.

(3) An organization will meet the one-third gross investment income test if it normally (within the meaning of paragraph (c), (d), or (e) of this section) receives not more than one-third of its support in each taxable year from gross investment income (as defined in section 509(e)). For purposes of this section, the amount of gross investment income received will be referred to as the numerator of the one-third gross investment income fraction, and the total amount of support received (as defined in section 509(d)) will be referred to as the denominator of the one-third gross investment income fraction. For purposes of section 509(a)(2), paragraph (m) of this section distinguishes gross receipts from gross investment income.

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(4) The one-third support test and the one-third gross investment income test are designed to insure that an organization which is excluded from private foundation status under section 509(a)(2) is responsive to the general public, rather than to the private interests of a limited number of donors or other persons.

(b) *Limitation on gross receipts*—(1) *General rule.* In computing the amount of support received from gross receipts under section 509(a)(2)(A)(ii) for purposes of the one-third support test of section 509(a)(2)(A), gross receipts from related activities received from any person, or from any bureau or similar agency of a governmental unit, are includible in any taxable year only to the extent that such receipts do not exceed the greater of \$5,000 or 1 percent of the organization's support in such taxable year.

(2) *Examples.* The application of this paragraph may be illustrated by the examples set forth below. For purposes of these examples, the term "general public" is defined as persons other than disqualified persons and other than persons from whom the foundation receives gross receipts in excess of the greater of \$5,000 or 1 percent of its support in any taxable year, and the term "gross receipts" is limited to receipts from activities which are not unrelated trade or business (within the meaning of section 513).

Example (1). For the taxable year 1970, X, an organization described in section 501(c)(3), received support of \$10,000 from the following sources:

Bureau M (a governmental bureau from which X received gross receipts for services rendered).....	\$25,000
Bureau N (a governmental bureau from which X received gross receipts for services rendered).....	25,000
General public (gross receipts for services rendered).....	20,000
Gross investment income.....	15,000
Contributions from individual substantial contributors (defined as disqualified persons under section 4946(a)(2)).....	15,000
Total support.....	100,000

Since the \$25,000 received from each bureau amounts to more than the greater of \$5,000 or one percent of X's support for 1970 (1% of \$100,000=\$1,000) under section 509(a)(2)(A)(ii), each amount is includible in the numerator of the one-third support fraction only to the extent of \$5,000. Thus, for the taxable year 1970, X received support from sources which are taken into account in meeting the one-third support test of section 509(a)(2)(A) computed as follows:

Bureau M.....	\$5,000
Bureau N.....	5,000
General public.....	20,000
Total.....	30,000

Therefore, in making the computations required under paragraph (c), (d), or (e) of this section, only \$30,000 is includible in the aggregate numerator and \$100,000 is includible in the aggregate denominator of the support fraction.

Example (2). For the taxable year 1970, Y, an organization described in section 501(c)(3), received support of \$600,000 from the following sources:

Bureau O (gross receipts for services rendered).....	\$10,000
Bureau P (gross receipts for services rendered).....	10,000
General public (gross receipts for services rendered).....	150,000
General public (contributions).....	40,000
Gross investment income.....	150,000
Contributions from substantial contributors.....	240,000
Total support.....	600,000

Since the \$10,000 received from each bureau amounts to more than the greater of \$5,000 or 1 percent of Y's support for 1970 (1% of \$600,000=\$6,000), each amount is includible in the numerator of the one-third support fraction only to the extent of \$6,000. Thus, for the taxable year 1970, Y received support from sources required to meet the one-third support test of section 509(a)(2)(A) computed as follows:

Bureau O.....	\$6,000
Bureau P.....	6,000
General public (gross receipts).....	150,000
General public (contributions).....	40,000
Total.....	202,000

Therefore, in making the computations required under paragraph (c), (d), or (e) of this section, \$202,000 is includible in the aggregate numerator and \$600,000 is includible in the aggregate denominator of the support fraction.

(c) *"Normally"*—(1) *In general*—(i)

Definition. The support tests set forth in section 509(a)(2) are to be computed on the basis of the nature of the organization's "normal" sources of support. An organization will be considered as "normally" receiving one-third of its support from any combination of gifts, grants, contributions, membership fees, and gross receipts from permitted sources (subject to the limitations described in paragraph (b) of this section) and not more than one-third of its support from gross investment income for its current taxable year and the taxable year immediately succeeding its current year, if, for the 4 taxable years immediately preceding the current taxable year, the aggregate amount of the support received during the applicable period from gifts, grants, contributions, membership fees, and gross receipts from permitted sources (subject to the limitations described in paragraph (b) of this section) is more than one-third, and the aggregate amount of the support received from gross investment income is not more than one-third, of the total support of the organization for such 4-year period.

(ii) *Exception for material changes in sources of support.* If for the current taxable year there are substantial and material changes in an organization's sources of support other than changes arising from unusual grants excluded under subparagraph (3) of this paragraph, then in applying subdivision (i) of this subparagraph, neither the 4-year computation period applicable to such year as an immediately succeeding taxable year, nor the 4-year computation period applicable to such year as a current taxable year shall apply, and in lieu of such computation periods there shall be applied a computation period consisting of the

taxable year of substantial and material changes and the 4 taxable years immediately preceding such year. Thus, for example, if there are substantial and material changes in an organization's sources of support for taxable year 1976, then even though such organization meets the requirements of subdivision (i) of this subparagraph based on a computation period of taxable years 1971 through 1974 or 1972 through 1975, such an organization will not meet the requirements of section 509(a)(2) unless it meets the requirements of subdivision (i) of this subparagraph for a computation period of the taxable years 1972 through 1976. See example (3) in subparagraph (6) of this paragraph for an illustration of this subdivision. An example of a substantial and material change is the receipt of an unusually large contribution or bequest which does not qualify as an unusual grant under subparagraph (3) of this paragraph. See subparagraph (5)(ii) of this paragraph as to the procedure for obtaining a ruling whether an unusually large grant may be excluded as an unusual grant.

(iii) *Status of grantors and contributors.* (a) If as a result of subdivision (ii) of this subparagraph, an organization is not able to meet the requirements of either the one-third support test described in paragraph (a)(2) of this section or the one-third gross investment income test described in paragraph (a)(3) of this section for its current taxable year, its status (with respect to a grantor or contributor under sections 170, 507, 545(b)(2), 556(b)(2), 642(c), 4942, 4945, 2055, 2106(a)(2), and 2522) will not be affected until notice of change of status under section 509(a)(2) is made to the public (such as by publication in the Internal Revenue Bulletin). The preceding sentence shall not apply, however, if the grantor or contributor was responsible for, or was aware of, the substantial and material change referred to in subdivision (ii) of this subparagraph, or acquired knowledge that the Internal Revenue Service had given notice to such organization that it would be deleted from classification as section 509(a)(2) organization.

(b) A grantor or contributor (other than one of the organization's founders, creators, or foundation managers (within the meaning of section 4946(b))) will not be considered to be responsible for, or aware of, the substantial and material change referred to in subdivision (ii) of this subparagraph if such grantor or contributor has made such grant or contribution in reliance upon a written statement by the grantee organization that such grant or contribution will not result in the loss of such organization's classification as not a private foundation under section 509(a). Such statement must be signed by a responsible officer of the grantee organization and must set forth sufficient information, including a summary of the pertinent financial data for the 4 preceding years, to assure a reasonably prudent man that his grant or contribution will not result

in the loss of the grantee organization's classification as not a private foundation under section 509(a). If a reasonable doubt exists as to the effect of such grant or contribution, or if the grantor or contributor is one of the organization's founders, creators, or foundation managers, the procedure set forth in subparagraph (5) (ii) of this paragraph may be followed by the grantee organization for the protection of the grantor or contributor.

(iv) *Special rule for new organizations.* If an organization has been in existence for at least 1 taxable year consisting of at least 8 months, but for fewer than 5 taxable years, the number of years for which the organization has been in existence immediately preceding each current taxable year being tested will be substituted for the 4-year period described in subdivision (i) of this subparagraph to determine whether the organization "normally" meets the requirements of paragraph (a) of this section. However, if subdivision (ii) of this subparagraph applies, then the period consisting of the number of years for which the organization has been in existence (up to and including the current year) will be substituted for the 4-year period described in subdivision (i) of this subparagraph. An organization which has been in existence for at least 1 taxable year, consisting of 8 or more months, may be issued a ruling or determination letter if it "normally" meets the requirements of paragraph (a) of this section for the number of years described in this subdivision. Such an organization may apply for a ruling or determination letter under the provisions of this paragraph, rather than under the provisions of paragraph (d) of this section. The issuance of a ruling or determination letter will be discretionary with the Commissioner. See paragraph (e) (4) of this section as to the initial determination of the status of a newly created organization. This subdivision shall not apply to those organizations receiving an extended advance ruling under paragraph (d) (4) of this section.

(2) *Terminations under section 507 (b) (1) (B).* For the special rules applicable to the term "normally" as applied to private foundations which elect to terminate their private foundation status pursuant to the 12-month or 60-month procedure provided in section 507(b) (1) (B), see the regulations under such section.

(3) *Exclusion of unusual grants.* For purposes of applying the 4-year aggregation test for support set forth in subparagraph (1) of this paragraph, one or more contributions (including contributions made prior to Jan. 1, 1970) may be excluded from the numerator of the one-third support fraction and from the denominator of both the one-third support and one-third gross investment income fractions only if such a contribution meets the requirements of this subparagraph. The exclusion provided by this subparagraph is generally intended to apply to substantial contributions and

bequests from disinterested parties, which contributions or bequests:

- (i) Are attracted by reason of the publicly supported nature of the organization;
- (ii) Are unusual or unexpected with respect to the amount thereof; and
- (iii) Would by reason of their size, adversely affect the status of the organization as normally meeting the one-third support test for any of the applicable periods described in paragraph (c), (d), or (e) of this section.

In the case of a grant (as defined in paragraph (g) of this section) which meets the requirements of this subparagraph, if the terms of the granting instrument (whether executed before or after 1969) require that the funds be paid to the recipient organization over a period of years, the amount received by the organization each year pursuant to the terms of such grant may be excluded for such year. However, no item of gross investment income may be excluded under this subparagraph. The provisions of this subparagraph shall apply to exclude unusual grants made during any of the applicable periods described in paragraph (c), (d), or (e) of this section. See subparagraph (5) (ii) of this paragraph as to reliance by a grantee organization upon an unusual grant ruling under this subparagraph.

(4) *Determining factor.* In determining whether a particular contribution may be excluded under subparagraph (3) of this paragraph, all pertinent facts and circumstances will be taken into consideration. No single factor will necessarily be determinative. Among the factors to be considered are:

- (i) Whether the contribution was made by any person (or persons standing in a relationship to such person which is described in section 4946(a) (1) (C) through (G)) who created the organization, previously contributed a substantial part of its support or endowment, or stood in a position of authority, such as a foundation manager (within the meaning of section 4946(b)), with respect to the organization. A contribution made by a person other than those persons described in this subdivision will ordinarily be given more favorable consideration than a contribution made by a person described in this subdivision.
- (ii) Whether the contribution was a bequest or an inter vivos transfer. A bequest will ordinarily be given more favorable consideration than an inter vivos transfer.
- (iii) Whether the contribution was in the form of cash, readily marketable securities, or assets which further the exempt purposes of the organization, such as a gift of a painting to a museum.
- (iv) Except in the case of a new organization, whether, prior to the receipt of the particular contribution, the organization (a) has carried on an actual program of public solicitation and exempt activities and (b) has been able to attract a significant amount of public support.
- (v) Whether the organization may reasonably be expected to attract a sig-

nificant amount of public support subsequent to the particular contribution. In this connection, continued reliance on unusual grants to fund an organization's current operating expenses (as opposed to providing new endowment funds) may be evidence that the organization cannot reasonably be expected to attract future support from the general public.

(vi) Whether, prior to the year in which the particular contribution was received, the organization met the one-third support test described in subparagraph (1) of this paragraph without the benefit of any exclusions of unusual grants pursuant to subparagraph (3) of this paragraph;

(vii) Whether neither the contributor nor any person standing in a relationship to such contributor which is described in section 4946(a) (1) (C) through (G) continues directly or indirectly to exercise control over the organization;

(viii) Whether the organization has a representative governing body as described in § 1.509(a)-3(d) (3) (i); and

(ix) Whether material restrictions or conditions (within the meaning of § 1.507-2(a) (8)) have been imposed by the transferor upon the transferee in connection with such transfer.

(5) *Grantors and contributors.* (i) As to the status of grants and contributions which result in substantial and material changes in the organization (as described in subparagraph (1) (ii) of this paragraph) and which fail to meet the requirements for exclusion under subparagraph (3) of this paragraph, see the rules prescribed in subparagraph (1) (iii) of this paragraph.

(ii) Prior to the making of any grant or contribution which will allegedly meet the requirements for exclusion under subparagraph (3) of this paragraph, a potential grantee organization may request a ruling whether such grant or contribution may be so excluded. Requests for such ruling may be filed by the grantee organization with the district director. The issuance of such ruling will be at the sole discretion of the Commissioner. The organization must submit all information necessary to make a determination of the applicability of subparagraph (3) of this paragraph, including all information relating to the factors described in subparagraph (4) of this paragraph. If a favorable ruling is issued, such ruling may be relied upon by the grantor or contributor of the particular contribution in question for purposes of sections 170, 507, 545(b) (2), 556(b) (2), 642(c), 4942, 4945, 2055, 2106 (a) (2), and 2522 and by the grantee organization for purposes of subparagraph (3) of this paragraph.

(6) *Examples.* The application of the principles set forth in this paragraph is illustrated by the examples set forth below. For purposes of these examples, the term "general public" is defined as persons other than disqualified persons and other than persons from whom the foundation received gross receipts in excess of the greater of \$5,000 or 1 percent of its support in any taxable year, the term "gross investment income" is

as defined in section 509(e), and the term "gross receipts" is limited to receipts from activities which are not unrelated trade or business (within the meaning of section 513).

Example (1). For the years 1970 through 1973, X, an organization exempt under section 501(c)(3) which makes scholarship grants to needy students of a particular city, received support from the following sources:

1970	
Gross receipts (general public) -----	\$35,000
Contributions (substantial contributors) -----	36,000
Gross investment income -----	29,000
Total support -----	100,000
1971	
Gross receipts (general public) -----	34,000
Contributions (substantial contributors) -----	35,000
Gross investment income -----	31,000
Total support -----	100,000
1972	
Gross receipts (general public) -----	35,000
Contributions (substantial contributors) -----	30,000
Gross investment income -----	35,000
Total support -----	100,000
1973	
Gross receipts (general public) -----	30,000
Contributions (substantial contributors) -----	39,000
Gross investment income -----	31,000
Total support -----	100,000

In applying section 509(a)(2) to the taxable year 1974 on the basis of subparagraph (1)(i) of this paragraph, the total amount of support from gross receipts from the general public (\$134,000) for the period 1970 through 1973 was more than one-third, and the total amount of support from gross investment income (\$126,000) was less than one-third, of its total support for the same period (\$400,000). For the taxable years 1974 and 1975, X is therefore considered "normally" to receive more than one-third of its support from the public sources described in section 509(a)(2)(A) and less than one-third of its support from gross investment income referred to in section 509(a)(2)(B) since due to the pattern of X's support, there are no substantial and material changes in the sources of the organization's support in these years. The fact that X received less than one-third of its support from section 509(a)(2)(A) sources in 1973 and more than one-third of its support from gross investment income in 1972 does not affect its status since it met the "normally" test over a 4-year period.

Example (2). Assume the same facts as in example (1) except that in 1973 X also received an unexpected bequest of \$50,000 from A, an elderly widow who was interested in encouraging the work of X, but had no other relationship to it. Solely by reason of the bequest, A became a disqualified person. X used the bequest to create five new scholarships. Its operations otherwise remained the same. Under these circumstances X could not meet the 4-year support test since the total amount received from gross receipts from the general public (\$134,000) would not be more than one-third of its total support for the 4-year period (\$450,000). Since A is a disqualified person, her bequest cannot be included in the numerator of the one-third support test under section 509(a)(2)(A). However, based on the factors set forth in subparagraph (4) of this paragraph, A's bequest may be excluded as an unusual grant under subparagraph (3) of this paragraph. Therefore, X will be considered to have met

the support test for the taxable years 1974 and 1975.

Example (3). In 1970, Y, an organization described in section 501(c)(3), was created by A, the holder of all the common stock in M corporation, B, A's wife, and C, A's business associate. Each of the three creators made small cash contributions to Y to enable it to begin operations. The purpose of Y was to sponsor and equip athletic teams for underprivileged children in the community. Between 1970 and 1973, Y was able to raise small amounts of contributions through fund raising drives and selling admission to some of the sponsored sporting events. For its first year of operations, it was determined that Y was excluded from the definition of "private foundation" under the provisions of section 509(a)(2). A made small contributions to Y from time to time. At all times, the operations of Y were carried out on a small scale, usually being restricted to the sponsorship of two to four baseball teams of underprivileged children. In 1974, M recapitalized and created a first and second class of 6 percent nonvoting preferred stock, most of which was held by A and B. A then contributed 49 percent of his common stock in M to Y. A, B, and C continued to be active participants in the affairs of Y from its creation through 1974. A's contribution of M's common stock was substantial and constituted 90 percent of Y's total support for 1974. Although Y could satisfy the one-third support test on the basis of the four taxable years prior to 1974, a combination of the facts and circumstances described in subparagraph (4) of this paragraph preclude A's contribution of M's common stock in 1974 from being excluded as an unusual grant under subparagraph (3) of this paragraph. A's contribution in 1974 constituted a substantial and material change in Y's sources of support within the meaning of subparagraph (1)(ii) of this paragraph and on the basis of the 5-year period prescribed in subparagraph (1)(ii) of this paragraph (1970 to 1974), Y would not be considered as "normally" meeting the one-third support test described in paragraph (a)(2) of this section for the taxable years 1974 (the current taxable year) and 1975 (the immediately succeeding taxable year).

Example (4). M, an organization described in section 501(c)(3), was organized in 1971 to promote the appreciation of ballet in a particular region of the United States. Its principal activities will consist of erecting a theater for the performance of ballet and the organization and operation of a ballet company. The governing body of M consists of 9 prominent unrelated citizens residing in the region who have either an expertise in ballet or a strong interest in encouraging appreciation of the art form. In order to provide sufficient capital for M to commence its activities, X, a private foundation, makes a grant of \$500,000 in cash to M. Although A, the creator of X, is one of the nine members of M's governing body, was one of M's original founders, and continues to lend his prestige to M's activities and fund raising efforts, A does not, directly or indirectly, exercise any control over M. By the close of its first taxable year, M has also received a significant amount of support from a number of smaller contributions and pledges from other members of the general public. Upon the opening of its first season of ballet performances, M expects to charge admission to the general public. Under the above circumstances, the grant by X to M may be excluded as an unusual grant under subparagraph (3) of this paragraph for purposes of determining whether M meets the one-third support test under section 509(a)(2). Although A was a founder and member of the governing body of M, X's grant may be excluded.

Example (5). Assume the same facts as example (4). In 1974, during M's third season of operations, B, a widow, passed away and bequeathed \$4 million to M. During 1971 through 1973, B had made small contributions to M, none exceeding \$10,000 in any year. During 1971 through 1974, M had received approximately \$550,000 from receipts for admissions and contributions from the general public. At the time of B's death, no person standing in a relationship to B described in section 4946(a)(1)(C) through (G) was a member of M's governing body. B's bequest was in the form of cash and readily marketable securities. The only condition placed upon the bequest was that it be used by M to advance the art of ballet. Under the above circumstances, the bequest of B to M may be excluded as an unusual grant under subparagraph (3) of this paragraph for purposes of determining whether M meets the one-third support test under section 509(a)(2).

Example (6). O is a research organization described in section 501(c)(3). O was created by A in 1971 for the purpose of carrying on economic studies primarily through persons receiving grants from O and engaging in the sale of economic publications. O's five-member governing body consists of A, A's sons, B, and C, and two unrelated economists. In 1971, A made a contribution to O of \$100,000 to help establish the organization. During 1971 through 1974 A made annual contributions to O averaging \$20,000 a year. During the same period, O received annual contributions from members of the general public averaging \$15,000 per year and receipts from the sale of its publications averaging \$50,000 per year. In 1974, B made an inter vivos contribution to O of \$600,000 in cash and readily marketable securities. Under the above circumstances, B's contribution cannot be excluded as an unusual grant under subparagraph (3) of this paragraph for purposes of determining whether O meets the one-third support test.

Example (7). P is an educational organization described in section 501(c)(3). P was created in 1971. The governing body of P has 9 members, consisting of A, a prominent civic leader and 8 other unrelated civic leaders and educators in the community, who also participated in the creation of P. During 1971 through 1974, the principal source of income for P has been receipts from the sale of its educational periodicals. These sales have amounted to \$200,000 for this period. Small contributions amounting to \$50,000 have also been received during the same period from members of the governing body, including A, as well as other members of the general public. In 1974 A contributed \$750,000 of the nonvoting stock of Y, a closely held corporation. A retained a substantial portion of the voting stock of Y. By a majority vote, the governing body decided to retain the Y stock for a period of at least 5 years. Under the above circumstances, A's contribution of the Y stock cannot be excluded as an unusual grant under subparagraph (3) of this paragraph for purposes of determining whether P meets the one-third support test.

(d) **Advance rulings to newly created organizations.**—(1) **In general.** A ruling or determination letter that an organization is described in section 509(a)(2) will not be issued to a newly created organization prior to the close of its first taxable year consisting of at least 8 months. However, such organization may request a ruling or determination letter that it will be treated as a section 509(a)(2) organization for its first 2 taxable years (or its first 3 taxable years, if its first taxable year consists of less than 8

months). For purposes of this section such 2- or 3-year period, whichever is applicable, shall be referred to as the advance ruling period. Such an advance ruling or determination letter may be issued if the organization can reasonably be expected to meet the requirements of paragraph (a) of this section during the advance ruling period. The issuance of a ruling or determination letter will be discretionary with the Commissioner.

(2) *Basic consideration.* In determining whether an organization "can reasonably be expected" (within the meaning of subparagraph (1) of this paragraph) to meet the one-third support test under section 509(a)(2)(A) and the one-third gross investment income test under section 509(a)(2)(B) described in paragraph (a) of this section for its advance ruling period or extended advance ruling period as provided in subparagraph (4) of this paragraph, if applicable, the basic consideration is whether its organizational structure, proposed programs or activities, and intended method of operation are such as to attract the type of broadly based support from the general public, public charities, and governmental units which is necessary to meet such tests. While the factors which are relevant to this determination, and the weight accorded to each of them, may differ from case to case, depending on the nature and functions of the organization, a favorable determination will not be made where the facts indicate that an organization is likely during its advance or extended advance ruling period to receive less than one-third of its support from permitted sources (subject to the limitations of paragraph (b) of this section) or to receive more than one-third of its support from gross investment income.

(3) *Factors taken into account.* All pertinent facts and circumstances shall be taken into account under subparagraph (2) of this paragraph in determining whether the organizational structure, programs or activities, and method of operation of an organization are such as to enable it to meet the tests under section 509(a)(2) for its advance or extended advance ruling period. Some of the pertinent factors are:

(i) Whether the organization has or will have a governing body which is comprised of public officials, or individuals chosen by public officials acting in their capacity as such, of persons having special knowledge in the particular field or discipline in which the organization is operating, of community leaders, such as elected officials, clergymen, and educators, or, in the case of a membership organization, of individuals elected pursuant to the organization's governing instrument or bylaws by a broadly based membership. This characteristic does not exist if the membership of the organization's governing body is such as to indicate that it represents the personal or private interests of disqualified persons, rather than the interests of the community or the general public.

(ii) Whether a substantial portion of the organization's initial funding is to be provided by the general public, by public charities, or by government grants, rather than by a limited number of grantors or contributors who are disqualified persons with respect to the organization. The fact that the organization plans to limit its activities to a particular community or region or to a special field which can be expected to appeal to a limited number of persons will be taken into consideration in determining whether those persons providing the initial support for the organization are representative of the general public. On the other hand, the subsequent sources of funding which the organization can reasonably expect to receive after it has become established and fully operational will also be taken into account.

(iii) Whether a substantial proportion of the organization's initial funds are placed, or will remain, in an endowment, and whether the investment of such funds is unlikely to result in more than one-third of its total support being received from gross investment income.

(iv) In the case of an organization which carries on fund-raising activities, whether the organization has developed a concrete plan for solicitation of funds from the general public on a community or area-wide basis; whether any steps have been taken to implement such plan; whether any firm commitments of financial or other support have been made to the organization by civic, religious, charitable, or similar groups within the community; and whether the organization has made any commitments to, or established any working relationships with, those organizations or classes of persons intended as the future recipients of its funds.

(v) In the case of an organization which carries on community services, such as slum clearance and employment opportunities, whether the organization has a concrete program to carry out its work in the community; whether any steps have been taken to implement that program; whether it will receive any part of its funds from a public charity or governmental agency to which it is in some way held accountable as a condition of the grant or contribution; and whether it has enlisted the sponsorship or support of other civic or community leaders involved in community service programs similar to those of the organization.

(vi) In the case of an organization which carries on educational or other exempt activities for, or on behalf of, members, whether the solicitation for dues-paying members is designed to enroll a substantial number of persons in the community, area, profession, or field of special interest (depending on the size of the area and the nature of the organization's activities); whether membership dues for individual (rather than institutional) members have been fixed at rates designed to make membership available to a broad cross-section of the public rather than to restrict membership to a

limited number of persons; and whether the activities of the organization will be likely to appeal to persons having some broad common interest or purpose, such as educational activities in the case of alumni associations, musical activities in the case of symphony societies, or civic affairs in the case of parent-teacher associations.

(vii) In the case of an organization which provides goods, services, or facilities, whether the organization is or will be required to make its services, facilities, performances, or products available (regardless of whether a fee is charged) to the general public, public charities, or governmental units, rather than to a limited number of persons or organizations; whether the organization will avoid executing contracts to perform services for a limited number of firms or governmental agencies or bureaus; and whether the service to be provided is one which can be expected to meet a special or general need among a substantial portion of the general public.

(4) *Extension of advance ruling period.* (i) The advance ruling period described in subparagraph (1) of this paragraph shall be extended for a period of 3 taxable years after the close of the unextended advance ruling period if the organization so requests, but only if such organization's request accompanies its request for an advance ruling and is filed with a consent under section 6501(c)(4) to the effect that the period of limitation upon assessment under section 4940 for any taxable year within the extended advance ruling period shall not expire prior to 1 year after the date of the expiration of the time prescribed by law for the assessment of a deficiency for the last taxable year within the extended advance ruling period. An organization's extended advance ruling period is 5 taxable years if its first taxable year consists of at least 8 months, or is 6 taxable years if its first taxable year is less than 8 months.

(ii) Notwithstanding subdivision (1) of this subparagraph, an organization which has received or applied for an advance ruling prior to October 16, 1972, may file its request for the 3-year extension within 90 days from such date, but only if it files the consents required in this section.

(iii) See paragraph (e)(4)(i)(d) of this section for the effect upon the initial determination of status of an organization which receives an advance ruling for an extended advance ruling period.

(e) *Status of newly created organizations.*—(1) *Advance or extended advance ruling.* This subparagraph shall apply to a newly created organization which has received a ruling or determination letter under paragraph (d) of this section that it be treated as a section 509(a)(2) organization for its advance or extended advance ruling period. So long as such an organization's ruling or determination letter has not been terminated by the Commissioner before the expiration of the advance or extended advance ruling period, then whether or not such organization has satisfied the requirements

of paragraph (a) of this section during such advance or extended advance ruling period, such an organization will be treated as an organization described in section 509(a)(2) in accordance with subparagraphs (2) and (3) of this paragraph, both for purposes of the organization and any grantor or contributor to such organization.

(2) *Reliance period.* Except as provided in subparagraphs (1) and (3) of this paragraph, an organization described in subparagraph (1) of this paragraph will be treated as an organization described in section 509(a)(2) for all purposes other than section 507(d) and 4940 for the period beginning with its inception and ending 90 days after its advance or extended advance ruling period. Such period will be extended until a final determination is made of such an organization's status only if the organization submits, within the 90-day period, information needed to determine whether it meets the requirements of paragraph (a) of this section for its advance or extended advance ruling period (even if such organization fails to meet the requirements of such paragraph (a)). However, since this subparagraph does not apply to section 4940, if it is subsequently determined that the organization was a private foundation from its inception, then the tax imposed by section 4940 shall be due without regard to the advance ruling or determination letter. Consequently, if any amount of tax under section 4940 in such a case is not paid on or before the last date prescribed for payment, the organization is liable for interest in accordance with section 6601. However, since any failure to pay such tax during the period referred to in this subparagraph is due to reasonable cause, the penalty under section 6651 with respect to the tax imposed by section 4940 shall not apply.

(3) *Grantors or contributors.* If a ruling or determination letter is terminated by the Commissioner prior to the expiration of the period described in subparagraph (2) of this paragraph, for purposes of sections 170, 507, 545(b)(2), 556(b)(2), 642(c), 4942, 4945, 2055, 2106(a)(2), and 2522 the status of grants or contributions with respect to grantors or contributors to such organizations will not be affected until notice of change of status of such organization is made to the public (such as by publication of the Internal Revenue Bulletin). The preceding sentence shall not apply, however, if the grantor or contributor was responsible for, or aware of, the act or failure to act that resulted in the organization's loss of classification under section 509(a)(2) or acquired knowledge that the Internal Revenue Service had given notice to such organization that it would be deleted from such classification. See, however, § 1.509(a)-3 (c)(5)(ii) for the procedures to be followed to protect the grantor or contributor from being considered responsible for, or aware of, the act or failure to act resulting in the grantee's loss of classification under section 509(a)(2).

(4) *Initial determination of status—*
(i) *New organizations.* (a) The initial determination of status of a newly created organization is the first determination (other than by issuance of an advance ruling or determination letter under paragraph (d) of this section) that the organization will be considered as "normally" meeting the requirements of paragraph (a) of this section for a period beginning with its first taxable year.

(b) In the case of a new organization whose first taxable year is at least 8 months, except as provided for in subdivision (i)(d) of this subparagraph, the initial determination of status shall be based on a computation period of either the first taxable year or the first and second taxable years.

(c) In the case of a new organization whose first taxable year is less than 8 taxable months, except as provided for in subdivision (i)(d) of this subparagraph, the initial determination of status shall be based on a computation period of either the first and second taxable years or the first, second and third taxable years.

(d) In the case of an organization which has received a ruling or determination letter for an extended advance ruling period under paragraph (d)(4) of this section, the initial determination of status shall be based on a computation period of all of the taxable years in the extended advance ruling period. However, where the ruling or determination letter for an extended advance ruling period under paragraph (d)(4) of this section is terminated by the Commissioner prior to the expiration of the period described in subparagraph (2) of this paragraph, the initial determination of status shall be based on a computation period of the period provided for in (b) or (c) of this subdivision or, if greater, the number of years to which the advance ruling applies.

(e) An initial determination that an organization will be considered as "normally" meeting the requirements of paragraph (a) of this section shall be effective for each taxable year in the computation period plus (except as provided by paragraph (c)(1)(ii) of this section relating to material changes in sources of support) the two taxable years immediately succeeding the computation period. Therefore, in the case of an organization referred to in (b) of this subdivision to which paragraph (c)(1)(ii) of this section does not apply, with respect to its first, second, and third taxable years, such an organization shall be described in section 509(a)(2) if it meets the requirements of paragraph (a) of this section for either its first taxable year or for its first and second taxable years on an aggregate basis. In addition, if it meets the requirements of paragraph (a) of this section for its first and second taxable years it shall be described in section 509(a)(2) for its fourth taxable year. Once an organization is considered as "normally" meeting the requirements of paragraph

(a) for a period specified under this subdivision, paragraph (c)(1)(i), (ii), or (iv) of this section shall apply.

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

Example (1). X, a calendar year organization described in section 501(c)(3), is created in February 1972 for the purpose of displaying African art. The support X received from the public in 1972 satisfies the one-third support and gross investment income tests described in section 509(a)(2) for its first taxable year, 1972. X may therefore get an initial determination that it meets the requirements of paragraph (a) of this section for its first taxable year beginning in February 1972 and ending on December 31, 1972. This determination will be effective for taxable years 1972, 1973, and 1974.

Example (2). Assume the same facts as in example (1) except that X also receives a substantial contribution from one individual in 1972 which is not excluded from the denominator of the one-third support fraction described in section 509(a)(2) by reason of the unusual grant provision of subparagraph (c)(3) of this section. Because of this substantial contribution, X fails to satisfy the one-third support test over its first taxable year, 1972. However, the support received from the public over X's first and second taxable years in the aggregate satisfies the one-third support and gross investment income tests. X may therefore get an initial determination that it meets the requirements of paragraph (a) of this section for its first and second taxable years in the aggregate beginning in February 1972 and ending on December 31, 1973. This determination will be effective for taxable years 1972, 1973, 1974, and 1975.

Example (3). Y, a calendar year organization described in section 501(c)(3), is created in July 1972 for the encouragement of the musical arts. Y requests and receives an extended advance ruling period of five full taxable years plus its initial short taxable year of 6 months under subparagraph (d)(4) of this section. The extended advance ruling period begins in July 1972 and ends on December 31, 1977. The support received from the public over Y's first through sixth taxable years in the aggregate will satisfy the one-third support and gross investment income tests described in section 509(a)(2). Therefore, Y in 1978 may get an initial determination that it meets the requirements of paragraph (a) of this section in the aggregate over all the taxable years in its extended advance ruling period beginning in July 1972 and ending on December 31, 1977. This determination will be effective for taxable years 1972 through 1979.

Example (4). Assume the same facts as in example (3) except that the ruling for the extended advance ruling period is terminated prospectively at the end of 1975, so that Y may not rely upon such ruling for 1976 or any succeeding year. The support received from the public over Y's first through fourth taxable years (1972 through 1975) will not satisfy the one-third support and gross investment income tests described in section 509(a)(2). Because the ruling was terminated, the computation period for Y's initial determination of status is the period 1972 through 1975. Since Y has not met the requirements of paragraph (a) of this section for such computation period, Y is not described in section 509(a)(2) for purposes of its initial determination of status. If Y is not described in section 509(a)(1), (3), or (4), then Y is a private foundation. As of 1976, Y shall be treated as a private foundation for all purposes (except as provided in

subparagraph (3) of this paragraph with respect to grantors and contributors), and as of July 1972 for purposes of the tax imposed by section 4940 and for purposes of section 507(d) (relating to aggregate tax benefit).

(ii) *Advance rulings.* Unless a newly created organization has obtained a ruling or determination letter under paragraph (d) of this section that it be treated as a section 509(a)(2) organization for its advance or extended advance ruling period, it can not rely upon the possibility it will meet the requirements of paragraph (a) of this section for a taxable year which begins before the close of either applicable computation period provided for in subdivision (i)(b) or (c) of this subparagraph. Therefore, an organization which has not obtained such a ruling or determination letter, in order to avoid the risks associated with subsequently being determined to be a private foundation, may comply with the rules applicable to private foundations, and may pay, for example, the tax imposed by section 4940. In that event, if the organization subsequently meets the requirements of paragraph (a) for either applicable computation period, it shall be treated as a section 509(a)(2) organization from its inception, and, therefore, any tax imposed under chapter 42 shall be refunded and section 509(b) shall not apply.

(iii) *Penalties.* If a newly created organization fails to obtain a ruling or determination letter under paragraph (d) of this section, and fails to meet the requirements of paragraph (a) of this section for the first applicable computation period provided for in subdivision (i)(b) or (c) of this subparagraph, see section 6651 for penalty for failure to file return and pay tax.

(iv) *Examples.* This subparagraph may be illustrated by the following examples:

Example (1). On January 1, 1972, A contributes \$100,000 to X, an organization described in section 501(c)(3) which he created on such date. X is not described in section 509(a)(1), (3), or (4). X's governing instrument does not contain the provisions referred to in section 508(e). Therefore, A is not entitled to a deduction under section 170 for the \$100,000 contribution by reason of section 508(d)(2)(A) unless X is described in section 509(a)(2). If X meets the requirements of section 509(a)(2) for 1972 and 1973 on an aggregate basis, then whether or not X met the requirements of section 509(a)(2) for 1972 based on the support received in 1972, X would not have to meet the governing instrument requirements of section 508(e), and section 508(d)(2)(A) would not prevent A from claiming the deduction under section 170 for 1972. If X fails to meet the requirements of section 509(a)(2) for both 1972 and, on an aggregate basis, 1972 and 1973, X would lose its exempt status under section 508(e) for both 1972 and 1973, and A would be barred by section 508(d)(2)(A) from claiming a deduction for the \$100,000 contribution to X.

Example (2). Assume the same facts as in example (1) except that X's governing instrument contains provisions which meet the requirements of section 508(e) in the event X is a private foundation, but do not apply to X in the event X is not a private foundation. Whether or not X meets the requirements of section 509(a)(2) for 1972

based on the support received in 1972 or 1972 and 1973 on an aggregate basis, since X meets the requirements of section 508(e), section 508(d)(2)(A) would not bar A from claiming a deduction under section 170 for 1972 for the contribution to X.

(f) *Gifts and contributions distinguished from gross receipts.* (1) *In general.* In determining whether an organization normally receives more than one-third of its support from permitted sources, all "gifts" and "contributions" (within the meaning of section 509(a)(2)(A)(i)) received from permitted sources, are includible in the numerator of the support fraction in each taxable year. However, "gross receipts" (within the meaning of section 509(a)(2)(A)(ii)) from admissions, sales of merchandise, performance of services, or furnishing of facilities, in an activity which is not an unrelated trade or business, are includible in the numerator of the support fraction in any taxable year only to the extent that such gross receipts do not exceed the limitation with respect to the greater of \$5,000 or 1 percent of support which is described in paragraph (b) of this section. The terms "gifts" and "contributions" shall, for purposes of section 509(a)(2), have the same meaning as such terms have under section 170(c) and also include bequests, legacies, devises, and transfers within the meaning of section 2055 or 2106(a)(2). Thus, for purposes of section 509(a)(2)(A), any payment of money or transfer of property without adequate consideration shall be considered a "gift" or "contribution." Where payment is made or property transferred as consideration for admissions, sales of merchandise, performance of services, or furnishing of facilities to the donor, the status of the payment or transfer under section 170(c) shall determine whether and to what extent such payment or transfer constitutes a "gift" or "contribution" under section 509(a)(2)(A)(i) as distinguished from "gross receipts" from related activities under section 509(a)(2)(A)(ii).

(2) *Valuation of property.* For purposes of section 509(a)(2), the amount includible in computing support with respect to gifts, grants or contributions of property or use of such property shall be the fair market or rental value of such property at the date of such gift or contribution.

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

Example. P is a local agricultural club described in section 501(c)(3). In order to encourage interest and proficiency by young people in farming and raising livestock, it makes awards at its annual fair for outstanding specimens of produce and livestock. Most of these awards are cash or other property donated by local businessmen. When the awards are made, the donors are given recognition for their donations by being identified as the donor of the award. The recognition given to donors is merely incidental to the making of the award to worthy youngsters. For these reasons, the donations will constitute "contributions" for purposes of section 509(a)(2)(A)(i). The amount includible in computing support with respect to such contributions is equal to the cash contributed

or the fair market value of other property on the dates contributed.

(g) *Grants distinguished from gross receipts.* (1) *In general.* In determining whether an organization normally receives more than one-third of its support from public sources, all "grants" (within the meaning of section 509(a)(2)(A)(i)) received from permitted sources are includible in full in the numerator of the support fraction in each taxable year. However, "gross receipts" (within the meaning of section 509(a)(2)(A)(ii)) from admissions, sales of merchandise, performance of services, or furnishing of facilities, in an activity which is not an unrelated trade or business, are includible in the numerator of the support fraction in any taxable year only to the extent that such gross receipts do not exceed the limitation with respect to the greater of \$5,000 or 1 percent of support which is described in paragraph (b) of this section. A grant is normally made to encourage the grantee organization to carry on certain programs or activities in furtherance of its exempt purposes. It may contain certain terms and conditions imposed by the grantor to insure that the grantee's programs or activities are conducted in a manner compatible with the grantor's own programs and policies and beneficial to the public. The grantee may also perform a service or produce a work product which incidentally benefits the grantor. Because of the imposition of terms and conditions, the frequent similarity of public purposes of grantor and grantee, and the possibility of benefit resulting to the grantor, amounts received as grants "for" the carrying on of exempt activities are sometimes difficult to distinguish from amounts received as gross receipts "from" the carrying on of exempt activities. The fact that the agreement, pursuant to which payment is made, is designated a "contract" or a "grant" is not controlling for purposes of classifying the payment under section 509(a)(2).

(2) *Distinguishing factors.* For purposes of section 509(a)(2)(A)(ii), in distinguishing the term "gross receipts" from the term "grants," the term "gross receipts" means amounts received from an activity which is not an unrelated trade or business, if a specific service, facility, or product is provided to serve the direct and immediate needs of the payor, rather than primarily to confer a direct benefit upon the general public. In general, payments made primarily to enable the payor to realize or receive some economic or physical benefit as a result of the service, facility, or product obtained will be treated as "gross receipts" with respect to the payee. The fact that a profitmaking organization would, primarily for its own economic or physical betterment, contract with a nonprofit organization for the rendition of a comparable service, facility or product from such organization constitutes evidence that any payments received by the nonprofit payee organization (whether from a governmental unit, a

nonprofit or a profitmaking organization) for such services, facilities or products are primarily for the economic or physical benefit of the payor and would therefore be considered "gross receipts," rather than "grants" with respect to the payee organization. For example, if a nonprofit hospital described in section 170(b)(1)(A)(iii) engages an exempt research and development organization to develop a more economical system of preparing food for its own patients and personnel, and it can be established that a hospital operated for profit might engage the services of such an organization to perform a similar benefit for its economic betterment, such fact would constitute evidence that the payments received by the research and development organization constitute "gross receipts," rather than "grants." Research leading to the development of tangible products for the use or benefit of the payor will generally be treated as a service provided to serve the direct and immediate needs of the payor, while basic research or studies carried on in the physical or social sciences will generally be treated as primarily to confer a direct benefit upon the general public.

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

Example (1). M, a nonprofit research organization described in section 501(c)(3), engages in some contract research. It receives funds from the government to develop a specific electronic device needed to perfect articles of space equipment. The initiative for the project came solely from the government. Furthermore, the government could have contracted with profitmaking research organizations which carry on similar activities. The funds received from the government for this project are gross receipts and do not constitute "grants" within the meaning of section 509(a)(2)(A)(i). M provided a specific product at the government's request and thus was serving the direct and immediate needs of the payor within the meaning of subparagraph (2) of this paragraph.

Example (2). N is a nonprofit educational organization described in section 501(c)(3). Its principal activity is to operate institutes to train employees of various industries in the principles of management and administration. The government pays N to set up a special institute for certain government employees and to train them over a 2-year period. Management training is also provided by profitmaking organizations. The funds received are included as "gross receipts." The particular services rendered were to serve the direct and immediate needs of the government in the training of its employees within the meaning of subparagraph (2) of this paragraph.

Example (3). The Office of Economic Opportunity makes a community action program grant to O, an organization described in section 509(a)(1). O serves as a "delegate agency" of OEO for purposes of financing a local community action program. As part of this program, O signs an agreement with X, an educational and charitable organization described in section 501(c)(3), to carry out a housing program for the benefit of poor families. Pursuant to this agreement, O pays X out of the funds provided by OEO to build or rehabilitate low income housing and to provide advisory services to other nonprofit organizations in order for them

to meet similar housing objectives, all on a nonprofit basis. Payments made from O to X constitute "grants" for purposes of section 509(a)(2)(A) because such program is carried on primarily for the direct benefit of the community.

Example (4). P is an educational institute described in section 501(c)(3). It carries on studies and seminars to assist institutions of higher learning. It receives funds from the government to research and develop a program of black studies for institutions of higher learning. The performance of such a service confers a direct benefit upon the public. Because such program is carried on primarily for the direct benefit of the public, the funds are considered a "grant."

Example (5). Q is an organization described in section 501(c)(3) which carries on medical research. Its efforts have primarily been directed toward cancer research. Q sought funds from the government for a particular project being contemplated in connection with its work. In order to encourage its activities, the government gives Q the sum of \$25,000. The research project sponsored by government funds is primarily to provide direct benefit to the general public, rather than to serve the direct and immediate needs of the government. The funds are therefore considered a "grant."

Example (6). R is a public service organization described in section 501(c)(3) and composed of State and local officials involved in public works activities. The Bureau of Solid Waste, Management of the Department of Health, Education, and Welfare paid R to study the feasibility of a particular system for disposal of solid waste. Upon completion of the study, R was required to prepare a final report setting forth its findings and conclusions. Although R is providing the Bureau of Solid Waste Management with a final report, such report is the result of basic research and study in the physical sciences and is primarily to provide direct benefit to the general public by serving to further the general functions of government, rather than a direct and immediate governmental need. The funds paid to R are therefore a "grant" within the meaning of section 509(a)(2).

Example (7). R is the public service organization referred to in example (6). W, a municipality described in section 170(c)(1), decides to construct a sewage disposal plant. W pays R to study a number of possible locations for such plant and to make recommendations to W, based upon a number of factors, as to the best location. W instructed R that in making its recommendation, primary consideration should be given to minimizing the costs of the project to W. Since the study commissioned by W was primarily directed toward producing an economic benefit to W in the form of minimizing the costs of its project, the services rendered are treated as serving W's direct and immediate needs and are includable as "gross receipts" by R.

Example (8). S is an organization described in section 501(c)(3). It was organized and is operated to further African development and strengthen understanding between the United States and Africa. To further these purposes, S receives funds from the Agency for International Development and the Department of State under which S is required to carry out the following programs: Selection, transportation, orientation, counseling, and language training of African students admitted to American institutions of higher learning; payment of tuition, other fees, and maintenance of such students; and operation of schools and vocational training programs in underdeveloped countries for residents of those countries. Since the programs carried on by S are primarily to provide direct benefit to the

general public, all of the funds received by S from the Federal agencies are considered "grants" within the meaning of section 509(a)(2).

(h) *Definition of membership fees—*
(1) *General rule.* For purposes of section 509(a)(2), the fact that a membership organization provides services, admissions, facilities, or merchandise to its members as part of its overall activities will not, in itself, result in the classification of fees received from members as "gross receipts" rather than "membership fees." If an organization uses membership fees as a means of selling admissions, merchandise, services, or the use of facilities to members of the general public who have no common goal or interest (other than the desire to purchase such admissions, merchandise, services, or use of facilities), then the income received from such fees shall not constitute "membership fees" under section 509(a)(2)(A)(i), but shall, if from a related activity, constitute "gross receipts" under section 509(a)(2)(A)(ii). On the other hand, to the extent the basic purpose for making the payment is to provide support for the organization rather than to purchase admissions, merchandise, services, or the use of facilities, the income received from such payment shall constitute "membership fees."

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

Example (1). M is a symphony society described in section 501(c)(3). Its primary purpose is to support the local symphony orchestra. The organization has three classes of membership. Contributing members pay annual dues of \$10, sustaining members pay \$25, and honorary members pay \$100. The dues are placed in a maintenance fund which is used to provide financial assistance in underwriting the orchestra's annual deficit. Members have the privilege of purchasing subscriptions to the concerts before they go on sale to the general public, but must pay the same price as any other member of the public. They also are entitled to attend a number of rehearsals each season without charge. Under these circumstances, M's receipts from members constitute "membership fees" for purposes of section 509(a)(2)(A)(i).

Example (2). N is a theater association described in section 501(c)(3). Its purpose is to support a repertory company in the community in order to make live theatrical performances available to the public. The organization sponsors six plays each year. Members of the organization are entitled to a season subscription to the plays. The fee paid as dues approximates the retail price of the six plays, less a 10-percent discount. Tickets to each performance are also sold directly to the general public. The organization also holds a series of lectures on the theater which members may attend. Under these circumstances, the fees paid by members as dues will be considered "gross receipts" from a related activity. Although the fees are designated as membership fees, they are actually admissions to a series of plays.

(i) *"Bureau" defined—*(1) *In general.* The term "any bureau or similar agency of a governmental unit" (within the meaning of section 509(a)(2)(A)(ii)), refers to a specialized operating unit of the executive, judicial, or legislative

branch of government where business is conducted under certain rules and regulations. Since the term "bureau" refers to a unit functioning at the operating, as distinct from the policymaking, level of government, it is normally descriptive of a subdivision of a department of government. The term "bureau," for purposes of section 509(a)(2)(A)(ii), would therefore not usually include those levels of government which are basically policymaking or administrative, such as the office of the Secretary or Assistant Secretary of a department, but would consist of the highest operational level under such policymaking or administrative levels. Each subdivision of a larger unit within the Federal Government, which is headed by a Presidential appointee holding a position at or above Level V of the Executive Schedule under 5 U.S.C. 5316, will normally be considered an administrative or policymaking, rather than an operating, unit. Amounts received from a unit functioning at the policymaking or administrative level of government will be treated as received from one bureau or similar agency of such unit. Units of a governmental agency above the operating level shall be aggregated and considered a separate bureau for this purpose. Thus, an organization receiving gross receipts from both a policymaking or administrative unit and an operational unit of a department will be treated as receiving gross receipts from two "bureaus" within the meaning of section 509(a)(2)(A)(ii). For purposes of this subparagraph, the Departments of Air Force, Army, and Navy are separate departments and each is considered as having its own policymaking, administrative, and operating units.

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

Example (1). The Bureau of Health Insurance is considered a "bureau" within the meaning of section 509(a)(2)(A)(ii). It is a part of the Department of Health, Education, and Welfare, whose Secretary performs a policymaking function, and is under the Social Security Administration, which is basically an administrative unit. The Bureau of Health Insurance is in the first operating level within the Social Security Administration. Similarly, the National Cancer Institute would be considered a "bureau," as it is an operating part of the National Institutes of Health within the Department of Health, Education, and Welfare.

Example (2). The Bureau for Africa and the Bureau for Latin America are considered "bureaus" within the meaning of section 509(a)(2)(A)(ii). Both are separate operating units under the Administrator of the Agency for International Development, a policymaking official. If an organization received gross receipts from both of these bureaus, the amount of gross receipts received from each would be subject to the greater of \$5,000 or 1 percent limitation under section 509(a)(2)(A)(ii).

Example (3). The Bureau of International Affairs of the Civil Aeronautics Board is considered a "bureau" within the meaning of section 509(a)(2)(A)(ii). It is an operating unit under the administrative office of the Executive Director. The subdivisions of the Bureau of International Affairs are Geographic Areas and Project Development Staff.

If an organization received gross receipts from these subdivisions, the total gross receipts from these subdivisions would be considered gross receipts from the same "bureau," the Bureau of International Affairs, and would be subject to the greater of \$5,000 or 1 percent limitation under section 509(a)(2)(A)(ii).

Example (4). The Department of Mental Health, a State agency which is an operational part of State X's Department of Public Health, is considered a "bureau." The Department of Public Health is basically an administrative agency and the Department of Mental Health is at the first operational level within it.

Example (5). The Aeronautical Systems Division of the Air Force Systems Command, and other units on the same level, are considered separate "bureaus" with the meaning of section 509(a)(2)(A)(ii). They are part of the Department of the Air Force which is a separate department for this purpose, as are the Army and Navy. The Secretary and the Under Secretary of the Air Force perform the policymaking function, the Chief of Staff and the Air Force Systems Command are basically administrative, having a comprehensive complement of staff functions to provide administration for the various divisions. The Aeronautical Systems Division and other units on the same level are thus the first operating level, as evidenced by the fact that they are the units that let contracts and perform the various operating functions.

Example (6). The Division of Space Nuclear Systems, the Division of Biology and Medicine, and other units on the same level within the Atomic Energy Commission are each separate "bureaus" within the meaning of section 509(a)(2)(A)(ii). The Commissioners (which make up the Commission) are the policymakers. The general manager and the various assistant general managers perform the administrative function. The various divisions perform the operating function as evidenced by the fact that each has separate programs to pursue and contracts specifically for these various programs.

(j) *Grants from public charities—(1) General rule.* For purposes of the one-third support test in section 509(a)(2)(A), grants (as defined in paragraph (g) of this section) received from an organization described in section 509(a)(1) (hereinafter referred to in this subparagraph as a "public charity") are generally includable in full in computing the numerator of the recipient's support fraction of the taxable year in question. It is sometimes necessary to determine whether the recipient of a grant from a public charity has received such support from the public charity as a grant, or whether the recipient has in fact received such support as an indirect contribution from a donor to the public charity. If the amount received is considered a grant from the public charity, it is fully includable in the numerator of the support fraction under section 509(a)(2)(A). However, if the amount received is considered to be an indirect contribution from one of the public charity's donors which has passed through the public charity to the recipient organization, such amount will retain its character as a contribution from such donor and, if, for example, the donor is a substantial contributor (as defined in section 507(d)(2)) with respect to the ultimate recipient, such amount shall be excluded

from the numerator of the support fraction under section 509(a)(2). If a public charity makes both an indirect contribution from its donor and an additional grant to the ultimate recipient, the indirect contribution shall be treated as made first.

(2) *Indirect contributions.* For purposes of subparagraph (1) of this paragraph, an indirect contribution is one which is expressly or impliedly earmarked by the donor as being for, or for the benefit of, a particular recipient (rather than for a particular purpose).

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

Example (1). M, a national foundation for the encouragement of the musical arts, is an organization described in section 170(b)(1)(A)(vi). A gives M a donation of \$5,000 without imposing any restrictions or conditions upon the gift. M subsequently makes a \$5,000 grant to X, an organization devoted to giving public performances of chamber music. Since the grant to X is treated as being received from M, it is fully includable in the numerator of X's support fraction for the taxable year of receipt.

Example (2). Assume M is the same organization described in example (1). B gives M a donation of \$10,000, but requires that M spend the money for the purpose of supporting organizations devoted to the advancement of contemporary American music. M has complete discretion as to the organizations of the type described to which it will make a grant. M decides to make grants of \$5,000 each to Y and Z, both being organizations described in section 501(c)(3) and devoted to furthering contemporary American music. Since the grants to Y and Z are treated as being received from M, Y and Z may each include one of the \$5,000 grants in the numerator of its support fraction for purposes of section 509(a)(2)(A). Although the donation to M was conditioned upon the use of the funds for a particular purpose, M was free to select the ultimate recipient.

Example (3). N is a national foundation for the encouragement of art and is an organization described in section 170(b)(1)(A)(vi). Grants to N are permitted to be earmarked for particular purposes. O, which is an art workshop devoted to training young artists and claiming status under section 509(a)(2), persuades C, a private foundation, to make a grant of \$25,000 to N. C is a disqualified person with respect to O. C made the grant to N with the understanding that N would be bound to make a grant to O in the sum of \$25,000, in addition to a matching grant of N's funds to O in the sum of \$25,000. Only the \$25,000 received directly from N is considered a grant from N. The other \$25,000 is deemed an indirect contribution from C to O and is to be excluded from the numerator of O's support fraction.

(k) *Method of accounting.* For purposes of section 509(a)(2), an organization's support will be determined solely on the cash receipts and disbursement method of accounting described in section 446(c)(1). For example, if a grantor makes a grant to an organization payable over a term of years, such grant will be includable in the support fraction of the grantee organization only when and to the extent amounts payable under the grant are received by the grantee.

(1) *Gross receipts from section 513(a)(1), (2), or (3) activities.* For purposes

of section 509(a)(2)(A)(ii), gross receipts from activities described in section 513(a)(1), (2), or (3) will be considered gross receipts from activities which are not unrelated trade or business.

(m) *Gross receipts distinguished from gross investment income.* (1) For purposes of section 509(a)(2), where the charitable purpose of an organization described in section 501(c)(3) is accomplished through the furnishing of facilities for a rental fee or loans to a particular class of persons, such as aged, sick, or needy persons, the support received from such persons will be considered "gross receipts" (within the meaning of section 509(d)(2)) from an activity which is not an unrelated trade or business, rather than "gross investment income." However, if such organization also furnishes facilities or loans to persons who are not members of such class and such furnishing does not contribute importantly to the accomplishment of such organization's exempt purposes (aside from the need of such organization for income or funds or the use it makes of the profits derived), the support received from such furnishing will be considered "rents" or "interest" and therefore will be treated as "gross investment income" within the meaning of section 509(d)(4), unless such income is included in computing the tax imposed by section 511.

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

Example. X, an organization described in section 501(c)(3), is organized and operated to provide living facilities for needy widows of deceased servicemen. X charges such widows a small rental fee for the use of such facilities. Since X is accomplishing its exempt purpose through the rental of such facilities, the support received from the widows is considered "gross receipts" within the meaning of section 509(d)(2). However, if X rents part of its facilities to persons having no relationship to X's exempt purpose, the support received from such rental will be considered "gross investment income" within the meaning of section 509(d)(4), unless such income is included in computing the tax imposed by section 511.

§ 1.509(a)-4 Supporting organizations.

(a) *In general.* (1) Section 509(a)(3) excludes from the definition of "private foundation" those organizations which meet the requirements of subparagraphs (A), (B), and (C) thereof.

(2) Section 509(a)(3)(A) provides that a section 509(a)(3) organization must be organized, and at all times thereafter operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more specified organizations described in section 509(a)(1) or (2). Section 509(a)(3)(A) describes the nature of the support or benefit which a section 509(a)(3) organization must provide to one or more section 509(a)(1) or (2) organizations. For purposes of section 509(a)(3)(A), paragraph (b) of this section generally describes the organizational and operational tests; paragraph (c) of this section describes permissible purposes un-

der the organizational test; paragraph (d) of this section describes the requirement of supporting or benefiting one or more "specified" publicly supported organizations; and paragraph (e) of this section describes permissible beneficiaries and activities under the operational test.

(3) Section 509(a)(3)(B) provides that a section 509(a)(3) organization must be operated, supervised, or controlled by or in connection with one or more organizations described in section 509(a)(1) or (2). Section 509(a)(3)(B) and paragraph (f) of this section describe the nature of the relationship which must exist between the section 509(a)(3) and section 509(a)(1) or (2) organizations. For purposes of section 509(a)(3)(B), paragraph (g) of this section defines "operated, supervised, or controlled by"; paragraph (h) of this section defines "supervised or controlled in connection with"; and paragraph (i) of this section defines "operated in connection with."

(4) Section 509(a)(3)(C) provides that a section 509(a)(3) organization must not be controlled directly or indirectly by disqualified persons (other than foundation managers or organizations described in section 509(a)(1) or (2)). Section 509(a)(3)(C) and paragraph (j) of this section prescribe a limitation on the control over the section 509(a)(3) organization.

(5) For purposes of this section, the term "supporting organization" means either an organization described in section 509(a)(3) or an organization seeking section 509(a)(3) status, depending upon its context. For purposes of this section, the term "publicly supported organization" means an organization described in section 509(a)(1) or (2).

(b) *Organizational and operational tests.* (1) Under subparagraph (A) of section 509(a)(3), in order to qualify as a supporting organization, an organization must be both organized and operated exclusively "for the benefit of, to perform the functions of, or to carry out the purposes of" (hereinafter referred to in this section as being organized and operated "to support or benefit") one or more specified publicly supported organizations. If an organization fails to meet either the organizational or the operational test, it cannot qualify as a supporting organization.

(2) In the case of supporting organizations created prior to January 1, 1970, the organizational and operational tests shall apply as of January 1, 1970. Therefore, even though the original articles of organization did not limit its purposes to those required under section 509(a)(3)(A) and even though it operated before January 1, 1970, for some purpose other than those required under section 509(a)(3)(A), an organization will satisfy the organizational and operational tests if, on January 1, 1970, and at all times thereafter, it is so constituted as to comply with these tests. For the special rules pertaining to the application of the organizational and operational tests to organizations ter-

minating their private foundation status under the 12-month or 60-month termination period provided under section 507(b)(1)(B) by becoming "public" under section 509(a)(3), see the regulations under section 507(b).

(c) *Organizational test.* (1) *In general.* An organization is organized exclusively for one or more of the purposes specified in section 509(a)(3)(A) only if its articles of organization (as defined in § 1.501(c)(3)-1(b)(2)):

(i) Limit the purposes of such organization to one or more of the purposes set forth in section 509(a)(3)(A);

(ii) Do not expressly empower the organization to engage in activities which are not in furtherance of the purposes referred to in subdivision (i) of this subparagraph;

(iii) State the specified publicly supported organizations on whose behalf such organization is to be operated (within the meaning of paragraph (d) of this section); and

(iv) Do not expressly empower the organization to operate to support or benefit any organization other than the specified publicly supported organizations referred to in subdivision (iii) of this subparagraph.

(2) *Purposes.* In meeting the organizational test, the organization's purposes, as stated in its articles, may be as broad as, or more specific than, the purposes set forth in section 509(a)(3)(A). Therefore, an organization which, by the terms of its articles, is formed "for the benefit of" one or more specified publicly supported organizations shall, if it otherwise meets the other requirements of this paragraph, be considered to have met the organizational test. Similarly, articles which state that an organization is formed "to perform the publishing functions" of a specified university are sufficient to comply with the organizational test. An organization which is "operated, supervised, or controlled by" (within the meaning of paragraph (g) of this section) or "supervised or controlled in connection with" (within the meaning of paragraph (h) of this section) one or more sections 509(a)(1) or (2) organizations to carry out the purposes of such organizations, will be considered as meeting the requirements of this paragraph if the purposes set forth in its articles are similar to, but no broader than, the purposes set forth in the articles of its controlling section 509(a)(1) or (2) organizations. If, however, the organization by which it is operated, supervised, or controlled is a publicly supported section 501(c)(4), (5), or (6) organization (deemed to be a section 509(a)(2) organization for purposes of section 509(a)(3) under the provisions of section 509(a)), the supporting organization will be considered as meeting the requirements of this paragraph if its articles require it to carry on charitable, etc., activities within the meaning of section 170(c)(2).

(3) *Limitations.* An organization is not organized exclusively for the purposes set forth in section 509(a)(3)(A)

if its articles expressly permit it to operate to support or benefit any organization other than those specified publicly supported organizations referred to in subparagraph (1)(iii) of this paragraph. Thus, for example, an organization will not meet the organizational test under section 509(a)(3)(A) if its articles expressly empower it to pay over any part of its income to, or perform any service for, any organization other than those publicly supported organizations specified in its articles (within the meaning of paragraph (d) of this section). The fact that the actual operations of such organization have been exclusively for the benefit of the specified publicly supported organizations shall not be sufficient to permit it to meet the organizational test.

(d) *Specified organizations.*—(1) *In general.* In order to meet the requirements of section 509(a)(3)(A), an organization must be organized and operated exclusively to support or benefit one or more "specified" publicly supported organizations. The manner in which the publicly supported organizations must be "specified" in the articles for purposes of section 509(a)(3)(A) will depend upon whether the supporting organization is "operated, supervised, or controlled by" or "supervised or controlled in connection with" (within the meaning of paragraphs (g) and (h) of this section) such organizations or whether it is "operated in connection with" (within the meaning of paragraph (i) of this section) such organizations.

(2) *Nondesignated publicly supported organizations; requirements.* (i) Except as provided in subdivision (iv) of this subparagraph, in order to meet the requirements of subparagraph (1) of this paragraph, the articles of the supporting organization must designate each of the "specified" organizations by name unless:

(a) The supporting organization is operated, supervised, or controlled by (within the meaning of paragraph (g) of this section), or is supervised or controlled in connection with (within the meaning of paragraph (h) of this section) one or more publicly supported organizations; and

(b) The articles of organization of the supporting organization require that it be operated to support or benefit one or more beneficiary organizations which are designated by class or purpose and which include:

(i) The publicly supported organizations referred to in (a) of this subdivision (without designating such organizations by name); or

(2) Publicly supported organizations which are closely related in purpose or function to those publicly supported organizations referred to in subdivision (i)(a) or this subparagraph (without designating such organization by name).

(ii) If a supporting organization is described in subdivision (i)(a) of this subparagraph, it will not be considered as failing to meet the requirements of subparagraph (1) of this paragraph that the publicly supported organizations be

specified merely because its articles of organization permit the conditions described in subparagraphs (3) (i), (ii), and (iii) and (4) (i) (a) and (b) of this paragraph.

(iii) This subparagraph may be illustrated by the following examples:

Example (1). X is an organization described in section 501(c)(3) which operates for the benefit of institutions of higher learning in the State of Y. X is controlled by these institutions (within the meaning of paragraph (g) of this section) and such institutions are all section 509(a)(1) organizations. X's articles will meet the organizational test if they require X to operate for the benefit of institutions of higher learning or educational organizations in the State of Y (without naming each institution). X's articles would also meet the organizational test if they provided for the giving of scholarships to enable students to attend institutions of higher learning but only in the State of Y.

Example (2). M is an organization described in section 501(c)(3) which was organized and operated by representatives of N church to run a home for the aged. M is controlled (within the meaning of paragraph (g) of this section) by N church, a section 509(a)(1) organization. The care of the sick and the aged are longstanding temporal functions and purposes of organized religion. By operating a home for the aged, M is operating to support or benefit N church in carrying out one of its temporal purposes. Thus M's articles will meet the organizational test if they require M to care for the aged since M is operating to support one of N church's purposes (without designating N church by name).

(iv) A supporting organization will meet the requirements of subparagraph (1) of this paragraph even though its articles do not designate each of the "specified" organizations by name if:

(a) There has been an historic and continuing relationship between the supporting organization and the section 509(a)(1) or (2) organizations; and

(b) By reason of such relationship, there has developed a substantial identity of interests between such organizations.

(3) *Nondesignated publicly supported organizations; scope of rule.* If the requirements of subparagraph (2) (i) (a) of this paragraph are met, a supporting organization will not be considered as failing the test of being organized for the benefit of "specified" organizations solely because its articles:

(i) Permit the substitution of one publicly supported organization within a designated class for another publicly supported organization either in the same or a different class designated in the articles;

(ii) Permit the supporting organization to operate for the benefit of new or additional publicly supported organizations of the same or a different class designated in the articles; or

(iii) Permit the supporting organization to vary the amount of its support among different publicly supported organizations within the class or classes of organizations designated by the articles.

For example, X is an organization which operates for the benefit of private colleges in the State of Y. If X is controlled by these colleges (within the meaning of paragraph (g) of this sec-

tion) and such colleges are all section 509(a)(1) organizations, X's articles will meet the organization test even if they permit X to operate for the benefit of any new colleges created in State Y in addition to the existing colleges or in lieu of one which has ceased to operate, or if they permit X to vary its support by paying more to one college than to another in a particular year.

(4) *Designated publicly supported organizations.* (i) If an organization is organized and operated to support one or more publicly supported organizations and it is "operated in connection with" such organization or organizations, then, except as provided in subparagraph (2)(iv) of this paragraph, its articles of organization must, for purposes of satisfying the organizational test under section 509(a)(3)(A), designate the "specified" organizations by name. Under the circumstances described in this subparagraph, a supporting organization which has one or more "specified" organizations designated by name in its articles, will not be considered as failing the test of being organized for the benefit of "specified" organizations solely because its articles:

(a) Permit a publicly supported organization which is designated by class or purpose, rather than by name, to be substituted for the publicly supported organization or organizations designated by name in the articles, but only if such substitution is conditioned upon the occurrence of an event which is beyond the control of the supporting organization, such as loss of exemption, substantial failure or abandonment of operations, or dissolution of the publicly supported organization or organizations designated in the articles;

(b) Permit the supporting organization to operate for the benefit of a beneficiary organization which is not a publicly supported organization, but only if such supporting organization is currently operating for the benefit of a publicly supported organization and the possibility of its operating for the benefit of other than a publicly supported organization is a remote contingency; or

(c) Permit the supporting organization to vary the amount of its support between different designated organizations, so long as it meets the requirements of the integral part test set forth in paragraph (1)(3) of this section with respect to at least one beneficiary organization.

(ii) If the beneficiary organization referred to in subdivision (i)(b) of this subparagraph is not a publicly supported organization, the supporting organization will not then meet the operational test of paragraph (e)(1) of this section. Therefore, if a supporting organization substituted in accordance with such subdivision (i)(b) a beneficiary other than a publicly supported organization and operated in support of such beneficiary organization, the supporting organization would not be described in section 509(a)(3).

(iii) This subparagraph may be illustrated by the following example:

Example. X is a charitable trust described in section 4947(a)(1) organized in 1968. Under the terms of its trust instrument, X's trustees are required to pay over all of X's annual income to M University Medical School for urological research. If M University Medical School is unable or unwilling to devote these funds to urological research, the trustees are required to pay all of such income to N University Medical School. However if N University Medical School is also unable or unwilling to devote these funds to urological research, X's trustees are directed to choose a similar organization willing to apply X's funds for urological research. From 1968 to 1973, X pays all of its net income to M University Medical School pursuant to the terms of the trust. M and N are publicly supported organizations. Although the contingent remainderman may not be a publicly supported organization, the possibility that X may operate for the benefit of other than a publicly supported organization is, in 1973, a remote possibility, and X will be considered as operating for the benefit of a "specified" publicly supported organization under subdivision (1)(b) of this subparagraph. However, if, at some future date, X actually substituted a non-publicly supported organization as beneficiary, X would fail the requirements of the operational test set forth in paragraph (e)(1) of this section.

(e) *Operational test.*—(1) *Permissible beneficiaries.* A supporting organization will be regarded as "operated exclusively" to support one or more specified publicly supported organizations (hereinafter referred to as the "operational test") only if it engages solely in activities which support or benefit the specified publicly supported organizations. Such activities may include making payments to or for the use of, or providing services or facilities for, individual members of the charitable class benefited by the specified publicly supported organization. A supporting organization may also, for example, make a payment indirectly through another unrelated organization to a member of a charitable class benefited by the specified publicly supported organization, but only if such a payment constitutes a grant to an individual rather than a grant to an organization. In determining whether a grant is indirectly to an individual rather than to an organization the same standard shall be applied as in § 53.4945-4(a)(4) of this chapter. Similarly, an organization will be regarded as "operated exclusively" to support or benefit one or more specified publicly supported organizations even if it supports or benefits an organization, other than a private foundation, which is described in section 501(c)(3) and is operated, supervised, or controlled directly by or in connection with such publicly supported organizations, or which is described in section 511(a)(2)(B). However, an organization will not be regarded as operated exclusively if any part of its activities is in furtherance of a purpose other than supporting or benefiting one or more specified publicly supported organizations.

(2) *Permissible activities.* A supporting organization is not required to pay over its income to the publicly supported organizations in order to meet the operational test. It may satisfy the test by

using its income to carry on an independent activity or program which supports or benefits the specified publicly supported organizations. All such support must, however, be limited to permissible beneficiaries in accordance with subparagraph (1) of this paragraph. The supporting organization may also engage in fund raising activities, such as solicitations, fund raising dinners, and unrelated trade or business to raise funds for the publicly supported organizations, or for the permissible beneficiaries.

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

Example (1). M is a separately incorporated alumni association of X University and is an organization described in section 501(c)(3). X University is designated in M's articles as the sole beneficiary of its support. M uses all of its dues and income to support its own program of educational activities for alumni, faculty, and students of X University and to encourage alumni to maintain a close relationship with the university and to make contributions to it. M does not distribute any of its income directly to X for the latter's general purposes. M pays no part of its funds to, or for the benefit of, any organization other than X. Under these circumstances, M is considered as operated exclusively to perform the functions and carry out the purpose of X. Although it does not pay over any of its funds to X, it carries on a program which both supports and benefits X.

Example (2). N is a separately incorporated religious and educational organization described in section 501(c)(3). It was formed and is operated by Y Church to provide religious training for the members of the church. While it does not maintain a regular faculty, N conducts a Sunday school, weekly adult education lectures on religious subjects, and other similar activities for the benefit of the church members. All of its funds are disbursed in furtherance of such activities and no part of its funds is paid to, or for the benefit of, any organization other than Y Church. N is considered as operated exclusively to perform the educational functions of Y Church and to carry out its religious purposes by providing various forms of religious instruction.

Example (3). P is an organization described in section 501(c)(3). Its primary activity is providing financial assistance to S, a publicly supported organization which aids underdeveloped nations in Central America. P's articles of organization designate S as the principal recipient of P's assistance. However, P also makes a small annual general purpose grant to T, a private foundation engaged in work similar to that carried on by S. T performs a particular function that assists in the overall aid program carried on by S. Even though P is operating primarily for the benefit of S, a specified publicly supported organization, it is not considered as operated exclusively for the purposes set forth in section 509(a)(3)(A). The grant to T, a private foundation, prevents it from complying with the operational test under section 509(a)(3)(A).

Example (4). Assume the same facts as example (3), except that T is a section 501(c)(3) organization other than a private foundation and is operated in connection with S. Under these circumstances, P will be considered as operated exclusively to support S within the meaning of section 509(a)(3)(A).

Example (5). Assume the same facts as example (3) except that instead of the annual general purpose grant made to T, each

grant made by P to T is specifically earmarked for the training of social workers and teachers, designated by name, from Central America. Under these circumstances, P's grants to T would be treated as grants to the individual social workers and teachers under section 4945(d)(3) and § 53.4945-4(a)(4), rather than as grants to T under section 4945(d)(4). These social workers and teachers are part of the charitable class benefited by S. P would thus be considered as operating exclusively to support S within the meaning of section 509(a)(3)(A).

(f) *Nature of relationship required between organizations.*—(1) *In general.* Section 509(a)(3)(B) describes the nature of the relationship required between a section 501(c)(3) organization and one or more publicly supported organizations in order for such section 501(c)(3) organization to qualify under the provisions of section 509(a)(3). To meet the requirements of section 509(a)(3), an organization must be operated, supervised, or controlled by or in connection with one or more publicly supported organizations. If an organization does not stand in one of such relationships (as provided in this paragraph) to one or more publicly supported organizations, it is not an organization described in section 509(a)(3).

(2) *Types of relationships.* Section 509(a)(3)(B) sets forth three different types of relationships, one of which must be met in order to meet the requirements of subparagraph (1) of this paragraph. Thus, a supporting organization may be:

- (i) Operated, supervised, or controlled by,
- (ii) Supervised or controlled in connection with, or
- (iii) Operated in connection with, one or more publicly supported organizations.

(3) *Requirements of relationships.* Although more than one type of relationship may exist in any one case, any relationship described in section 509(a)(3)(B) must insure that:

(i) The supporting organization will be responsive to the needs of demands of one or more publicly supported organizations; and

(ii) The supporting organization will constitute an integral part of, or maintain a significant involvement in, the operations of one or more publicly supported organizations.

(4) *General description of relationships.* In the case of supporting organizations which are "operated, supervised, or controlled by" one or more publicly supported organizations, the distinguishing feature of this type of relationship is the presence of a substantial degree of direction by the publicly supported organizations over the conduct of the supporting organization, as described in paragraph (g) of this section. In the case of supporting organizations which are "supervised or controlled in connection with" one or more publicly supported organizations, the distinguishing feature is the presence of common supervision or control among the governing bodies of all organizations involved, such as the presence of common directors, as described in paragraph

(h) of this section. In the case of a supporting organization which is "operated in connection with" one or more publicly supported organizations, the distinguishing feature is that the supporting organization is responsive to, and significantly involved in the operations of, the publicly supported organization, as described in paragraph (i) of this section.

(g) *Meaning of "operated, supervised, or controlled by".* (1) (i) Each of the items "operated by," "supervised by," and "controlled by," as used in section 509(a)(3)(B), presupposes a substantial degree of direction over the policies, programs, and activities of a supporting organization by one or more publicly supported organizations. The relationship required under any one of these terms is comparable to that of a parent and subsidiary, where the subsidiary is under the direction of, and accountable or responsible to, the parent organization. This relationship is established by the fact that a majority of the officers, directors, or trustees of the supporting organization are appointed or elected by the governing body, members of the governing body, officers acting in their official capacity, or the membership of one or more publicly supported organizations.

(ii) A supporting organization may be "operated, supervised, or controlled by" one or more publicly supported organizations within the meaning of section 509(a)(3)(B) even though its governing body is not comprised of representatives of the specified publicly supported organizations for whose benefit it is operated within the meaning of section 509(a)(3)(A). A supporting organization may be "operated, supervised, or controlled by" one or more publicly supported organizations (within the meaning of section 509(a)(3)(B)) and be operated "for the benefit of" one or more different publicly supported organizations (within the meaning of section 509(a)(3)(A)) only if it can be demonstrated that the purposes of the former organizations are carried out by benefiting the latter organizations.

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

Example (1). X is a university press which is organized and operated as a nonstock educational corporation to perform the publishing and printing for M University, a publicly supported organization. Control of X is vested in a Board of Governors appointed by the Board of Trustees of M University upon the recommendation of the president of the university. X is considered to be operated, supervised, or controlled by M University within the meaning of section 509(a)(3)(B).

Example (2). Y Council was organized under the joint sponsorship of seven independent publicly supported organizations, each of which is dedicated to the advancement of knowledge in a particular field of social science. The sponsoring organizations organized Y Council as a means of pooling their ideas and resources for the attainment of common objectives, including the conducting of scholarly studies and formal discussions in various fields of social science. Under Y Council's by-laws, each of the seven sponsoring organizations elects three members to

Y's board of trustees for 3-year terms. Y's board also includes the president of Y Council and eight other individuals elected at large by the board. Pursuant to policies established or approved by the board, Y Council engages in research, planning, and evaluation in the social sciences and sponsors or arranges conferences, seminars, and similar programs for scholars and social scientists. It carries out these activities through its own full-time professional staff, through a part-time committee of scholars, and through grant recipients. Under the above circumstances, Y Council is subject to a substantial degree of direction by the sponsoring publicly supported organizations. It is therefore considered to be operated, supervised, or controlled by such sponsoring organizations within the meaning of section 509(a)(3)(B).

Example (3). Z is a charitable trust created by A in 1972. It has three trustees, all of whom are appointed by M University, a publicly supported organization. The trust was organized and is operated to pay over all of its net income for medical research to N, O, and P, each of which is specified in the trust, is a hospital described in section 509(a)(1), and is located in the same city as M. Members of M's biology department are permitted to use the research facilities of N, O, and P. Under subparagraph (1)(ii) of this paragraph, Z is considered to be operated, supervised, or controlled by M within the meaning of section 509(a)(3)(B), even though it is operated for the benefit of N, O, and P within the meaning of section 509(a)(3)(A).

(h) *Meaning of "supervised or controlled in connection with".* (1) In order for a supporting organization to be "supervised or controlled in connection with" one or more publicly supported organizations, there must be common supervision or control by the persons supervising or controlling both the supporting organization and the publicly supported organizations to insure that the supporting organization will be responsive to the needs and requirements of the publicly supported organizations. Therefore, in order to meet such requirement, the control or management of the supporting organization must be vested in the same persons that control or manage the publicly supported organizations.

(2) A supporting organization will not be considered to be "supervised or controlled in connection with" one or more publicly supported organizations if such organization merely makes payments (mandatory or discretionary) to one or more named publicly supported organizations, even if the obligation to make payments to the named beneficiaries is enforceable under State law by such beneficiaries and the supporting organization's governing instrument contains provisions whose effect is described in section 508(e)(1)(A) and (B). Such arrangements do not provide a sufficient "connection" between the payor organization and the needs and requirements of the publicly supported organizations to constitute supervision or control in connection with such organizations.

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

Example (1). A, a philanthropist, founded X school for orphan boys (a publicly sup-

ported organization). At the same time A founded X school, he also established Y trust into which he transferred all of the operating assets of the school, together with a substantial endowment for it. Under the provisions of the trust instrument, the same persons who control and manage the school also control and manage the trust. The sole function of Y trust is to hold legal title to X school's operating and endowment assets, to invest the endowment assets and to apply the income from the endowment to the benefit of the school in accordance with direction from the school's governing body. Under these circumstances, Y trust is organized and operated "for the benefit of" X school and is "supervised or controlled in connection with" such organization within the meaning of section 509(a)(3). The fact that the same persons control both X and Y insures Y's responsiveness to X's needs.

Example (2). In 1972, B, a philanthropist, created P, a charitable trust for the benefit of Z, a symphony orchestra described in section 509(a)(2). B transferred 100 shares of common stock to P. Under the terms of the trust instrument, the trustees (none of whom is under the control of B) were required to pay over all of the income produced by the trust assets to Z. The governing instrument of P contains certain provisions whose effect is described in section 508(e)(1)(A) and (B). Under applicable State law, Z can enforce the provisions of the trust instrument and compel payment to Z in a court of equity. There is no relationship between the trustees of P and the governing body of Z. Under these circumstances P is not supervised or controlled in connection with a publicly supported organization. Because of the lack of any common supervision or control by the trustees of P and the governing body of Z, P is not supervised or controlled in connection with Z within the meaning of section 509(a)(3)(B).

Example (3). T is a charitable trust described in section 501(c)(3) and created under the will of D. Prior to his death, D was a leader and very active in C church, a publicly supported organization. D created T to perpetuate his interest in, and assistance to, C. The sole purpose of T was to provide financial support for C and its related institutions. All of the original named trustees of T are members of C, are leaders in C, and hold important offices in one or more of C's related institutions. Successor trustees of T are by the terms of the charitable trust instrument to be chosen by the remaining trustees and are also to be members of C. All of the original trustees have represented that any successor trustee will be a leader in C and will hold an important office in one or more of C's related institutions. By reason of the foregoing relationship T and its trustees are responsive to the needs and requirements of C and its related institutions. Under these circumstances, T trust is organized and operated "for the benefit of" C and is "supervised or controlled in connection with" C and its related institutions within the meaning of section 509(a)(3)(B).

(i) *Meaning of "operated in connection with".* (1) *General rule.* (i) Except as provided in subdivisions (ii) and (iii) of this subparagraph and subparagraph (4) of this paragraph, a supporting organization will be considered as being operated in connection with one or more publicly supported organizations only if it meets the "responsiveness test" which is defined in subparagraph (2) of this paragraph and the "integral part test" which is defined in subparagraph (3) of this paragraph.

(ii) In the case of an organization which was supporting or benefiting one or more publicly supported organizations before November 20, 1970, additional facts and circumstances, such as a historic and continuing relationship between organizations, may be taken into account, in addition to the factors described in subparagraph (2) of this paragraph, to establish compliance with the responsiveness test.

(iii) If—

(a) A supporting organization can establish that it has met the integral part test set forth in subparagraph (3) (iii) of this paragraph for any 5-year period, period,

(b) Such organization cannot meet the requirements of such test for its current taxable year solely because the amount received by one or more of the publicly supported beneficiary organizations from such supporting organization is no longer sufficient, with respect to such beneficiary organizations, to satisfy subparagraph (3) (iii) of this paragraph, and

(c) There has been a historic and continuing relationship of support between such organizations between the end of such 5-year period and the taxable year in question,

then such supporting organization will be considered as meeting the requirements of the integral part test in subparagraph (3) (iii) of this paragraph for such taxable year.

(2) *Responsiveness test.* (i) For purposes of this paragraph, a supporting organization will be considered to meet the "responsiveness test" if the organization is responsive to the needs or demands of the publicly supported organizations within the meaning of this subparagraph. In order to meet this test, either subdivision (ii) or subdivision (iii) of this subparagraph must be satisfied.

(ii) (a) One or more officers, directors, or trustees of the supporting organization are elected or appointed by the officers, directors, trustees, or membership of the publicly supported organizations;

(b) One or more members of the governing bodies of the publicly supported organizations are also officers, directors, or trustees of, or hold other important offices in, the supporting organization; or

(c) The officers, directors, or trustees of the supporting organization maintain a close and continuous working relationship with the officers, directors, or trustees of the publicly supported organizations; and

(d) By reason of (a), (b), or (c) of this subdivision, the officers, directors or trustees of the publicly supported organizations have a significant voice in the investment policies of the supporting organization, the timing of grants, the manner of making them, and the selection of recipients by such supporting organization, and in otherwise directing the use of the income or assets of such supporting organization.

(iii) (a) The supporting organization is a charitable trust under State law;

(b) Each specified publicly supported organization is a named beneficiary

under such charitable trust's governing instrument; and

(c) The beneficiary organization has the power to enforce the trust and compel an accounting under State law.

(3) *Integral part test; general rule.*

(i) For purposes of this paragraph, a supporting organization will be considered to meet the "integral part test" if it maintains a significant involvement in the operations of one or more publicly supported organizations and such publicly supported organizations are in turn dependent upon the supporting organization for the type of support which it provides. In order to meet this test, either subdivision (ii) or subdivision (iii) of this subparagraph must be satisfied.

(ii) The activities engaged in for or on behalf of the publicly supported organizations are activities to perform the functions of, or to carry out the purposes of, such organizations, and, but for the involvement of the supporting organization, would normally be engaged in by the publicly supported organizations themselves.

(iii) (a) The supporting organization makes payments of substantially all of its income to or for the use of one or more publicly supported organizations, and the amount of support received by one or more of such publicly supported organizations is sufficient to insure the attentiveness of such organizations to the operations of the supporting organization. In addition, a substantial amount of the total support of the supporting organization must go to those publicly supported organizations which meet the attentiveness requirement of this subdivision with respect to such supporting organization. Except as provided in (b) of this subdivision, the amount of support received by a publicly supported organization must represent a sufficient part of the organization's total support so as to insure such attentiveness. In applying the preceding sentence, if such supporting organization makes payments to, or for the use of, a particular department or school of a university, hospital or church, the total support of the department or school shall be substituted for the total support of the beneficiary organization.

(b) Even where the amount of support received by a publicly supported beneficiary organization does not represent a sufficient part of the beneficiary organization's total support, the amount of support received from a supporting organization may be sufficient to meet the requirements of this subdivision if it can be demonstrated that in order to avoid the interruption of the carrying on of a particular function or activity, the beneficiary organization will be sufficiently attentive to the operations of the supporting organization. This may be the case where either the supporting organization or the beneficiary organization earmarks the support received from the supporting organization for a particular program or activity, even if such program or activity is not the beneficiary organization's primary program or ac-

tivity so long as such program or activity is a substantial one.

(c) This subdivision may be illustrated by the following examples:

Example (1). X, an organization described in section 501(c)(3), pays over all of its annual net income to Y, a museum described in section 509(a)(2). X meets the responsiveness test described in subparagraph (2) of this paragraph. In recent years, Y has earmarked the income received from X to underwrite the cost of carrying on a chamber music series consisting of 12 performances a year which are performed for the general public free of charge at its premises. Because of the expense involved in carrying on these recitals, Y is dependent upon the income from X for their continuation. Under these circumstances, X will be treated as providing Y with a sufficient portion of Y's total support to assure Y's attentiveness to X's operations, even though the chamber music series is not the primary part of Y's activities.

Example (2). M, an organization described in section 501(c)(3), pays over all of its annual net income to the Law School of N University, a publicly supported organization. M meets the responsiveness test described in subparagraph (2) of this paragraph. M has earmarked the income paid over to N's Law School to endow a chair in its Department of International Law. Without M's continued support, N might not continue to maintain this chair. Under these circumstances, M will be treated as providing N with a sufficient portion of N's total support to assure N's attentiveness to M's operations.

(d) All pertinent factors, including the number of beneficiaries, the length and nature of the relationship between the beneficiary and supporting organization and the purpose to which the funds are put (as illustrated by subdivision (iii) (b) and (c) of this subparagraph), will be considered in determining whether the amount of support received by a publicly supported beneficiary organization is sufficient to insure the attentiveness of such organization to the operations of the supporting organization. Normally the attentiveness of a beneficiary organization is motivated by reason of the amounts received from the supporting organization. Thus, the more substantial the amount involved, in terms of a percentage of the publicly supported organization's total support the greater the likelihood that the required degree of attentiveness will be present. However, in determining whether the amount received from the supporting organization is sufficient to insure the attentiveness of the beneficiary organization to the operations of the supporting organization (including attentiveness to the nature and yield of such supporting organization's investments), evidence of actual attentiveness by the beneficiary organization is of almost equal importance. An example of acceptable evidence of actual attentiveness is the imposition of a requirement that the supporting organization furnish reports at least annually for taxable years beginning after December 31, 1971, to the beneficiary organization to assist such beneficiary organization in insuring that the supporting organization has invested its endowment in assets productive of a

reasonable rate of return (taking appreciation into account) and has not engaged in any activity which would give rise to liability for a tax imposed under section 4941, 4943, 4944, or 4945 if such organization were a private foundation. The imposition of such requirement within 120 days after October 16, 1972, will be deemed to have retroactive effect to January 1, 1970, for purposes of determining whether a supporting organization has met the requirements of this subdivision for its first two taxable years beginning after December 31, 1969. The imposition of such requirement is, however, merely one of the factors in determining whether a supporting organization is complying with this subdivision and the absence of such requirement will not preclude an organization from classification as a supporting organization based on other factors.

(e) However, where none of the beneficiary organizations is dependent upon the supporting organization for a sufficient amount of the beneficiary organization's support within the meaning of this subdivision, the requirements of this subparagraph will not be satisfied, even though such beneficiary organizations have enforceable rights against such organization under State law.

(4) *Integral part test; transitional rule.* (i) A trust (whether or not exempt from taxation under section 501(a)) which on November 20, 1970, has met and continues to meet the requirements of subdivisions (ii) through (vi) of this subparagraph shall be treated as meeting the requirements of the integral part test (whether or not it meets the requirements of subparagraph (3) (ii) or (iii) of this paragraph) if for taxable years beginning after October 16, 1972, the trustee of such trust makes annual written reports to all of the beneficiary publicly supported organizations with respect to such trust setting forth a description of the assets of the trust, including a detailed list of the assets and the income produced by such assets. A trust organization which meets the requirements of this subparagraph may request a ruling that it is described in section 509(a) (3) in such manner as the Commissioner may prescribe.

(ii) All the unexpired interests in the trust are devoted to one or more purposes described in section 170(c) (1) or (2) (B) and a deduction was allowed with respect to such interests under section 170, 545(b) (2), 556(b) (2), 642(c), 2055, 2106(a) (2), 2522, or corresponding provisions of prior law (or would have been allowed such a deduction if the trust had not been created before 1913).

(iii) The trust was created prior to November 20, 1970, and did not receive any grant, contribution, bequest or other transfer on or after such date. For purpose of this subdivision, a split-interest trust described in section 4947(a) (2) which was created prior to November 20, 1970, which was irrevocable on such date, and which becomes a charitable trust described in section 4947(a) (1) after such date shall be treated as having been created prior to such date;

(iv) The trust is required by its governing instrument to distribute all of its net income currently to a designated publicly supported beneficiary organization. Where more than one publicly supported beneficiary organization is designated in the governing instrument of a trust, all of the net income must be distributable and must be distributed currently to each of such beneficiary organizations in fixed shares pursuant to such governing instrument. For purposes of this subdivision, the governing instrument of a charitable trust shall be treated as requiring distribution to a designated beneficiary organization where the trust instrument describes the charitable purpose of the trust so completely that such description can apply to only one existing beneficiary organization and is of sufficient particularity as to vest in such organization rights against the trust enforceable in a court possessing equitable powers;

(v) The trustee of the trust does not have discretion to vary either the beneficiaries or the amounts payable to the beneficiaries. For purposes of this subdivision, a trustee shall not be treated as having such discretion where the trustee has discretion to make payments of principal to the single section 509(a) (1) or (2) organization that is currently entitled to receive all of the trust's income or where the trust instrument provides that the trustee may cease making income payments to a particular charitable beneficiary in the event of certain specific occurrences, such as the loss of exemption under section 501(c) (3) or classification under section 509(a) (1) or (2) by the beneficiary or the failure of the beneficiary to carry out its charitable purpose properly;

(vi) None of the trustees would be disqualified persons within the meaning of section 4946(a) (other than foundation managers under 4946(a) (1) (B)) with respect to the trust if such trust were treated as a private foundation.

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

Example (1). N is a nonprofit publishing organization described in section 501(c) (3). It does all of the publishing and printing for the churches of a particular denomination (which are publicly supported organizations). Control of the organization is vested in a five-man Board of Directors, which includes one church official and four lay members of the congregations of that denomination. N does no other printing or publishing. It publishes all of the churches' religious as well as secular tracts and materials. Under these circumstances, N is considered as being "operated in connection with" a number of publicly supported organizations. Publishing religious literature is an integral part of the churches' activities; it is carried on by N on behalf of the churches, and there is sufficient direction of N's activities by the churches to insure responsiveness by N to their needs.

Example (2). O, an alumni association described in section 501(c) (3), was formed to promote a spirit of loyalty among graduates of Y University, a publicly supported organization, and to effect united action in promoting the general welfare of the university. A special committee of Y's governing board

meets with O and makes recommendations as to the allocation of O's program of gifts and scholarships to the university and its students. O also provides certain functions which would otherwise be part of Y's functions, such as maintaining records of alumni. O publishes a bulletin to keep alumni aware of the activities of the university. Under these circumstances O is considered to be operated in connection with Y within the meaning of section 509(a) (3) (B).

Example (3). P is a trust created under the will of A for the purpose of furthering musical education. As a means of accomplishing its purposes P founded X, a school of music described in section 509(a) (1). The trust instrument is thereafter amended to name X specifically as the beneficiary of the trust. X can enforce its equitable rights as trust beneficiary under State law. Members of the governing body of X form a minority of the foundation managers of P. For many years the organizations have been operated in close association with each other. P provides the principal endowment fund for the operation of X. In addition, while the governing body of X concerns itself with artistic policies, the foundation managers of P handle the budgetary concerns of X. X's annual budget is prepared with the assistance of P's foundation managers and is approved by P. Under these circumstances, P is considered to be operated in connection with X within the meaning of section 509(a) (3) (B).

Example (4). Q is a charitable trust described in section 501(c) (3) and created under the will of C. Prior to his death, C built H Hospital and deeded it to I University for use as a training and clinical facility for I's medical school. Both H and I are publicly supported organizations. C created Q to perpetuate his interest in, and assistance to, H Hospital. The sole purpose of Q was to provide financial support for H, the beneficiary organization named in C's will. H can enforce its equitable rights as trust beneficiary under State law. After the death of C, Q continued to provide substantial support for H. It was primarily responsible for the erecting of a new hospital building, as well as the construction of other facilities for the hospital. In addition, each medical department of H indicates during the year what its greatest needs are. Once these requests are approved by the medical director of I University's Medical School, they are presented to Q, and subject to the amount of Q's income (all of which is applied to H), these requests are honored and the new equipment of facility is supplied through Q's funds. The governing body of Q and those of H and I are completely independent. However, based on the above facts, Q is responsive to the needs of H, Q maintains a substantial involvement in the conduct of H, and H is substantially dependent upon the receipt of support from Q. Accordingly, Q is operated in connection with one or more section 509(a) (1) organizations within the meaning of section 509(a) (3) (B).

Example (5). R is a charitable trust created under the will of B, who died in 1971. Its purpose is to hold assets as an endowment for S, a hospital, T, a university, and U, a national medical research organization (all being publicly supported organizations and specifically named in the trust instrument), and to distribute all of the income each year in equal shares among the three named beneficiaries. S, T, and U have certain enforceable rights against R under State law, including the right to compel an accounting. Except for making these annual payments, the trustees of R have no further contacts or relationships with S, T, or U. The payments by R to such organizations do not comprise a sufficient amount of support to meet the requirements of subparagraph

(3) of this paragraph for any of these organizations. Although R meets the responsiveness test described in subparagraph (2) of this paragraph, it does not meet the integral part test described in subparagraph (3) of this paragraph. R is not, therefore, considered as operated in connection with one or more publicly supported organizations within the meaning of section 509(a)(3)(B). However, if B had died prior to November 20, 1970, R could, upon meeting all of the requirements of subparagraph (4) of this paragraph, be considered as operated in connection with one or more of publicly supported organizations within the meaning of section 509(a)(3)(B).

Example (6). S is a charitable trust described in section 501(c)(3). S was created under the will of C in 1910 for the purpose of providing aged and indigent women with care and shelter. Prior to his death in 1910, C helped to create T, a home for aged women, through a substantial inter vivos contribution. Although T is not specifically named in C's will, the trustees of S (who are completely independent of T) have paid over all of S's income to T in furtherance of the trust's purposes since the death of C. S establishes that between 1910 and 1955, the amount of support received by T from S was sufficient support to satisfy the provisions of § 1.509(a)-4(1)(3)(iii). In 1956, T merged with U, a home for aged and indigent men, and V, a nursing home. S continued to pay all its income to W, the organization resulting from the merger of T, U, and V. However, as a result of the merger and certain changes in the methods of financing the operations, the payments made by S after 1955 no longer were sufficient to satisfy the integral part test of § 1.509(a)-4(1)(3)(iii). W qualifies as an organization described in section 509(a)(2). For the taxable year 1971, S meets the responsiveness test under § 1.509(a)-4(1)(2)(ii). Although W is not a named beneficiary under S's governing instrument, pursuant to § 1.509(a)-4(1)(1)(ii) the historic and continuing relationship between the organizations will be taken into account to establish compliance with the responsiveness test. Furthermore, pursuant to § 1.509(a)-4(1)(1)(iii), under the facts set forth above, the integral part test under § 1.509(a)-4(1)(3)(iii) will be considered as being satisfied for the taxable year 1971. Thus S will be considered as "operated in connection with" W for the taxable year 1971.

(j) **Control by disqualified persons—**
(1) **In general.** Under the provisions of section 509(a)(3)(C) a supporting organization may not be controlled directly or indirectly by one or more disqualified persons (as defined in section 4946) other than foundation managers and other than one or more publicly supported organizations. If a person who is a disqualified person with respect to a supporting organization, such as a substantial contributor to the supporting organization, is appointed or designated as a foundation manager of the supporting organization by a publicly supported beneficiary organization to serve as the representative of such publicly supported organization, then for purposes of this paragraph such person will be regarded as a disqualified person, rather than as a representative of the publicly supported organization. An organization will be considered "controlled," for purposes of section 509(a)(3)(C), if the disqualified persons, by aggregating their votes or positions of authority, may require such organization to perform any act which significantly affects its operations or may

prevent such organization from performing such act. This includes, but is not limited to, the right of any substantial contributor or his spouse to designate annually the recipients, from among the publicly supported organizations of the income attributable to his contribution to the supporting organization. Except as provided in subparagraph (2) of this paragraph, a supporting organization will be considered to be controlled directly or indirectly by one or more disqualified persons if the voting power of such persons is 50 percent or more of the total voting power of the organization's governing body or if one or more of such persons have the right to exercise veto power over the actions of the organization. Thus, if the governing body of a foundation is composed of five trustees, none of whom has a veto power over the actions of the foundation, and no more than two trustees are at any time disqualified persons, such foundation will not be considered to be controlled directly or indirectly by one or more disqualified persons by reason of this fact alone. However, all pertinent facts and circumstances including the nature, diversity, and income yield of an organization's holdings, the length of time particular stocks, securities, or other assets are retained, and its manner of exercising its voting rights with respect to stocks in which members of its governing body also have some interest, will be taken into consideration in determining whether a disqualified person does in fact indirectly control an organization.

(2) **Proof of independent control.** Notwithstanding subparagraph (1) of this paragraph, an organization shall be permitted to establish to the satisfaction of the Commissioner that disqualified persons do not directly or indirectly control it. For example, in the case of a religious organization operated in connection with a church, the fact that the majority of the organization's governing body is composed of lay persons who are substantial contributors to the organization will not disqualify the organization under section 509(a)(3)(C) if a representative of the church, such as a bishop or other official, has control over the policies and decisions of the organization.

(k) **Organizations operated in conjunction with certain section 501(c)(4), (5), or (6) organizations.** (1) For purposes of section 509(a)(3), an organization which is operated in conjunction with an organization described in section 501(c)(4), (5), or (6) (such as a social welfare organization, labor or agricultural organization, business league, or real estate board) shall, if it otherwise meets the requirements of section 509(a)(3), be considered an organization described in section 509(a)(3) if such section 501(c)(4), (5), or (6) organization would be described in section 509(a)(2) if it were an organization described in section 501(c)(3). The section 501(c)(4), (5), or (6) organization, which the supporting organization is operating in conjunction with, must therefore meet the one-third tests of a publicly supported organization set forth in section 509(a)(2).

(2) This paragraph may be illustrated by the following example:

Example. X medical association, described in section 501(c)(6), is supported by membership dues and funds resulting from the performance of its exempt activities. This support, which is entirely from permitted sources, constitutes more than one-third of X's support. X does not normally receive more than one-third of its support from gross investment income. X organized and operated an endowment fund for the sole purpose of furthering medical education. The fund is an organization described in section 501(c)(3). Since more than one-third of X's support is derived from membership dues and from funds resulting from the performance of exempt purposes (all of which are from permitted sources) and not more than one-third of its support is from gross investment income, it would be a publicly supported organization described in section 509(a)(2) if it were described in section 501(c)(3) rather than section 501(c)(6). Accordingly, if the fund otherwise meets the requirements of section 509(a)(3) with respect to X, it will be considered an organization described in section 509(a)(3).

§ 1.509(a)-5 Special rules of attribution.

(a) **Retained character of gross investment income.** (1) For purposes of determining whether an organization meets the gross investment income test set forth in section 509(a)(2)(B), amounts received by such organization from:

(i) An organization which seeks to be described in section 509(a)(3) by reason of its support of such organization; or

(ii) A charitable trust, corporation, fund, or association described in section 501(c)(3) (including a charitable trust described in section 4947(a)(1)) or a split interest trust described in section 4947(a)(2), which is required by its governing instrument or otherwise to distribute, or which normally does distribute, at least 25 percent of its adjusted net income (within the meaning of section 4942(f)) to such organization, and such distribution normally comprises at least 5 percent of such distributee organization's adjusted net income,

will retain their character as gross investment income (rather than gifts or contributions) to the extent that such amounts are characterized as gross investment income in the possession of the distributing organization described in subdivision (i) or (ii) of this subparagraph or, if the distributing organization is a split interest trust described in section 4947(a)(2), to the extent that such amounts would be characterized as gross investment income attributable to transfers in trust after May 26, 1969, if such trust were a private foundation. For purposes of this section, all income which is characterized as gross investment income in the possession of the distributing organization shall be deemed to be distributed first by such organization and shall retain its character as such in the possession of the recipient of amounts described in this paragraph. If an organization described in subdivision (i) or (ii) of this subparagraph makes distributions to more than one organization, the amount of gross investment income

deemed distributed shall be prorated among the distributees.

(2) For purposes of subparagraph (1) of this paragraph, amounts paid by an organization to provide goods, services, or facilities for the direct benefit of an organization seeking section 509(a)(2) status (rather than for the direct benefit of the general public) shall be treated in the same manner as amounts received by the latter organization. Such amounts will be treated as gross investment income to the extent that such amounts are characterized as gross investment income in the possession of the organization spending such amounts. For example, X is an organization described in subparagraph (1)(i) of this paragraph. It uses part of its funds to provide Y, an organization seeking section 509(a)(2) status, with certain services which Y would otherwise be required to purchase on its own. To the extent that the funds used by X to provide such services for Y are characterized as gross investment income in the possession of X, such funds will be treated as gross investment income received by Y.

(3) An organization seeking section 509(a)(2) status shall file a separate statement with its Form 990, Annual Information Return, setting forth all amounts received from organizations described in subparagraph (1)(i) or (ii) of this paragraph.

(b) *Relationships created for avoidance purposes.* (1) If a relationship between an organization seeking section 509(a)(3) status and an organization seeking section 509(a)(2) status:

(i) Is established or availed of after October 9, 1969, and

(ii) One of the purposes of establishing or utilizing such relationship is to avoid classification as a private foundation with respect to either organization, the character and amount of support received by the section 509(a)(3) organization will be attributed to the section 509(a)(2) organization for purposes of determining whether the latter meets the one-third support test and the one-third gross investment income test under section 509(a)(2). If a relationship described in this subparagraph is established or utilized by an organization seeking section 509(a)(3) status and two or more organizations seeking section 509(a)(2) status, the amount of support received by the former organization will be prorated among the latter organizations and the character of each class of support (as defined in section 509(d)) will be attributed pro rata to each such organization. The provisions of this paragraph and of paragraph (a) of this section are not mutually exclusive.

(2) In determining whether a relationship between one or more organizations seeking section 509(a)(2) status (hereinafter referred to as "beneficiary organizations") and an organization seeking section 509(a)(3) status (hereinafter referred to as the "supporting organization") has been established or availed of to avoid classification as a private foundation (within the meaning

of subparagraph (1) of this paragraph), all pertinent facts and circumstances, including the following, shall be taken into account as evidence that a relationship was not established or availed of to avoid classification as a private foundation:

(i) The supporting organization is operated to support or benefit several specified beneficiary organizations.

(ii) The beneficiary organization has a substantial number of dues-paying members (in relation to the public it serves and the nature of its activities) and such members have an effective voice in the management of both the supporting and beneficiary organizations.

(iii) The beneficiary organization is composed of several membership organizations, each of which has a substantial number of members (in relation to the public it serves and the nature of its activities), and such membership organizations have an effective voice in the management of the supporting and beneficiary organizations.

(iv) The beneficiary organization receives a substantial amount of support from the general public, public charities, or governmental grants.

(v) The supporting organization uses its funds to carry on a meaningful program of activities to support or benefit the beneficiary organization and such use would, if such supporting organization were a private foundation, be sufficient to avoid the imposition of any tax upon such organization under section 4942.

(vi) The supporting organization is not able to exercise substantial control or influence over the beneficiary organization by reason of the former's receiving support or holding assets which are disproportionately large in comparison with the support received or the assets held by the latter.

(vii) Different persons manage the operations of the beneficiary and supporting organizations and each organization performs a different function.

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

Example (1). M, an organization described in section 509(a)(2), is a council composed of 10 learned societies. Each member society has a large membership of scholars interested in a particular academic area. In 1970 M established N, an organization seeking section 509(a)(3) status, for the purpose of carrying on research and study projects of interest to the member societies. The principal source of funds for N's activities is from foundation and government grants and contracts. The principal source of funds for M's activities after the creation of N is membership dues. M continued to maintain a wide variety of activities for its members, such as publishing periodicals and carrying on seminars and conferences. N is subject to complete control by the governing body of M. Under these circumstances, the relationship between these organizations is not one which is described in subparagraph (1) of this paragraph.

Example (2). Q is a local medical research organization described in section 509(a)(2). Its fixed assets are negligible and it carries on research activities on a limited scale. It

also makes a limited number of grants to scientists and doctors who are engaged in medical research of interest to Q. It receives support through small government grants and a few research contracts from private foundations. R is an organization described in section 501(c)(3). As of January 1, 1970, R was classified as a private foundation under section 509. It has a substantial endowment which it uses to make grants to various charitable and scientific organizations described in section 501(c)(3). During 1970, R agrees to subsidize the research activities of Q. R amends its governing instrument to provide specifically that all of R's support will be used for research activities which are approved and supervised by Q. R also amends its bylaws to permit a minority of Q's board of directors to be members of R's governing body. R then gives timely notification under section 507(b)(1)(B)(ii) that R is terminating its private foundation status by meeting the requirements of section 509(a)(3) by the end of the 12-month period described in section 507(b)(1)(B)(i). For purposes of determining whether R has met the requirements of section 509(a)(3) by the end of the 12-month period, as well as determining Q's status under section 509(a)(2), the character and amount of support received by R will be attributed to Q.

(c) *Effect on organizations claiming section 509(a)(3) status.* If an organization claiming section 509(a)(2) status fails to meet either the one-third support test or the one-third gross investment income test under section 509(a)(2) by reason of the application of the provisions of paragraph (a) or (b) of this section, and such organization is one of the specified organizations (within the meaning of section 509(a)(3)(A)) for whose support or benefit an organization claiming section 509(a)(3) status is operated, the organization claiming section 509(a)(3) status will not be considered to be operated exclusively to support or benefit one or more section 509(a)(1) or (2) organizations.

§ 1.509(a)-6 Classification under section 509(a).

If an organization is described in section 509(a)(1) and also in another paragraph of section 509(a), it will be treated as described in section 509(a)(1). For purposes of this section, the parenthetical language "other than in clauses (vii) and (viii)" used in section 509(a)(1) shall be construed to mean "other than an organization which is described only in clause (vii) or (viii)". For example, X is an organization which is described in section 170(b)(1)(A)(vi), but could also meet the description of section 170(b)(1)(A)(viii) as an organization described in section 509(a)(2). For purposes of the one-third support test in section 509(a)(2)(A), contributions from X to other organizations will be treated as support from an organization described in section 170(b)(1)(A)(vi) rather than from an organization described in section 170(b)(1)(A)(viii).

§ 1.509(a)-7 Reliance by grantors and contributors to section 509(a)(1), (2), and (3) organizations.

(a) *General rule.* Once an organization has received a final ruling or deter-

mination letter classifying it as an organization described in section 509(a) (1), (2), or (3), the treatment of grants and contributions and the status of grantors and contributors to such organization under sections 170, 507, 545 (b) (2), 556(b) (2), 642(c), 4942, 4945, 2055, 2106(a) (2), and 2522 will not be affected by reason of a subsequent revocation by the service of the organization's classification as described in section 509(a) (1), (2), or (3) until the date on which notice of change of status is made to the public (such as by publication in the Internal Revenue Bulletin) or another applicable date, if any, specified in such public notice. In appropriate cases, however, the treatment of grants and contributions and the status of grantors and contributors to an organization described in section 509(a) (1) (2), or (3) may be affected pending verification of the continued classification of such organization under section 509 (a) (1), (2), or (3). Notice to this effect will be made in a public announcement by the service. In such cases the effect of grants and contributions made after the date of the announcement will depend upon the statutory qualification of the organization as an organization described in section 509(a) (1), (2), or (3).

(b) *Exceptions.* (1) Paragraph (a) of this section shall not apply if the grantor or contributor:

(i) Had knowledge of the revocation of the ruling or determination letter classifying the organization as an organization described in section 509(a) (1), (2), or (3), or

(ii) Was in part responsible for, or was aware of, the act, the failure to act, or the substantial and material change on the part of the organization which gave rise to the revocation of the ruling or determination letter classifying the organization as an organization described in section 509(a) (1), (2), or (3).

(2) Paragraph (a) of this section shall not apply where a different rule is otherwise expressly provided in the regulations under sections 170(b) (1) (A), 507(b) (1) (B), or 509.

§ 1.509(b) Statutory provisions: private foundation defined; continuation of private foundation status.

SEC. 509. Private foundation defined.

(b) *Continuation of private foundation status.* For purposes of this title, if an organization is a private foundation (within the meaning of subsection (a)) on October 9, 1969, or becomes a private foundation on any subsequent date, such organization shall be treated as a private foundation for all periods after October 9, 1969, or after such subsequent date, unless its status as such is terminated under section 507.

[Sec. 509(b), as added by sec. 101(a), Tax Reform Act 1969 (83 Stat. 497)]

§ 1.509(b)-1 Continuation of private foundation status.

(a) *In general.* If an organization is a private foundation (within the meaning of section 509(a)) on October 9, 1969, or becomes a private foundation on any subsequent date, such organization shall

be treated as a private foundation for all periods after October 9, 1969, or after such subsequent date, unless its status as such is terminated under section 507. Therefore, if an organization was described in section 501(c) (3) and was a private foundation within the meaning of section 509(a) on October 9, 1969, it shall be treated as a private foundation for all periods thereafter, even though it may also satisfy the requirements of an organization described in some other paragraph of section 501(c). For example, if on October 9, 1969, an organization was described in section 501(c) (3), but because of its activities, it could also have qualified as an organization described in section 501(c) (4), such organization will continue to be treated as a private foundation, if it was a private foundation within the meaning of section 509(a) on October 9, 1969.

(b) *Taxable private foundations.* If an organization is a private foundation on October 9, 1969, and it is determined that it is not exempt under section 501(a) as an organization described in section 501(c) (3) as of any date after October 9, 1969, such organization, even though it may operate thereafter as a taxable entity, will continue to be treated as a private foundation unless its status as such is terminated under section 507. For example, X organization is a private foundation on October 9, 1969. It is subsequently determined that, as of July 1, 1972, X is no longer exempt under section 501(a) as an organization described in section 501(c) (3) because, for example, it has not conformed its governing instrument pursuant to section 508(e). X will continue to be treated as a private foundation after July 1, 1972, unless its status as such is terminated under section 507. However, if an organization is not exempt under section 501(a) as an organization described in section 501(c) (3) on October 9, 1969, then it will not be treated as a private foundation within the meaning of section 509(a) by reason of section 509(b), unless it becomes a private foundation on a subsequent date.

§ 1.509(c) Statutory provisions: private foundation defined; status of organization after termination of private foundation status.

SEC. 509. Private foundation defined.

(c) *Status of organization after termination of private foundation status.* For purposes of this part, an organization the status of which as a private foundation is terminated under section 507 shall (except as provided in section 507(b) (2)) be treated as an organization created on the day after the date of such termination.

[Sec. 509(c), as added by sec. 101(a), Tax Reform Act of 1969 (83 Stat. 497)]

§ 1.509(c)-1 Status of organization after termination of private foundation status.

(a) *In general.* For purposes of Part II of Subchapter F of this chapter, an organization whose status as a private foundation is terminated under section 507 shall be treated as an organization

created on the day after the date of such termination. An organization whose private foundation status has been terminated under the provisions of section 507(a) will, if it continues to operate, be treated as a new organization and must, if it desires to be classified under section 501(c) (3), give notification that it is applying for recognition of section 501 (c) (3) status pursuant to the provisions of section 508(a).

(b) *Effect upon section 507(d) (1).* If the private foundation status of an organization has been terminated under section 507(b) (1) (B) and the regulations thereunder, and:

(1) Such organization does not continue at all times thereafter to meet the requirements of section 509(a) (1), (2), or (3) (and is therefore no longer excluded from the definition of a private foundation); and

(2) The status of such organization as a private foundation is thereafter terminated under section 507(a),

then the tax imposed under section 507(c) (1) upon the aggregate tax benefit (described in section 507(d) (1)) resulting from section 501(c) (3) status shall be computed only upon the aggregate tax benefit resulting after the date on which the organization again becomes a private foundation under subparagraph (1) of this paragraph.

§ 1.509(d) Statutory provisions: private foundation defined; definition of support.

SEC. 509. Private foundation defined.

(d) *Definition of support.* For purposes of this part and chapter 42, the term "support" includes (but is not limited to)—

(1) Gifts, grants, contributions, or membership fees,

(2) Gross receipts from admissions, sales of merchandise, performance of services, or furnishing of facilities in any activity which is not an unrelated trade or business (within the meaning of section 513),

(3) Net income from unrelated business activities, whether or not such activities are carried on regularly as a trade or business,

(4) Gross investment income (as defined in subsection (e)),

(5) Tax revenues levied for the benefit of an organization and either paid to or expended on behalf of such organization, and

(6) The value of services or facilities (exclusive of services or facilities generally furnished to the public without charge) furnished by a governmental unit referred to in section 170(c) (1) to an organization without charge.

Such term does not include any gain from the sale or other disposition of property which would be considered as gain from the sale or exchange of a capital asset, or the value of exemption from any Federal, State, or local tax or any similar benefit.

[Sec. 509(d), as added by section 101(a), Tax Reform Act 1969 (83 Stat. 497)]

§ 1.509(d)-1 Definition of support

For purposes of section 509(a) (2), the term "support" does not include amounts received in repayment of the principal of a loan or other indebtedness. See, however, section 509(e) as to amounts re-

ceived as interest on a loan or other indebtedness.

§ 1.509(e) Statutory provisions; private foundation defined; definition of gross investment income.

SEC. 509. *Private foundation defined.*

(e) *Definition of gross investment income.* For purposes of subsection (d), the term "gross investment income" means the gross amount of income from interest, dividends, rents, and royalties, but not including any such income to the extent included in computing the tax imposed by section 511.

[Sec. 509(e), as added by section 101(a), Tax Reform Act 1969 (83 Stat. 498)]

§ 1.509(e)-1 Definition of gross investment income.

For the distinction between gross receipts and gross investment income, see § 1.509(a)-3(m).

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

[SEAL] JOHNNIE M. WALTERS,
Commissioner of Internal Revenue.

Approved: October 6, 1972.

FREDERIC W. HICKMAN,
*Assistant Secretary
of the Treasury.*

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Title 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission PART 175—CSC SECURITY PROGRAM

A new Part 175 is added to Chapter I of Title 5 of the Code of Federal Regulations to prescribe the procedures whereby members of the public or Departments may direct requests for a review of the classification of a Commission document. The new Part 175 reads as follows:

§ 175.101 Requests for review of classification of documents.

A person desiring a review of the classification of a Commission document under Executive Order 11652 and the National Security Council Directive Governing the Classification, Downgrading, Declassification and Safeguarding of National Security Information shall submit his request in writing to the Commission's Security Officer. Procedures for submitting requests for review of classification, and for appeals from unfavorable action thereon, and the addresses to which requests and appeals should be directed are set out in Appendix A to this part.

APPENDIX A

REQUESTS FOR DECLASSIFICATION REVIEW

The following guidance is provided for members of the public desiring a classification review of a document of the Civil Service Commission (CSC) pursuant to section 5.(c) of Executive Order 11652 (37 F.R. 5209, March 10, 1972) and section III.B of the National

Security Council Directive Governing the Classification, Downgrading, Declassification and Safeguarding of National Security Information (37 F.R. 10053, May 19, 1972).

(a) *Request for classification review of documents.* (1) Any person desiring a classification review of a CSC document containing information classified as National Security Information by reason of the provisions of Executive Order 11652 (or any predecessor Executive order) and which is more than 10 years old, should address such requests to the Security Officer, U.S. Civil Service Commission, Washington, D.C. 20415. (2) Requests need not be made on any special form but shall, as specified in the Executive order, describe the document with sufficient particularity to enable CSC personnel to identify and obtain the document from CSC records without expending more than a reasonable amount of effort. (3) Charges for locating and reproducing copies of records will be made when deemed applicable in accordance with title 5 of the Independent Offices Appropriations Act, 1952, 65 Stat. 290, 31 U.S.C. 483a and the requester will be so notified.

(b) *Action on requests for classification review.* (1) The Security Officer shall assign the request to the appropriate office for action. The Security Officer or the office which has been assigned action shall immediately acknowledge receipt of the request in writing. Every effort will be made to complete action on each request within thirty (30) days of receipt of the request. If action cannot be completed within thirty (30) days, the requester shall be so advised by the Security Officer or the office acting on the request along with the reasons for the need for additional time. (2) If the requester does not receive a decision on his request within sixty (60) days from the date of receipt of his request by CSC, or from the date of the most recent receipt of his response to a CSC request for more particulars, he may apply to the CSC Committee on Classification of Security Information, U.S. Civil Service Commission, Washington, D.C. 20415, for a decision on his request. (3) In the event the Security Officer or the office which has been assigned action on the request makes the determination that the requested information must remain classified by reason of the provisions of Executive Order 11652, the requester shall be given prompt notification of that decision and, whenever possible, shall be provided with a brief statement as to why the information or material cannot be declassified. He shall also be advised that if he desires he may appeal that determination to the CSC Committee on Classification of Security Information, U.S. Civil Service Commission, Washington, D.C. 20415. Any such request shall include a brief statement as to why the requester disagrees with the decision which he is appealing. (4) The CSC Committee on Classification of Security Information shall normally render its decision within thirty (30) days of receipt of a request. If a longer period is likely to be required because of the need for additional communications or conferences with the requester, he shall be advised of the time needed to complete review of the matter.

(c) *Appeal to Interagency Classification Review Committee.* Whenever the CSC Committee on Classification of Security Information confirms a determination for continued classification, it shall so notify the requester who shall be entitled to appeal that action to the Interagency Classification Review Committee established under section 7(A) of Executive Order 11652. Such appeals should be addressed to the Interagency Classification Review Committee, The Executive Office Building, Washington, D.C. 20500.

(d) *Suggestions and complaints.* Any person may also direct suggestions or com-

plaints with respect to the administration of the other provisions of Executive Order 11652 and the NSC Directive by the CSC to the CSC Committee for Classification of Security Information, U.S. Civil Service Commission, Washington, D.C. 20415.

(e) *Other material.* CSC Administrative Manual, Chapter 175.02 covering CSC policies and procedures relating to classified information or material is available for inspection by the public in the CSC Library, Room 5H27, 1900 E Street NW., Washington, D.C. or in one of the 10 CSC regional offices in the following cities: Atlanta, Boston, Chicago, Dallas, Denver, New York, Philadelphia, St. Louis, San Francisco, and Seattle.

(E.O. 11652, 37 F.R. 5209)

Effective date. This regulation shall be effective upon its publication in the FEDERAL REGISTER (10-17-72).

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
*Executive Assistant
to the Commissioners.*

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Title 9—ANIMALS AND ANIMAL PRODUCTS

Chapter I—Animal and Plant Health Inspection Service, Department of Agriculture

SUBCHAPTER B—COOPERATIVE CONTROL AND ERADICATION OF LIVESTOCK OR POULTRY DISEASES

PART 56—SWINE DESTROYED BECAUSE OF HOG CHOLERA

Payment of Indemnities

Pursuant to the provisions of the Act of May 29, 1884, as amended, the Act of February 2, 1903, as amended, the Act of March 3, 1905, as amended, the Act of September 6, 1961, and the Act of July 2, 1962 (21 U.S.C. 111-113, 114, 114a, 114g, 115, 117, 120, 121, 123-126, 134a-134h), Part 56, Title 9, Code of Federal Regulations relating to the payment of indemnity for swine destroyed because of hog cholera, is thereby amended in the following respects:

In § 56.7, paragraphs (a) and (b) are amended to read:

§ 56.7 Payment to owners for swine destroyed.

(a) Subject to paragraph (b) of this section, owners of swine destroyed in accordance with this part in States listed in § 76.2 (f) or (g) of this chapter and in States not listed in either of these sections, may be paid an indemnity by the United States not to exceed the percentage of the appraised value of swine destroyed as specified in the following schedule: *Providing*, That each such State has laws, rules or regulations requiring the individual identification of all feeder and breeder swine moving through livestock markets and other concentration points in intrastate and interstate movement: