Interested persons were afforded an opportunity to participate in the rulemaking through submission of comments. All comments received were favorable.

DRAFTING INFORMATION

The principal authors of this document are Thomas W. Binczak, Air Traffic Division, and DeWitte T. Lawson, Jr., Esquire, Regional Counsel.

ADOPTION OF THE AMENDMENT

Accordingly, pursuant to the authority delegated to me by the Administrator, Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective 0901 GMT, December 1, 1977, as hereinafter set forth.

§ 71.181 [Amended]

UKIAH, CALIFORNIA

Following "* * * Fortuna VORTAC 110° radials." Add: * * * "and that airspace extending upward from 5,300 feet MSL bounded on the east by the southwest edge of V-27 and on the west by the east/southeast edge of V-27W."

(Sec. 307(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)) and Sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).)

NOTE.—The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Issued in Los Angeles, California on September 1, 1977.

HERMAN C. BLISS,
Acting Deputy Director,
Western Region.

[FR Doc.77-26544 Filed 9-14-77;8:45 am]

[Airspace Doc. No. 77-CE-8]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Designation of Transition Area—Clarion, Iowa

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this federal action is to designate a transition area at Clarion, Iowa to provide controlled airspace for aircraft executing instrument approach procedures to the Clarion Municipal Airport which are based on a Non-Directional Radio Beacon (NDB) navigational aid being installed at the airport.

EFFECTIVE DATE: December 1, 1977.

FOR FURTHER INFORMATION CONTACT:

Dwaine E. Hiland, Airspace Specialist, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-537, FAA, Central Region, Federal Building, 601 East 12th Street, Kansas City, Mo. 64106, telephone 816-374-3408.

SUPPLEMENTARY INFORMATION: The City of Clarion, Iowa is installing a Non-Directional Radio Beacon (NDB) on the Clarion Municipal Airport. This navigational aid will provide new navigational guidance for aircraft utilizing this airport. The establishment of an instrument approach procedure based on this navigational aid entails designation of a transition area at and above 700 feet above ground level (AGL) within which aircraft are provided air traffic control service. The intended effect of this action is to ensure adequate controlled airspace for aircraft executing the new instrument approach procedures at the Clarion Municipal Airport.

DRAFTING INFORMATION

The principal authors of this document are Dwaine E. Hiland, Operations, Procedures and Airspace Branch, Air Traffic Division and John L. Fitzgerald, Jr., Office of the Regional Counsel.

DISCUSSION OF COMMENTS

On pages 20834 and 20835 of the FEDERAL REGISTER dated April 21, 1977, as extended in the FEDERAL REGISTER of May 31, 1977, at page 27603, the Federal Aviation Administration published a notice of proposed rulemaking which would amend Section 71.181 of Part 71 of the Federal Aviation Regulations so as to designate a transition area at Clarion, Iowa. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rule Making.

Accordingly, Subpart G, Section 71.181 of the Federal Aviation Regulations (14 CFR 71.181) as republished on January 3, 1977 (42 FR 440), is amended, effective 0901 G.m.t. December 1, 1977, by adding the following new transition area:

CLARION, IOWA

That airspace extending upward from 700' above the surface within a 5 mile radius of the Clarion Municipal Airport (latitude 42°44'30" N., longitude 93°45'30" W.) and within 3 miles each side of the 311° bearing from the Clarion Municipal Airport, extending from the 5 mile radius to 8.5 miles northwest of the airport.

(Sec. 307(a), Federal Aviation Act of 1958 as amended (49 U.S.C. 1348); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655 (c)); Sec. 11.69 of the Federal Aviation Regulations (14 CFR 11.69)).

NOTE.—The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Issued in Kansas City, Missouri, on September 6, 1977.

C. R. MELUGIN, Jr.,
Director, Central Region.

[FR Doc.77-26876 Filed 9-14-77;8:45 am]

[Docket No. 12537; Amdt. No. 65-22]

PART 65—CERTIFICATION: AIRMEN OTHER THAN FLIGHT CREWMEMBERS

Inspection Authorization

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY. This amendment is being issued to clarify current rules, and to adopt additional rules, applicable to applicants for, and holders of, an inspection authorization (I.A.). This action is necessary since the current rules have been the subject of considerable misunderstanding.

EFFECTIVE DATE: October 17, 1977.

FOR FURTHER INFORMATION CONTACT:

Raymond E. Ramakis, Regulatory Projects Branch (AFS-940), Safety Regulations Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; Telephone: (202) 755-8716.

SUPPLEMENTARY INFORMATION: Interested persons have been afforded an opportunity to participate in the making of this amendment by a notice of proposed rule making (Notice No. 73-4) issued on January 29, 1973, and published in the FEDERAL REGISTER on February 6, 1973 (38 F.R. 3410). Due consideration has been given to all comments received in response to the notice. Except as otherwise discussed in this amendment, the amendment and the reasons for it are identical to the proposal and the reasons set forth in the proposal.

Many of the three hundred and seventy-six comments received in response to the notice expressed disagreement with proposed § 65.91(c)(2). That section would have required the applicant for an inspection authorization to have had diversified practical experience performing aircraft and aircraft engine maintenance during at least the two-year period before applying. Nearly all of the commentators in disagreement with this proposal objected to the use of the word "diversified" as being confusing, vague, or undefined. The FAA agrees that the words "diversified practical experience", as used in proposed § 65.91(c)(2), need further clarification and, accordingly, withdraws this proposal.

In addition, many commentators disagreed with proposed § 65.95 (c) and (d). Paragraph (c) would have precluded the holder of an I.A. from exercising the privileges of his authorization outside of the area of jurisdiction of the local FAA District Office in which his fixed base of operation is located. Under paragraph (d), the holder of an I.A. changing the location of, or terminating inspection activity at, his fixed base of operation would have had to surrender the authorization to the local FAA District Office. Most of those opposing these proposals stated, in essence, that a mere change of geographical location has no effect on qualifications to exercise the privileges of an I.A. Others stated that the inability to use an I.A. outside the fixed base of operation would cause economic hardship.

After consideration of these comments, the FAA has determined that the holder of an I.A. should not be denied the use of his authorization when going outside the jurisdiction of his local FAA District Office or terminating inspection activity at, or changing the location of, his fixed base of operation, as provided in proposed § 65.95 (c) and (d). Accordingly, these proposals are withdrawn.

Proposed § 65.94 would have required the holder of an I.A. to keep, and make available for inspection by the Administrator, a current record of inspections performed by him under § 65.95(a). While a preponderance of commentators favored this proposal, some contended that such a requirement would impose an undue economic burden and others felt that it would not be beneficial to anyone. In light of the economic burden that this recordkeeping provision may impose, the FAA has decided to further evaluate the impact of proposed § 65.94. Accordingly, that proposed section is also withdrawn.

Proposed § 65.91(c)(1) was intended to clarify the current section by providing that an applicant for an I.A. would have to hold a currently effective mechanic certificate with both an airframe rating and a powerplant rating, each of which has been in effect for not less than three years. Moreover, under proposed § 65.92(a), the holder of an I.A. could exercise the privileges of the authorization only while he holds a currently effective certificate and ratings. While those proposed sections specified that the applicant for, or holder of, an I.A. must have a currently effective mechanic certificate, they did not expressly provide that the airframe and powerplant ratings held must also be current. Sections 65.91(c)(1) and 65.92(a), as adopted, make this clear. These requirements will ensure that the applicant for an I.A. is qualified to exercise the privileges of the authorization and remains qualified while he holds the authorization.

Paragraph (d) of current § 65.91 provides that an inspection authorization expires on March 31 of each year. That paragraph is revoked by this amendment since the provision contained therein is included in new § 65.92(a).

A review of comments received in response to the notice indicates that proposed § 65.93 appears to have been misinterpreted by several commentators. The purpose of that proposal was merely to require that a person desiring to renew his I.A. must present the evidence currently required by that section at the local FAA District Office having jurisdiction over the area in which his fixed base of operation is located. The proposal was designed to relax the current requirement to submit that evidence at a more distant General Aviation District Office or International Filed Office. However, as part of its Operations Review Program, the FAA is considering extensive revisions to current § 65.93, including a revision similar to that set forth in Notice 73-4. In light of this, the FAA concludes that it would be appropriate to consider all revisions to that section during the Operations Review, rather than implementing a single revision at the present time.

The FAA has conducted a preliminary evaluation of the impacts of the provisions adopted in this amendment. Based on that evaluation, it has been determined that the impacts of those provisions will be minimal and that an in-depth evaluation under the policy of the Secretary of Transportation and the Administrator (41 FR 16200; April 16, 1976) is not required.

The principal authors of this document are Irving Birnbaum, Flight Standards Service, and Danvers E. Long, Office of the Chief Counsel.

Accordingly, Part 65 of the Federal Aviation Regulations is amended, effective October 17, 1977, as follows:

1. By amending § 65.91 by revising paragraph (c)(1), and by revoking and reserving paragraph (d) as follows:

§ 65.91 Inspection authorization.

* * * * *

(c) To be eligible for an inspection authorization, an applicant must:

(1) Hold a currently effective mechanic certificate with both an airframe rating and a powerplant rating, each of which is currently effective and has been continuously in effect for not less than the three year period immediately before the date of application;

* * * * *

(d) [Reserved]

2. By adding a new § 65.92 to read as follows:

§ 65.92 Inspection authorization: Duration.

Each inspection authorization expires on March 31 of each year. However, the holder may exercise the privileges of that authorization only while he holds a currently effective mechanic certificate with both a currently effective airframe rating and a currently effective powerplant rating.

(b) An inspection authorization ceases to be effective whenever any of the following occurs:

(1) The authorization is surrendered, suspended, or revoked.

(2) The holder no longer has a fixed base of operation.

(3) The holder no longer has the equipment, facilities, and inspection data required by § 65.91(c) (3) and (4) for issuance of his authorization.

(c) The holder of an inspection authorization that is suspended or revoked shall, upon the Administrator's request, return it to the Administrator.

(Secs. 313(a) and 601, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a) and 1421); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)).)

NOTE.—The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Issued in Washington, D.C. on September 9, 1977.

LANGHORNE BOND,
Administrator.

[FR Doc.77-26941 Filed 9-14-77;8:45 am]

SUBCHAPTER F—AIR TRAFFIC AND GENERAL OPERATING RULES

[Docket No. 17137; Amdt. No. 95-274]

PART 95—IFR ALTITUDES

Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rule) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. These regulatory actions are needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: October 6, 1977.

FOR FURTHER INFORMATION CONTACT:

William L. Bersch, Flight Procedures and Airspace Branch (AFS-730), Aircraft Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591, telephone 202-426-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 95 of the Federal Aviation Regulations (14 CFR Part 95) prescribe new, amended, suspended, or revoked IFR altitudes governing the operation of all aircraft in IFR flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in Part 95. The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference.

The reasons and circumstances which create the need for this amendment involve matters of flight safety, operational efficiency in the National Airspace System, and are related to published aeronautical charts that are essential to the user and provides for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment is unnecessary, impracticable, or contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

The principal authors of this document are Rudolph L. Fioretti, Flight Standards Service, and Richard W. Danforth, Office of the Chief Counsel.

ADOPTION OF THE AMENDMENT

Accordingly and pursuant to the authority delegated to me by the Administrator, Part 95 of the Federal Aviation Regulations (14 CFR Part 95) is amended as follows effective: October 6, 1977.

(Secs. 307, 313(a), 601, and 1110, Federal Aviation Act of 1958 (49 U.S.C. §§ 1348, 1354 (a), 1421, and 1510); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); Delegation: 25 FR 6489 and Paragraph 802 of Order FS P 1100.1, as amended March 9, 1973.)

NOTE.—The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Issued in Washington, D.C. on September 6, 1977.

JAMES M. VINES,
Chief, Aircraft Programs Division.

NOTE.—The incorporation by reference in the preceding document was approved by the Director of the Federal Register on May 12, 1969.

§95.627 BLUE FEDERAL AIRWAY 27

is amended by adding:

FROM	TO	MEA
Oscarville, Alas. NDB	St. Marys, Alas. NDB	3000
St. Marys, Alas. NDB	Fort Davis, Alas. NDB	3000

§95.627 BLUE FEDERAL AIRWAY 27

is amended to delete:

FROM	TO	MEA
Oscarville, Alas. LF/RBN	Ft. Davis, Alas. LF/RBN	4000

§95.1001 DIRECT ROUTES—U.S.

is amended by adding:

FROM	TO	MEA
Laughlin, Tex. VOR	San Antonio, Tex. VOR	*5000
*3000—MOCA		
Lawton, Okla. VOR	McAlester, Okla. VOR	*6000
Via LAW 071/MLC 254		MAA—24000
*2700—MOCA		
*Kachemak, Alas. LF/RBN	Solid INT, Alas. Via Control 1218	7500
*5000—MCA Kachemak LF/RBN, SE-bound		
Wessels, Alas. LF/RBN	Snout INT, Alas. Via Control 1310	*3000
*2000—MOCA		
Cape Girardeau, Mo. VOR	INT. 149 M RAD Cape Girardeau VOR & 221 M RAD Cunningham VOR	2000 MAA—12000

DIRECT ROUTES—U.S.—cont'd.

FROM	TO	MEA
Springfield, Mo. VORTAC	Nashville, Tenn. VORTAC	18000 MAA—41000

§95.1001 DIRECT ROUTES—U.S.

is amended to delete:

FROM	TO	MEA
Fin INT, Alas	Juniper INT, Alas.	*3000
*2300—MOCA		
Fort Randall, Alas. LF/RBN	Nikolski, Alas. VOR	11500
Fort Randall, Alas. LF/RBN	Port Moller, Alas. LF/RBN	10500
Fort Randall, Alas. LF/RBN	Raven INT, Alas.	2500
*Kachemak, Alas. LF/RBN	Granite INT, Alas. Via Control 1218	7500
*5000—MCA Kachemak LF/RBN, SE-bound		
King Salmon, Alas. LFR	Cape Newenham, Alas. LF/RBN	4500
Naknek River, Alas. LF/RBN	Harry INT, Alas. Via Control 1401	3000
Naknek River, Alas. LF/RBN	Gorra INT, Alas. Via Control 1400	2000
Nenana, Alas. VOR	Chandalar Lake, Alas. LF/RBN COP 113 ENN	*14500
*8000—MOCA		
Nikolski, Alas. LF/RBN	Cape Sarichef, Alas. LF/RBN	9000
Sagwon, Alas. LF/RBN	Fin INT, Alas.	3000
Wessels, Alas. LF/RBN	Porpoise INT, Alas. Via Control 1310	*3000
*2000—MOCA		

§95.5000 HIGH ALTITUDE RNAV ROUTES

FROM/TO	TOTAL DISTANCE	CHANGEOVER POINT DISTANCE	CHANGEOVER POINT FROM GEOGRAPHIC LOCATION	TRACK ANGLE	MEA	MAA
J863R is amended to read in part:						
Galax, Va. W/P	200	50.0	Galax	234/054 to COP	18000	45000
Macey, Ga. W/P				232/052 to Macey		
J879R is amended to read in part:						
Rader, Tenn. W/P	113.0			200/020 to COP	18000	45000
Macey, Ga. W/P				201/021 to Macey		
J881R is amended to read in part:						
Miner, Ky. W/P	263.0	142.0	Miner	175/355 to COP	18000	45000
Macey, Ga. W/P				180/360 to Macey		

§95.5500 HIGH ALTITUDE RNAV ROUTES

FROM/TO	TOTAL DISTANCE	CHANGEOVER POINT DISTANCE	CHANGEOVER POINT FROM GEOGRAPHIC LOCATION	TRACK ANGLE	MEA	MAA
J907R is amended to read in part:						
Humble, Tex. W/P	124	62	Humble	274/094 to COP	18000	45000
Austin, Tex. W/P				270/090 to Austin		
J916R is amended to read in part:						
San Antonio, Tex. W/P	164	82	San Antonio	074/254 to COP	18000	45000
Humble, Tex. W/P				074/254 to Humble		

FROM/TO	TOTAL DISTANCE	CHANGEOVER POINT DISTANCE	CHANGEOVER POINT FROM GEOGRAPHIC LOCATION	TRACK ANGLE	MEA	MAA
J918R is amended to read in part:						
Humble, Tex. W/P	149	75	Humble	082/262 to COP	18000	45000
Guest, La. W/P				082/262 to Guest		
J929R is amended to read in part:						
Burke, La. W/P	111	56	Burke	239/059 to COP	18000	45000
Humble, Tex. W/P				240/060 to Humble		
J952R is amended to read in part:						
Burke, La. W/P	111	56	Burke	239/059 to COP	18000	45000
Humble, Tex. W/P				240/060 to Humble		
J984 is amended to read in part:						
Humble, Tex. W/P	278	139	Humble	092/272 to COP	18000	45000
Leeville, La. VORTAC				095/275 to Leeville		
J937R is amended to delete:						
Leafs, Calif. W/P	139				28000	45000
Sowed, Calif. W/P				053/233 to Sowed		
J937R is amended by adding:						
Alcoa, Calif. W/P	139				28000	45000
Sowed, Calif. W/P				053/233 to Sowed		
J938R is amended to delete:						
Polis, Calif. W/P	112				28000	45000
Leafs, Calif. W/P				260/080 to Leafs		
J938R is amended by adding:						
Polis, Calif. W/P	112				28000	45000
Alcoa, Calif. W/P				260/080 to Alcoa		
J944R is amended to read:						
Morro, Calif. W/P	97			249/069 to COP	18000	45000
Perch, Calif. W/P				246/066 to Perch		
Perch, Calif. W/P	173				18000	45000
Dinty, Calif. W/P				247/067 to Dinty		
J945 is amended to delete:						
Santa Barbara, Calif. VORTAC	153.2				18000	45000
Ceres, Calif. W/P				231/051 to Ceres		
J945R is amended by adding:						
Santa Barbara, Calif VORTAC	153.2				18000	45000
Dinty, Calif. W/P				231/051 to Dinty		
J946R is amended to delete:						
Rosin, Calif. W/P	60.8				28000	45000
Yucan, Calif. W/P				236/056 to Yucan		
J946 is amended by adding:						
Rosin, Calif. W/P	60.8				28000	45000
Ficky, Calif. W/P				236/056 to Ficky		
J960R is amended to delete:						
Ceres, Calif. W/P	173				18000	45000
Perch, Calif. W/P				067/247 to Perch		
J960R is amended by adding:						
Dinty, Calif. W/P	173				18000	45000
Perch, Calif. W/P				067/247 to Perch		
J961R is amended to delete:						
Ceres, Calif. W/P	153.2				18000	45000
Santa Barbara, Calif. VORTAC				051/231 to Santa Barbara		
J961R is amended by adding:						
Dinty, Calif. W/P	153.2				18000	45000
Santa Barbara, Calif. VORTAC				051/231 to Santa Barbara		
J962R is amended to delete:						
Yucan, Calif. W/P	184.0				28000	45000
Santa Catalina, Calif. VORTAC				040/220 to Santa Catalina		
J962R is amended by adding:						
Ficky, Calif. W/P	184.0				28000	45000
Santa Catalina, Calif. VORTAC				040/220 to Santa Catalina		
J964R is amended to delete:						
Merle, Calif. W/P	122				29000	45000
Fruit, Calif. W/P				216/036 to Fruit		
J964R is amended by adding:						
Merle, Calif. W/P	122				29000	45000
Clukk, Calif. W/P				216/036 to Clukk		
J965R is amended to delete:						
Polis, Calif. W/P	112				28000	45000
Leafs, Calif. W/P				260/080 to Leafs		
J965R is amended by adding:						
Polis, Calif. W/P	112				28000	45000
Alcoa, Calif. W/P				260/080 to Alcoa		
J966R is amended to delete:						
Leafs, Calif. W/P	112				28000	45000
Polis, Calif. W/P				080/260 to Polis		

FROM/TO	TOTAL DISTANCE	CHANGEOVER POINT DISTANCE	CHANGEOVER POINT FROM GEOGRAPHIC LOCATION	TRACK ANGLE	MEA	MAA
J966R is amended by adding:						
Alcoa, Calif. W/P	112				28000	45000
Polis, Calif. W/P				080/260 to Polis		
J967R is amended to delete:						
Fruit, Calif. W/P	122				29000	45000
Merle, Calif. W/P				036/216 to Merle		
J967R is amended by adding:						
Clukk, Calif. W/P	122				29000	45000
Merle, Calif. W/P				036/216 to Merle		

§95.6003 VOR FEDERAL AIRWAY 3
is amended to read in part:

FROM	TO	MEA
Brunswick, Ga. VOR	*Faded INT, Ga.	1500
*3000—MRA		
Faded INT, Ga.	*Harps INT, Ga.	1500
*3800—MRA		
Harps INT, Ga.	Savannah, Ga. VOR	2000

§95.6006 VOR FEDERAL AIRWAY 6
is amended to read in part:

FROM	TO	MEA
Marton INT, Wyo.	*Liter INT, Wyo.	**10500
*10500—MCA Liter INT, W-bound		
**9500—MOCA		
Liter INT, Wyo.	Albin INT, Wyo	*9500
*7800—MOCA		

§95.6007 VOR FEDERAL AIRWAY 7
is amended to read in part:

FROM	TO	MEA
Terre Haute, Ind. VOR	Wings INT, Ind.	*2600
*1900—MOCA		
Wings INT, Ind.	*Pates INT, Ind.	2500
*4000—MRA		
Pates INT, Ind.	Lafayette, Ind. VOR	2500

§95.6012 VOR FEDERAL AIRWAY 12
is amended by adding:

FROM	TO	MEA
Santa Barbara, Calif. VOR	Palmdale, Calif. VOR	9000
Santa Barbara, Calif. VOR	*Fillmore, Calif. VOR	
Via S alter.	Via S alter.	8000
*6100—MCA Fillmore VOR, W-bound		
Fillmore, Calif. VOR	*Saugus INT, Calif.	
Via S alter.	Via S alter.	6000
*6300—MCA Saugus INT, NE-bound		
Saugus INT, Calif.	*Palmdale, Calif. VOR	
Via S alter.	Via S alter.	7000
*6300—MCA Palmdale VOR, SW-bound		

§95.6012 VOR FEDERAL AIRWAY 12
is amended to delete:

FROM	TO	MEA
Santa Barbara, Calif. VOR	*Henderson INT, Calif.	7000
*5600—MCA Henderson INT, W-bound		
*Henderson INT, Calif.	**Fillmore, Calif. VOR	6000
*5600—MCA Henderson INT, W-bound		
**5500—MCA Fillmore VOR, W-bound		
Fillmore, Calif. VOR	Saugus INT, Calif.	6000
*Saugus INT, Calif.	**Palmdale, Calif. VOR	7000
*6300—MCA Saugus INT, NE-bound		
**6300—MCA Palmdale VOR, SW-bound		

§95.6013 VOR FEDERAL AIRWAY 13
is amended to read in part:

FROM	TO	MEA
*Cheso INT, Ark.	Wesfo One Fix, Ark.	3500
*4500—MRA		

§95.6015 VOR FEDERAL AIRWAY 15
is amended to read in part:

FROM	TO	MEA
Hobby, Tex. VOR	Sealy INT, Tex.	
Via W alter.	Via W alter.	*2000
*1600—MOCA		

§95.6020 VOR FEDERAL AIRWAY 20
is amended to read in part:

FROM	TO	MEA
Palacios, Tex. VOR	*Arcola INT, Tex.	**1800
*2000—MCA Arcola INT, NE-bound		
**1600—MOCA		
Arcola INT, Tex.	Hobby, Tex. VOR	2500
Hobby, Tex. VOR	Beaumont, Tex. VOR	*1800
*1600—MOCA		

§95.6025 VOR FEDERAL AIRWAY 25
is amended to read in part:

FROM	TO	MEA
Ventura, Calif. VOR	Santa Barbara, Calif. VOR	6000

§95.6026 VOR FEDERAL AIRWAY 26
is amended to read in part:

FROM	TO	MEA
Casper, Wyo. VOR	Sand Creek INT, Wyo.	8000

§95.6027 VOR FEDERAL AIRWAY 27
is amended to read in part:

FROM	TO	MEA
Ventura Calif. VOR	Hener INT, Calif.	5000
Hener INT, Calif.	Chary INT, Calif.	6000
Chary INT, Calif.	Galer INT, Calif.	5000
Galer INT, Calif.	Gaviota, Ca. VOR	6000

§95.6037 VOR FEDERAL AIRWAY 37
is amended to read in part:

FROM	TO	MEA
Brunswick, Ga. VOR	*Faded INT, Ga.	1500
*3000—MRA		
*Faded INT, Ga.	**Harps INT, Ga.	1500
*3000—MRA		
**3800—MRA		
Harps INT, Ga.	Savannah, Ga. VOR	2000
Zenith INT, W. Va.	*Hawki INT, W. Va.	**8000
*8000—MRA		
**6600—MOCA		
Hawki INT, W. Va.	Elkins, W. Va. VOR	6000

§95.6038 VOR FEDERAL AIRWAY 38
is amended to read in part:

FROM	TO	MEA
Elkins, W. Va. VOR	*Bugel INT, W. Va.	6400
*8000—MRA		
Bugel INT, W. Va.	Crawford INT, Va.	*8000
*6900—MOCA		

§95.6053 VOR FEDERAL AIRWAY 53
is amended to read in part:

FROM	TO	MEA
Indianapolis, Ind. VOR	Jakks INT, Ind.	2700
Jakks INT, Ind.	Lafayette, Ind. VOR	2600

§95.6066 VOR FEDERAL AIRWAY 66
is amended to read in part:

FROM	TO	MEA
Athens, Ga. VOR	Ivens INT, S.C.	2600
Ivens INT, S.C.	Unran INT, S.C.	*4900
*2500—MOCA		

§95.6076 VOR FEDERAL AIRWAY 76
is amended to read in part:

FROM	TO	MEA
Sealy INT, Tex.	Hobby, Tex. VOR	*2000
*1600—MOCA		

§95.6085 VOR FEDERAL AIRWAY 85 is amended to read in part:

FROM	TO	MEA
Medicine Bow, Wyo. VOR Via W Alter.	*Alcova INT, Wyo. Via W alter.	9900
*9700—MRA		

§95.6089 VOR FEDERAL AIRWAY 89 is amended to read in part:

FROM	TO	MEA
Liter INT, Wyo.	Chadron, Neb. VOR	*7800
*7500—MOCA		

§95.6095 VOR FEDERAL AIRWAY 95 is amended by adding:

FROM	TO	MEA
Farmington, N.M. VOR	*Durango, Colo. VOR	9600
*9100—MCA Durango VOR, S-bound		
*Durango, Colo. VOR	**Gunnison, Colo. VOR	16100
*13200—MCA Durango VOR, N-bound		
**12500—MCA Gunnison VOR, S-bound		
**13000—MCA Gunnison VOR, NE-bound		

§95.6102 VOR FEDERAL AIRWAY 102 is amended to read in part:

FROM	TO	MEA
*Natural Wells INT, Va.	Velli INT, W. Va.	7000
Velli INT, W. Va.	Elkins, W. Va. VOR	*7000
*6000—MRA		
**6400—MOCA		

§95.6128 VOR FEDERAL AIRWAY 128 is amended to read in part:

FROM	TO	MEA
Bites INT, W. Va.	*Hawki INT, W. Va.	**10000
*8000—MRA		
**7000—MOCA		
Hawki INT, W. Va.	Luray INT, Va.	*10000
*7000—MOCA		
*Potes INT, Ind.	Jokks INT, Ind.	**4000
*4000—MRA		
**2300—MOCA		
Jokks INT, Ind.	Indianapolis, Ind. VOR	2700

§95.6139 VOR FEDERAL AIRWAY 139 is amended to read in part:

Wocky INT, R.I.	Lafay INT, R.I.	*2300
*1700—MOCA		
Lafay INT, R.I.	Providence, R.I. VOR	*2300
*1800—MOCA		

§95.6142 VOR FEDERAL AIRWAY is deleted:

§95.6157 VOR FEDERAL AIRWAY 157 is amended to read in part:

FROM	TO	MEA
*Vegie INT, Fla. Via W alter.	Serpa INT, Fla. Via W alter.	**3100
*3100—MRA		
**1500—MOCA		
Serpa INT, Fla. Via W alter.	Swags INT, Fla. Via W alter.	*2000
*1200—MOCA		

§95.6162 VOR FEDERAL AIRWAY 162 is amended to read in part:

FROM	TO	MEA
Derin INT, W. Va.	Emmit INT, W. Va.	6000
Emmit INT, W. Va.	Clarksburg, W. Va. VOR	4000

§95.6257 VOR FEDERAL AIRWAY 257 is amended to read in part:

FROM	TO	MEA
*Grand Canyon, Ariz. VOR	Kacir INT, Ariz.	**12000
*12100—MCA Grand Canyon VOR, N-bound		
**11100—MOCA		
Kacir INT, Ariz.	Bryce Canyon, Utah VOR	11600

§95.6286 VOR FEDERAL AIRWAY 286 is amended to read in part:

FROM	TO	MEA
Elkins, W. Va. VOR	Derin INT, W. Va.	6000
Derin INT, W. Va.	Casanova, Va. VOR	*6600
*6000—MOCA		

§95.6296 VOR FEDERAL AIRWAY 296 is amended to read in part:

FROM	TO	MEA
Fayetteville, N.C. VOR	*Currie INT, N.C.	1900
*3000—MRA		
Currie INT, N.C.	Wilmington, N.C. VOR	1900

§95.6298 VOR FEDERAL AIRWAY 298 is amended to read in part:

FROM	TO	MEA
McCall, Ida. VOR	*Dubois, Ida. VOR	**16000
*9800—MCA Dubois VOR, W-bound		
**14000—MOCA		

§95.6166 VOR FEDERAL AIRWAY 166 is amended to read in part:

FROM	TO	MEA
Typer INT, W. Va.	Tushe INT, W. Va.	4900
Tushe INT, W. Va.	Kessel, W. Va. VOR	6000

§95.6172 VOR FEDERAL AIRWAY 172 is amended by adding:

FROM	TO	MEA
Wolbach, Neb. VOR	Columbus, Neb. VOR	*3800
*2200—MOCA		
Columbus, Neb. VOR	Neola, Iowa VOR	*3500
*3000—MOCA		

§95.6172 VOR FEDERAL AIRWAY 172 is amended to delete:

FROM	TO	MEA
Wolbach, Neb. VOR	Bellwood INT, Neb.	*4000
*3800—MOCA		
Bellwood INT, Neb.	Kennard INT, Neb	*4000
*2800—MOCA		
Kennard INT, Neb.	Neola, Iowa VOR	2900

§95.6174 VOR FEDERAL AIRWAY 174 is amended to read in part:

FROM	TO	MEA
Elkins, W. Va. VOR	Kneed INT, W. Va.	6000
Kneed INT, W. Va.	Front Royal, Va. VOR	6800

§95.6186 VOR FEDERAL AIRWAY 186 is amended by adding:

FROM	TO	MEA
Santa Barbara, Calif. VOR	Fillmore, Calif. VOR	6000

§95.6194 VOR FEDERAL AIRWAY 194 is amended to read in part:

FROM	TO	MEA
Rocky Mount, N.C. VOR	Cofield, N.C. VOR	1800

§95.6198 VOR FEDERAL AIR 198 is amended to read in part:

FROM	TO	MEA
Hobby, Tex. VOR	Smith INT, Tex.	*1800
*1500—MOCA		
Smith INT, Tex.	Sabine Pass, Tex. VOR	*1800
*1300—MOCA		

§95.6216 VOR FEDERAL AIRWAY 216 is amended to read in part:

FROM	TO	MEA
Lanes INT, Ill.	Davis INT, Ill.	2800

§95.6221 VOR FEDERAL AIRWAY 221 is amended to read in part:

FROM	TO	MEA
Bible Grove, Ill. VOR	Carlisle INT, Ind.	*3700
*2100—MOCA		
Shelbyville, Ind. VOR	Muncie, Ind. VOR	2800

§95.6232 VOR FEDERAL AIRWAY 232 is amended to read in part:

FROM	TO	MEA
Milton, Pa. VOR	Beers INT, Pa.	4000
Beers INT, Pa.	Penns INT, N.J.	*4000
*3200—MOCA		

§95.6306 VOR FEDERAL AIRWAY 306 is amended to read in part:

FROM	TO	MEA
Navasota, Tex. VOR	Montgomery INT, Tex.	*2000
*1700—MOCA		
Montgomery INT, Tex.	Cleveland INT, Tex.	*3000
*1700—MOCA		

§95.6348 VOR FEDERAL AIRWAY 348 is amended to read in part:

FROM	TO	MEA
Thunder Bay, Ont. VOR	Sault Ste. Marie, Mich. VOR	#2300
#For that airspace over U.S. Territory.		

§95.6441 VOR FEDERAL AIRWAY 441 is amended by adding:

FROM	TO	MEA
Melbourne, Fla. VOR	Lakeland, Fla. VOR	2000
Lakeland, Fla. VOR	St. Petersburg, Fla. VOR	2000

§95.6485 VOR FEDERAL AIRWAY 485 is amended to read in part:

FROM	TO	MEA
Ventura, Calif. VOR	*Hener INT, Calif.	5000
*8200—MCA Hener INT, NW-bound		
Hener INT, Calif.	Fellows, Calif. VOR	*9000
*8500—MOCA		

§95.7079 JET ROUTE NO. 79 is amended to read in part:

FROM	TO	MEA	MAA
Norfolk, Va. VORTAC	Int. 030 M rad Norfolk VORTAC & 219 M rad Snow Hill VORTAC	18000	40000
Int 030 M rad Norfolk VORTAC & 219 M rad Snow Hill VORTAC	Coyle, N.J. VORTAC	18000	45000

By amending Sub-part D as follows:

§95.8003 VOR FEDERAL AIRWAY CHANGEOVER POINTS

AIRWAY SEGMENT FROM	TO	CHANGEOVER POINTS DISTANCE	FROM
V-306 is amended by adding:			
Daisetta, Tex. VOR	Lake Charles, La. VOR	30	Daisetta
V-444 is amended by adding:			
Barrow, Alas. VOR	Evansville, Alas. NDB	105	Barrow

[FR Doc.77-26874 Filed 9-14-77;8:45 am]

[Docket No. 17215; Amdt. No. 1090]

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For examination—1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, D.C. 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Information Center (APA-430), FAA Headquarters Building, 800 Independence Avenue SW., Washington, D.C. 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed weekly, may be ordered from Superintendent of Documents, U.S. Govperintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The current annual subscription price is $150.00; add $30.00 for each additional copy mailed to the same address.

FOR FURTHER INFORMATION CONTACT:

William L. Bersch, Flight Procedures and Airspace Branch (AFS-730), Aircraft Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone 202-426-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 9) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. § 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the FEDERAL REGISTER expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPs criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, or contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The principal authors of this document are Rudolph L. Fioretti, Flight Standards Service, and Richard W. Danforth, Office of the Chief Counsel.

ADOPTION OF THE AMENDMENT

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective on the dates specified, as follows:

1. By amending § 97.23 VOR-VOR/DME SIAPs identified as follows:

* * * *Effective November 3, 1977.*

Kailua-Kona, HI—Ke-ahole, VOR/DME Rwy 17 (TAC) Orig.

Kailua-Kona, HI—Ke-ahole, VORTAC Rwy 17, Amdt. 3, canceled

Holland, MI—Tulip City, VOR-A, Amdt. 5

Holland, MI—Park Township, VOR-C, Amdt. 4

Belmar-Farmingdale, NJ—Monmouth County, VOR-A, Amdt. 9

2. By amending § 97.25 SDF-LOC-LDA SIAPs identified as follows:

* * * *Effective September 22, 1977.*

Augusta, ME—Augusta State, LOC Rwy 17, Original

3. By amending § 97.27 NDB/ADF SIAPs identified as follows:

* * * *Effective November 3, 1977.*

Holland, MI—Park Township, NDB-B, Amdt. 3

* * * *Effective October 6, 1977.*

Selma, AL—Selfield, NDB Rwy 30, Amdt. 1

Anahuac, TX—Chambers County, NDB Rwy 30, Amdt. 1

NOTE.—The FAA published an amendment in Docket No. 17063, Amdt. No. 1084 to Part 97 of the Federal Aviation Regulations (42 FR 39381; August 4, 1977) under section 97.27 effective October 8, 1977, which is hereby amended as follows:

Minchumina, AK—Minchumina, NDB Rwy 2, Amdt. 1 is effective October 6, 1977.

4. By amending § 97.29 ILS-MLS SIAPs identified as follows:

* * * *Effective September 1, 1977.*

Tulsa, OK—Tulsa International, ILS Rwy 35R, Amdt. 24

(Secs. 307, 313(a), 601, and 1110, Federal Aviation Act of 1958 (49 U.S.C. §§ 1348, 1354 (a), 1421, and 1510); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); Delegation: 24 FR 5662 and Paragraph 802 of Order FS P 1100.1, as amended March 9, 1973.)

NOTE.—The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Issued in Washington, D.C. on September 9, 1977.

JAMES M. VINES,
Chief,
Aircraft Programs Division.

NOTE.—The incorporation by reference in the preceding document was approved by the Director of the Federal Register on May 12, 1969.

[FR Doc.77-26873 Filed 9-14-77;8:45 am]

Title 16—Commercial Practices

CHAPTER II—CONSUMER PRODUCT SAFETY COMMISSION

PART 1401—SELF PRESSURIZED CONSUMER PRODUCTS CONTAINING CHLOROFLUOROCARBONS: REQUIREMENTS TO PROVIDE THE COMMISSION WITH PERFORMANCE AND TECHNICAL DATA; REQUIREMENTS TO NOTIFY CONSUMERS AT POINT OF PURCHASE OF PERFORMANCE AND TECHNICAL DATA

Self-Pressurized Consumer Products Containing Chlorofluorocarbon Propellants: Labeling and Data Submission Requirements

Correction

In FR Doc. 77-24502 appearing at page 42780 in the issue for Wednesday, August 24, 1977, the date given as "February 20, 1978" should be changed to "February 19, 1978" in the following paragraphs:

(1) On page 42781, first column, in the last line of the first full paragraph;

(2) On page 42784, middle column, in the 7th line of § 1401.4(a);

(3) Also on page 42784, third column, in the 7th line of § 1401.5(a).

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER D—MISCELLANEOUS EXCISE TAXES

[T.D. 7496 (CC:LR-1614)]

PART 53—FOUNDATION EXCISE TAXES

Taxes on Excess Business Holdings

AGENCY: Internal Revenue Service, Treasury.

ACTION: Publication of full text of final regulations.

SUMMARY: This document sets forth the full text of previously adopted final regulations (42 FR 34499, July 6, 1977) related to taxes on the excess business holdings of private foundations.

EFFECTIVE DATE: The regulations are effective for taxable years beginning after December 31, 1969.

FOR FURTHER INFORMATION CONTACT:

Larry E. Smith of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, Attention: CC:LR:T, 202-566-3909, not a toll-free call.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On January 3, 1973, the FEDERAL REGISTER published a notice of proposed rulemaking containing proposed amendments to the Foundation Excise Tax Regulations (26 CFR Part 53) under section 4943 of the Internal Revenue Code of 1954, 38 FR 32. The amendments were proposed to conform the regulations to section 101(b) of the Tax Reform Act of 1969 (83 Stat. 507). A public hearing was held on March 29, 1973. After consideration of all comments regarding the proposed amendments, those amendments were adopted, as revised, by T.D. 7496, published in the FEDERAL REGISTER for July 6, 1977 (42 FR 34499). In addition, T.D. 7496 superseded § 143.6 of the Temporary Excise Tax Regulations under the Tax Reform Act of 1969 (26 CFR Part 143). However, T.D. 7496 as published in the FEDERAL REGISTER contained only the changes to the notice of proposed rulemaking published on January 3, 1973, rather than the full text of the final regulations. This document sets forth the full text of the final regulations.

Accordingly, the full text of the final regulations adopted by T.D. 7496 is as follows.

ROBERT A. BLEY,
Director, Legislation and Regulations Division.

Subpart D of 26 CFR Part 53 is inserted in its appropriate place to read as follows:

§ 53.4943-1 General rule; purpose

Generaly, under section 4943, the combined holdings of a private foundation and all disqualified persons (as defined in section 4946(a)) in any corporation conducting a business which is not substantially related (aside from the need of the foundation for income or funds or the use it makes of the profits derived) to the exempt purposes of the foundation are limited to 20 percent of the voting stock in such corporation. In addition, the combined holdings of a private foundation and all disqualified persons in any unincorporated business (other than a sole proprietorship) which is not substantially related (aside from the need of the foundation for income or funds or the use it makes of the profits derived) to the exempt purposes of such foundation are limited to 20 percent of the beneficial or profits interest in such business. In the case of a sole proprietorship which is not substantially related (within the meaning of the preceding sentence), section 4943 provides that a private foundation shall have no permitted holdings. These general provisions are subject to a number of exceptions and special provisions which will be described in following sections.

§ 53.4943-2 Imposition of tax on excess business holdings of private foundations.

(a) *Imposition of initial tax*—(1) *In general.*—(i) *Initial tax.* Section 4943 (a)(1) imposes an initial excise tax (the "initial tax") on the excess business holdings of a private foundation for each taxable year of the foundation which ends during the taxable period defined in section 4943(d)(2). The amount of such tax is equal to 5 percent of the total value of all the private foundation's excess business holdings in each of its business enterprises. In determining the value of the excess business holdings of the foundation subject to tax under section 4943, the rules set forth in §§ 20.-2031-1 through 20.2031-3 of this chapter (Estate Tax Regulations) shall apply.

(ii) *Disposition of certain excess business holdings within ninety days.* In any case in which a private foundation acquires excess business holdings, other than as a result of a purchase by the foundation, the foundation shall not be subject to the taxes imposed by section 4943, but only if it disposes of an amount of its holdings so that it no longer has such excess business holdings within 90 days from the date on which it knows, or has reason to know, of the event which caused it to have such excess business holdings. Similarly, a private foundation shall not be subject to the taxes imposed by section 4943 because of its purchase of holdings where it did not know, or have reason to know of prior acquisitions by disqualified persons, but only if the foundation disposes of its excess holdings within the 90-day period described previously, and its purchase would not have created excess business holding but for such prior acquisitions by disqualified persons. In determining whether for purposes of this (ii) the foundation has disposed of such excess business holdings during such 90-day period, any disposition of holdings by a disqualified person during such period shall be disregarded.

(iii) *Extension of ninety day period.* The period described in paragraph (a)(1)(ii) of this section, during which no tax shall be imposed under section 4943, shall be extended to include the period during which a foundation is prevented by federal or state securities laws from disposing of such excess business holdings.

(iv) *Effect of disposition subject to material restrictions.* If a private foundation disposes of an interest in a business enterprise but imposes any material restrictions or conditions that prevent the transferee from freely and effectively using or disposing of the transferred interest, then the transferor foundation will be treated as owning such interest until all such restrictions or conditions are eliminated (regardless of whether the transferee is treated for other purposes of the Code as owning such interest from the date of the transfer). However, a restriction or condition imposed in compliance with federal or state securities laws, or in accordance with the terms or conditions of the gift or bequest through which such interest was acquired by the foundation, shall not be considered a material restriction or condition imposed by a private foundation.

(v) *Foundation knowledge of acquisitions made by disqualified persons.* (A) For purposes of paragraph (a) (1) (ii) of this section, whether a private foundation will be treated as knowing, or having reason to know, of the acquisition of holdings by a disqualified person will depend on the facts and circumstances of each case. Factors which will be considered relevant to a determination that a private foundation did not know or had no reason to know of an acquisition are: the fact that it did not discover acquisitions made by disqualified persons through the use of procedures reasonably calculated to discover such holdings; the diversity of foundation holdings; and the existence of large numbers of disqualified persons who have little or no contact with the foundation or its managers.

(B) The provisions of paragraph (a) (1) (v) (A) of this section may be illustrated by the following example:

Example. By the fifteenth day of the fifth month after the close of each taxable year, the F Foundation sends to each foundation manager, substantial contributor, person holding more than a 20% interest (as described in section 4946(a) (1) (C)) in a substantial contributor, and foundation described in section 4946(a) (1) (H), a questionnaire asking such persons to list all holdings, actual or constructive, in each business enterprise in which F had holdings during the taxable year in excess of those permitted by the 2 percent de minimis rule of section 4943(c) (2) (C). In preparing the list of such enterprises, F takes into account its constructive holdings only if, during the taxable year, F (along with all related foundations described in section 4946(a) (1) (H)) owned over 2% of the voting stock, profits interest or beneficial interest in the entity actually owning the holdings constructively held by F. The questionnaire asks each such person to list the holdings in such enterprises of any persons who, because of their relationship to such disqualified person, were themselves disqualified persons (i.e., members of the family (as defined in section 4946(d)), and any corporations, partnerships, trusts and estates described in section 4946(a) (1) (E) through (G) in which such person, or members of his family, had an interest). The questionnaire asks that constructive holdings be listed only if, during the taxable year, the disqualified person owned over 2% of the voting stock, profits interest or beneficial interest in the entity actually owning the holdings constructively held by such person. (Thus a disqualified person owning less than 2% of a mutual fund is not required to list his attributed share of all the securities in the portfolio of the fund.) If no response to the questionnaire is received, the foundation seeks the information requested by the questionnaire by mailing a second (but not a third) questionnaire. If a questionnaire which is returned to the foundation indicates that certain information was unavailable to the person completing the questionnaire, the foundation seeks that information directly. For example, if a disqualified person indicates that he could not find out whether a corporation described in section 4946(a) (1) (E) had holdings in the enterprise listed in the questionnaire, the foundation seeks to obtain this information directly from the corporation by mailing it a questionnaire. In such a case, F may be found not to have reason to know of the acquisition of holdings by a disqualified person.

(vi) *Holdings acquired other than by purchase.* See section 4943(c) (6) and § 53.4943-6 for rules relating to the acquisition of certain holdings other than by purchase by the foundation or a disqualified person.

(2) *Special rules.* In applying subparagraph (1) of this paragraph, the tax imposed by section 4943(a) (1)—

(i) Shall be imposed on the last day of the private foundation's taxable year, but

(ii) The amount of such tax and the value of the excess business holdings subject to such tax shall be determined with respect to the foundation's holdings (based upon voting power, profits or beneficial interest, or value, whichever is applicable) in any business enterprise as of that day during the foundation's taxable year when the foundation's excess holdings in such enterprise were the greatest.

In applying subdivision (ii) of this subparagraph, if a foundation's excess business holdings in a business enterprise which constitute such foundation's greatest excess holdings in such enterprise for any taxable year are maintained for 2 or more days during such taxable year, the value of such excess holdings which is subject to tax under section 4943(a) (1) shall be the greatest value of such excess holdings in such enterprise as of any day on which such greatest excess holdings are maintained during such taxable year.

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

Example (1). Y is a private foundation reporting on a calendar year basis. On January 1, 1973, Y has 20 shares of common stock in corporation N, of which five shares constitute excess business holdings. On June 1, 1973, Y disposes of such five shares; however, because of additional acquisitions of N common stock on such date by disqualified persons with respect to Y, the remaining 15 shares of N common stock held by Y now constitute excess business holdings. There are no further acquisitions or dispositions of N common stock during 1973 by Y or its disqualified persons. Although Y's greatest holdings in N during 1973 are held between January 1, 1973, and May 31, 1973, Y's greatest excess holdings in N during 1973 are held between June 1, 1973, and December 31, 1973. Therefore, the tax specified in section 4943(a) (1) shall be computed on the basis of the greatest value of such greatest excess holdings as of any day between June 1 and December 31, 1973.

Example (2). X is a private foundation reporting on a calendar year basis. On January 1, 1972, X has 100 shares of common stock in M corporation which are excess business holdings. On such date each share of M common stock has a fair market value of $100. On February 28, 1972, in an effort to dispose of such excess business holdings, X sells 70 shares of M common stock for $120 per share (the fair market value of each share on such date) to A, an individual who is not a disqualified person within the meaning of section 4946(a). The value of $120 per share is the highest fair market value between January 1 and February 28, 1972. X disposes of no more stock in M for the remainder of calendar year 1972. On December 31, 1972, the fair market value of each share of M common stock is $80. X calculates its tax on its excess business holdings in M for 1972 as follows:

100 shares of M common stock times $120 fair market value per share as of Feb. 28, 1972	$12,000
$12,000 multiplied by rate of tax (percent)	5
Amount of tax on X foundation's excess business holdings for 1972	$600

Example (3). Assume the same facts as in Example (2) except that the sale of X to A occurs on January 7, 1973, when the fair market value of each share of M corporation common stock equals $70. A value of $100 per share is the highest fair market value of the M common stock between January 1 and January 7, 1973. On May 9, 1973, X for the first time has excess business holdings in N corporation in the form of 200 shares of N common stock. The value per share of N common stock on May 9, 1973, equals $200. X makes no disposition of the N common stock during 1973, and the value of each share of N common stock as of December 31, 1973 equals $250 (the highest value of N common stock during 1973). X calculates its tax on its excess business holdings in both M and N for 1973 as follows:

100 shares of M common stock times $100 fair market value per share	$10,000
$250 fair market value per share	$50,000
Total	$60,000
Total	$60,000
$60,000 multiplied by rate of tax (percent)	5
Amount of tax on X foundation's excess business holdings for 1973	$3,000

(b) *Additional tax.* In any case in which the initial tax is imposed under section 4943(a) with respect to the holdings of a private foundation in any business enterprise, if, at the close of the correction period (as defined in section 4943(d) (3) and § 53.4943-9) with respect to such holdings the foundation still has excess business holdings in such enterprise, there is imposed a tax under section 4943(b) equal to 200 percent of the value of such excess holdings as of the last day of such correction period (determined without regard to extensions).

§ 53.4943-3 Determination of excess business holdings.

(a) *Excess business holdings.*—(1) *In general.* For purposes of section 4943, the term "excess business holdings" means, with respect to the holdings of any private foundation in any business enterprise (as described in section 4943(d) (4)), the amount of stock or other interest in the enterprise which, except as provided in § 53.4943-2(a) (1), the foundation, or a disqualified person, would have to dispose of, or cause the disposition of, to a person other than a disqualified person (as defined in section 4946(a)) in order for the remaining holdings of the foundation in such enterprise to be permitted holdings (as defined in paragraphs (b) and (c) of this section). If a private foundation is required by section 4943 and the regulations thereunder to dispose of certain shares of a class of stock in a particular period of time and other shares of the same class of stock in a shorter period of time, any stock disposed of shall be charged first against those dispositions which must be made in such shorter period.

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

Example. Corporation X has outstanding 100 shares of voting stock, with each share entitling the holder thereof to one vote. F, a private foundation, possesses 20 shares of X voting stock representing 20 percent of the voting power in X. Assume that the permitted holdings of F in X under paragraph (b)(1) of this section are 11 percent of the voting stock in X. F, therefore, possesses voting stock in X representing a percentage of voting stock in excess of the percentage permitted by such paragraph. Such excess percentage is 9 percent of the voting stock in X, determined by subtracting the percentage of voting stock representing the permitted holdings of F in X (i.e., 11 percent) from the percentage of voting stock held by F in X (i.e., 20 percent). (20%−11%=9%). The excess business holdings of F in X are an amount of voting stock representing such excess percentage, or 9 shares of X voting stock (9 percent of 100).

(b) *Permitted holdings in an incorporated business enterprise*—(1) *In general.*—(i) *Permitted holdings defined.* Except as otherwise provided in section 4943(c) (2) and (4), the permitted holdings of any private foundation in an incorporated business enterprise (including a real estate investment trust, as defined in section 856) are—

(A) 20 percent of the voting stock in such enterprise reduced (but not below zero) by

(B) The percentage of voting stock in such enterprise actually or constructively owned by all disqualified persons.

(ii) *Voting stock.* For purposes of this section, the percentage of voting stock held by any person in a corporation is normally determined by reference to the power of stock to vote for the election of directors, with treasury stock and stock which is authorized but unissued being disregarded. Thus, for example, if a private foundation holds 20 percent of the shares of one class of stock in a corporation, which class is entitled to elect three directors, and such foundation holds no stock in the other class of stock, which is entitled to elect five directors, such foundation shall be treated as holding 7.5 percent of the voting stock because the class of stock it holds has 37.5 percent of such voting power, by reason of being able to elect three of the eight directors, and the foundation holds one-fifth of the shares of such class (20 percent of 37.5 percent is 7.5 percent). The fact that extraordinary corporate action (e.g., charter or by-law amendments) by a corporation may require the favorable vote of more than a majority of the directors, or of the outstanding voting stock, of such corporation shall not alter the determination of voting power of stock in such corporation in accordance with the two preceding sentences.

(2) *Nonvoting stock as permitted holdings*—(i) *In general.* In addition to those holdings permitted by paragraph (b)(1) of this section, the permitted holdings of a private foundation in an incorporated business enterprise shall include any share of nonvoting stock in such enterprise held by the foundation in any case in which all disqualified persons hold, actually or constructively, no more than 20 percent (35 percent where third persons have effective control as defined in paragraph (b)(3)(ii) of this section) of the voting stock in such enterprise. All equity interests which do not have voting power attributable to them shall, for purposes of section 4943, be classified as nonvoting stock. For this purpose, evidences of indebtedness (including convertible indebtedness), and warrants and other options or rights to acquire stock shall not be considered equity interests.

(ii) *Stock with contingent voting rights and convertible nonvoting stock.* Stock carrying voting rights which will vest only when conditions, the occurrence of which are indeterminate, have been met, such as preferred stock which gains such voting rights only if no dividends are paid thereon, will be treated as nonvoting stock until the conditions have occurred which cause the voting rights to vest. When such rights vest, the stock will be treated as voting stock that was acquired other than by purchase, but only if the private foundation or disqualified persons had no control over whether the conditions would occur. Similarly, nonvoting stock which may be converted into voting stock will not be treated as voting stock until such conversion occurs. For special rules where stock is acquired other than by purchase, see section 4943(c)(6) and the regulations thereunder.

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

Example. Assume that F, a private foundation, holds 10 percent of the single class of voting stock of corporation X, and owns 20 shares of nonvoting stock in X. Assume further that A and B, the only disqualified persons with respect to F, hold 10 percent of the voting stock of X. Under the provisions of paragraph (b)(1) of this section, the 10 percent of X voting stock held by F will be classified as permitted holdings of F in X since 20 percent less the percentage of voting stock held by A and B in X is 10 percent. In addition, under the provisions of this (2), the 20 shares of X nonvoting stock will qualify as permitted holdings of F in X since the percentage of voting stock held by A and B in X is no greater than 20 percent.

(3) *Thirty-five-percent rule where third person has effective control of enterprise*—(i) *In general.* Except as provided in section 4943(c)(4), paragraph (b)(1) of this section shall be applied by substituting 35 percent for 20 percent if—

(A) The private foundation and all disqualified persons together do not hold, actually or constructively, more than 35 percent of the voting stock in the business enterprise, and

(B) The foundation establishes to the satisfaction of the Commissioner that effective control (as defined in paragraph (b)(3)(ii) of this section) of the business enterprise is in one or more persons (other than the foundation itself) who are not disqualified persons.

(ii) *"Effective control" defined.* For purposes of this subparagraph, the term "effective control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a business enterprise, whether through the ownership of voting stock, the use of voting trusts, or contractual arrangements, or otherwise. It is the reality of control which is decisive and not its form or the means by which it is exercisable. Thus, where a minority interest held by individuals who are not disqualified persons has historically elected the majority of a corporation's directors, effective control is in the hands of those individuals.

(4) *Two percent de minimis rule*—(i) *In general.* Under section 4943(c)(2)(C), a private foundation is not treated as having excess business holdings in any incorporated business enterprise in which it (together with all other private foundations (including trusts described in section 4947(a)(2)) which are described in section 4946(a)(1)(H)) actually or constructively owns not more than 2 percent of the voting stock and not more than 2 percent in value of all outstanding shares of all classes of stock. If, however, the private foundation, together with all other private foundations which are described in section 4946(a)(1)(H), actually or constructively owns more than 2 percent of either the voting stock or the value of the outstanding shares of all classes of stock in any incorporated business enterprise, all the stock in such business enterprise classified as excess business holding under section 4943 is treated as excess business holdings. For purposes of this paragraph, any stock owned by a private foundation which is treated as held by a disqualified person under section 4943(c)(4)(B), (5), or (6) shall be treated as actually owned by the private foundation. See paragraph (b)(1) of § 53.4941(d)–4 for the determination of excess business holdings without regard to section 4943(c)(2)(C) for purposes of applying section 101(C)(2)(B) of the Tax Reform Act of 1969 (83 Stat. 533).

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

Example (1). F, a private foundation, owns 1 percent of the single class of voting stock and 1 percent in value of all the outstanding shares of all classes of stock in X corporation. No other private foundation described in section 4946(a)(1)(H) owns any stock in X. All of the stock owned by F in X would be excess business holdings under section 4943(c)(1) if section 4943(c)(2)(C) were inapplicable. F owns no other shares of stock in X. Since F owns no more than 2 percent of the voting stock and no more than 2 percent in value of all outstanding shares of all classes of stock in X, under section 4943(c)

(2)(C) none of the stock in X owned by F is treated as excess business holdings.

Example (2). Assume the facts as stated in Example (1), except that F and T, a controlled private foundation under section 4946 (a)(1)(H), together own 1 percent of all the voting stock and 1 percent in value of all the outstanding shares of all classes of stock in X. All of the stock in X owned by F and T would be excess business holdings under section 4943(c)(1) if section 4943(c)(2)(C) were inapplicable. Since F and T together own no more than 2 percent of the voting stock and no more than 2 percent in value of all outstanding shares of all classes of stock in X, under section 4943(c)(2)(C) none of the stock in X owned by either F or T is treated as excess business holdings.

Example (3). Assume the facts as stated in Example (1), except that F owns 3 percent of the voting stock in X, 2 percent of which is treated as held by P, a disqualified person of F, under section 4943(c)(4)(B). Under subdivision (i) of this subparagraph, the 2 percent of the stock in X owned by F which is treated as held by P under section 4943(c)(4)(B) is treated as actually owned by F for purposes of section 4943(c)(2)(C). Consequently, all of the X stock owned by F is treated as excess business holdings under section 4943(c)(2)(C). However, only 1 percent of the stock in X is subject to tax under section 4943(a), since the other 2 percent is treated as owned by a disqualified person under section 4943(c)(4)(B) for purposes of determining the tax upon F under section 4943(a).

(c) *Permitted holdings in an unincorporated business enterprise*—(1) *In general*. The permitted holdings of a private foundation in any business enterprise which is not incorporated shall, subject to the provisions of subparagraphs (2), (3), and (4) of this paragraph, be determined under the principles of paragraph (b) of this section.

(2) *Partnership or joint venture*. In the case of a partnership (including a limited partnership) or joint venture, the terms "profits interest" and "capital interest" shall be substituted for "voting stock" and "nonvoting stock," respectively, wherever those terms appear in paragraph (b) of this section. The interest in profits of such foundation (or such disqualified person) shall be determined in the same manner as its distributive share of partnership taxable income. See section 704(b) (relating to the determination of the distributive share by the income or loss ratio) and the regulations thereunder. In the absence of a provision in the partnership agreement, the capital interest of such foundation (or such disqualified person) in a partnership shall be determined on the basis of its interest in the assets of the partnership which would be distributable to such foundation (or such disqualified person) upon its withdrawal from the partnership, or upon liquidation of the partnership, whichever is the greater.

(3) *Sole proprietorship*. For purposes of section 4943, a private foundation shall have no permitted holdings in a sole proprietorship. In the case of a transfer by a private foundation of a portion of a sole proprietorship, see paragraph (c)(2) of this section (relating to permitted holdings in partnerships). For the treatment of a private foundation's ownership of a sole proprietorship prior to May 26, 1969, see § 53.4943-4.

(4) *Trusts and other unincorporated business enterprises*—(i) *In general*. In the case of any unincorporated business enterprise which is not described in paragraph (c)(2) or (3) of this section, the term "beneficial interest" shall be substituted for "voting stock" wherever the term appears in paragraph (b) of this section. Any and all references to nonvoting stock in paragraph (b) of this section shall be inapplicable with respect to any unincorporated business enterprise described in this subparagraph.

(ii) *Trusts*. For purposes of section 4943, the beneficial interest of a private foundation or any disqualified person in a trust shall be the beneficial remainder interest of such foundation or person determined as provided in paragraph (b) of § 53.4943-8.

(iii) *Other unincorporated business enterprises*. For purposes of section 4943, the beneficial interest of a private foundation or any disqualified person in an unincorporated business enterprise (other than a trust or an enterprise described in paragraph (c)(2) or (3) of this section) includes any right to receive a portion of distributions of profits of such enterprise, and, if the portion of distributions is not fixed by an agreement among the participants, any right to receive a portion of the assets (if any) upon liquidation of the enterprise, except as a creditor or employee. For purposes of this subparagraph, a right to receive distributions of profits includes a right to receive any amount from such profits (other than as a creditor or employee), whether as a sum certain or as a portion of profits realized by the enterprise. Where there is no agreement fixing the rights of the participants in such enterprise, the interest of such foundation (or such disqualified person) in such enterprise shall be determined by dividing the amount of all equity investments or contributions to the capital of the enterprise made or obligated to be made by such foundation (or such disqualified person) by the amount of all equity investments or contributions to capital made or obligated to be made by all participants in the enterprise.

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

Example (*1*). Corporation X has outstanding 100 shares of voting stock, with each share entitling the holder thereof to one vote. Assume that F, a private foundation, possesses 30 shares of X voting stock, and that A and B, the only disqualified persons with respect to F, together own 10 shares of X voting stock. The excess business holdings of F in X are 20 shares of X voting stock, determined as follows:

(i) Determination of voting stock percentages:	
(a) Total number of outstanding votes in X	100
(b) Total number of votes in X held by F	30
(c) Total number of votes in X held by A and B	10
(d) Percentage of voting stock in X held by F (item (b) divided by item (a)) (percent)	30
(e) Percentage of voting stock in X held by A and B item (c) divided by item (a)) (percent)	10
(ii) Determination of permitted holdings of voting stock:	
(a) Percentage of voting stock in X held by A and B (percent)	10
(b) Permitted holdings of voting stock by F in X (20 pct less item (a)) (percent)	10
(iii) Determination of excess business holdings:	
(a) Percentage of voting stock in X held by F (percent)	30
(b) Permitted holdings of voting stock by F in X (percent)	10
(c) Item (a) less item (b) (percent)	20
(d) Excess business holdings of F in X (i.e., an amount of X voting stock representing a percentage of voting stock equivalent to that in item (c)) (shares)	20

* * * * *

Example (2). F, a private foundation, is a partner in P partnership. In addition, A and B, the only disqualified persons with respect to F, are partners in P. The partnership agreement of P contains no provisions regarding the sharing of profits by, and the respective capital interests of, the partners.

(i) Assume that, under section 704(b), F's distributive share of P taxable income is determined to be 20 percent. In addition, assume that under such section, A and B are determined to have a 4-percent distributive share each of P taxable income. Accordingly, F holds a 20-percent profits interest in P, and A and B hold an 8-percent profits interest in P. Assuming that the provisions of section 4943(c)(2)(B) do not apply, the permitted holdings of F in P are 12 percent of the profits interest in P, determined by subtracting the precentage of the profits interest held by A and B in P (i.e., 8 percent) from 20 percent. (20 percent−8 percent=12 percent.) F, therefore, holds a percentage of the profits interest in P in excess of the percentage permitted by § 53.4943-3(b)(1). The excess business holdings of F in P are a percentage of the profits interest in P equivalent to such excess percentage, or 8 percent of the profits interest in P, determined by subtracting the permitted holdings of F in P (i.e., 12 percent) from the percentage of the profit interest held by F in P (i.e., 20 percent) (20 percent−12 percent=8 percent.)

(ii) Assume that, under the partnership agreement, F would be entitled to a distribution of 20 percent of P's assets upon F's withdrawal from P and to a distribution of 30 percent of P's assets upon the liquidation profits interest held by F in P (i.e., 20 percent) (20 percent−12 percent=8 percent). of P. F, therefore, holds a 30-percent capital centage of the assets of P distributable to F upon F's withdrawal from P, or the percentage of such assets distributable to F upon the liquidation of P. Since the percentage of the profits interest held by A and B in P is less than 20 percent, such 30-percent capital interest will be included in the permitted holdings of F in P.

§ 53.4943-4 Present holdings.

(a) *Introduction*—(1) *Section 4943(c)(4) in general*. (i) Paragraph (4) of section 4943(c) prescribes transition rules for a private foundation which, but for such paragraph, would have excess business holdings on May 26, 1969. Section 4943(c)(4) provides such a foundation with protection from the initial tax on excess business holdings in two ways. First, the entire interest of such a foundation in any business enterprise in which such a foundation, but for section 4943(c)(4), would have had excess business holdings on May 26, 1969, is treated under section 4943(c)(4)(B) as held by disqualified persons for a certain period of time (the "first phase"). The effect of such treatment is to prevent a private foundation from being subject to the initial tax with respect to its May 26, 1969, interest during the first phase holding period and also to prevent the foundation from purchasing any additional business holdings in such business enterprise during such period (unless the combined holdings of the foundation and all disqualified persons fall below the 20 percent (or 35 percent, if applicable) figure prescribed by section 4943(c)(2)). Second, section 4943(c)(4)(A)(i) initially increases the percentage of permitted holdings of such a foundation to a percentage equal to the difference between—

(A) The percentage of combined holdings of the foundation and all disqualified persons in such business enterprise on May 26, 1969 (subject to a 50 percent maximum), and

(B) The percentage of holdings of all disqualified persons.

The percentage referred to in paragraph (a)(1)(i)(A) of this section is referred to in this section as the "substituted level". This "substituted level" is then reduced by the "downward ratchet rule" prescribed by section 4943(c)(4)(A)(ii) and paragraph (d)(3) of this section for certain dispositions by such foundation or by disqualified persons. The primary purpose of the substituted level is to indicate what the permitted holdings in such business enterprise will be immediately after the expiration of the first phase holding period. Thereafter, the permitted holdings of a private foundation itself are further limited to a maximum 25 percent interest in such business enterprise by section 4943(c)(4)(D) as soon as the combined holdings of all disqualified persons in such business enterprise exceed 2 percent (of the voting stock). If the combined holdings of all disqualified persons at no time exceed 2 percent (of the voting stock) during the 15 years following the first phase (the "second phase"), then the substituted level is reduced to a 35 percent maximum after the second phase.

(ii) Paragraph (a)(1)(i) of this section may be illustrated by the following example:

Example. On May 26, 1969, private foundation P held a 5 percent interest in corporation X (voting stock and value). On such date disqualified persons held a 16 percent interest in X (voting stock and value). Assume that except for section 4943(c)(4), P would have had a 1 percent interest in X which would have constituted excess business holdings. Therefore, section 4943(c)(4)(B) applies and P's 5 percent interest in X is treated as held by a disqualified person during the 10-year period beginning May 26, 1969. Since the entire 21 percent held by P and disqualified persons is now treated as held by disqualified persons, P's substituted level is 21 percent and its permitted holdings are zero (21%—21%). However, P has no excess business holdings in X, because during the 10-year period P is not treated as holding such interest. The only change in the interest in X occurs on January 2, 1972, when P disposes of 2 percent of its interest in X to A, an unrelated person. Since the interest held by P and all disqualified persons (21%—2%=19%) has decreased below 20 percent, P's substituted level is reduced to 20 percent and its permitted holdings are 1 percent (20%—19%) on such date. Therefore, if the other interests in X do not change, P will not have excess business holdings if P purchases no more than an additional 1 percent interest in X.

(2) *Interaction of provisions of section 4943(c) (4), (5), and (6).* During the first phase, a private foundation may acquire additional interests in a business enterprise, other than by purchase, which are entitled to be treated as held by disqualified persons for varying holding periods under section 4943(c) (5) or (6) (relating respectively to certain holdings acquired pursuant to the terms of a trust or will in effect on May 26, 1969, and to the 5-year period to dispose of certain gifts, bequests, etc.). In any case, holdings which the private foundation disposes of shall be charged first against those holdings which it must dispose of in the shortest period in order to avoid the initial tax thereon. Further, acquisitions of a private foundation under a pre-May 27, 1969, will or trust described in section 4943(c)(5) are treated in a manner similar to the treatment of interests actually held by a private foundation on May 26, 1969. See §§ 53.4943-5 and 53.4943-6.

(b) *Present holdings in general.* (1) Section 4943(c)(4)(B) provides that any interest in a business enterprise held by a private foundation on May 26, 1969, if the foundation on such date has excess business holdings (determined without regard to section 4943(c)(4)), shall (while held by the foundation) be treated as held by a disqualified person during a first phase. Therefore, no interest of a private foundation shall be treated as held by a disqualified person under section 4943(c)(4)(B) and this section unless:

(i) The private foundation was an entity (not including a revocable trust) in existence on May 26, 1969, even though it was not then treated as a private foundation under section 509 or section 4947;

(ii) Such interest was actually or constructively owned by such entity on such date; and

(iii) Without regard to section 4943(c)(4) such entity had on such date an interest (considered in connection with the interests actually or constructively owned by all disqualified persons with respect to such entity on that date in the same business enterprise, determined as if the entity were then a private foundation) which exceeded the permitted holdings prescribed by section 4943(c)(2) or (3).

(See, however, section 4943(c)(5) and § 53.4943-5 for similar treatment for certain interests acquired by a private foundation under the terms of a trust or a will which were in effect on May 26, 1969.) If a private foundation owns an interest described by section 4943(c)(4)(B), then the length of the first phase for such an interest is prescribed by paragraph (c) of this section and shall not be affected by any interest acquired by the private foundation or any disqualified person in such business enterprise after May 26, 1969. In addition, the amount of permitted holdings in such business enterprise is prescribed by paragraph (d) of this section. An interest constructively held by a private foundation (or a disqualified person) on May 26, 1969, shall not cease to be an interest to which section 4943(c)(4) applies merely because it is later distributed to such foundation (or to such disqualified person). Nor shall an interest directly held by a private foundation (or disqualified person) on May 26, 1969, cease to be treated as an interest to which section 4943(c)(4) applies to the extent it remains actually or constructively held by such foundation (or such disqualified person) upon transfer of such interest, such as upon the incorporation of a sole proprietorship.

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

Example. A, a nonprofit research organization described in section 501(c)(3), was organized in 1966. On May 26, 1969, A held 50 percent of the stock of corporation B. For its taxable years 1970, 1971, and 1972, A is classified as an organization described in section 509(a)(2). However, for 1973 and subsequent years, A fails to satisfy the gross investment income limitation of section 509(a)(2)(B), and is thus classified as a private foundation. In such a case, section 4943 (c)(4) applies, and a disqualified person shall be treated as holding A's stock in B during a first phase that begins on May 26, 1969.

(c) *First phase holding periods*—(1) *In general.* If, on May 26, 1969, a private foundation has excess business holdings in any business enterprise (determined with regard to the 20 or 35 percent permitted holdings of section 4943 (c)(2)), then all interests which such foundation holds, actually or constructively, in such enterprise on May 26, 1969, shall (while held by such foundation) be deemed held by a disqualified person during the following periods:

(i) The 20-year period beginning on May 26, 1969, if the private foundation holds, actually or constructively, more than 95 percent of the voting stock (or more than a 95 percent profits or beneficial interest in the case of an unincorporated enterprise) in such enterprise on such date;

(ii) Except as provided in paragraph (c)(1)(i) of this section, the 15-year period beginning on May 26, 1969, if the private foundation and all disqualified persons hold, actually or constructively on such date, more than 75 percent of the voting stock (or more than a 75 percent profits or beneficial interest in the case of any unincorporated enterprise) or 75 percent of the value of all outstanding shares of all classes of stock in such enterprise (or more than a 75 percent profits and capital interest in the case of a partnership or joint venture); or

(iii) The 10-year period beginning on May 26, 1969, in any case not described in paragraph (c)(1) (i) or (ii) of this section.

The 20-year, 15-year, or 10-year period described in this subdivision (whichever applies) shall, for purposes of section 4943 and this section, be known as the "first phase".

(2) *Sole proprietorships.* The 20-year period described in paragraph (c)(1) of this section shall apply with respect to any interest which a private foundation holds in a sole proprietorship on May 26, 1969. See paragraph (b) of this section for the effect of converting such an enterprise to a corporate, partnership, or other form.

(3) *Suspension of first-phase periods.* The 20-year, 15-year, or 10-year period described in paragraph (c)(1) of this section shall be suspended during the pendency of any judicial proceeding which is brought and diligently litigated by the private foundation and which is necessary to reform, or to excuse the foundation from compliance with, its governing instrument or any other instrument (as in effect on May 26, 1969) in order to allow disposition of any excess business holdings held by the foundation on May 26, 1969.

(4) *Election to shorten the period during which certain holdings of private foundations are treated as held by disqualified persons.* If, on May 26, 1969, the combined holdings of a private foundation and all disqualified persons in any one business enterprise are such as to make applicable the 15-year period referred to in paragraph (c)(1)(ii) of this section, and if, on such date, the foundation's holdings do not exceed 95 percent of the voting stock in such enterprise, then such 15-year period is shortened to the 10-year period referred to in paragraph (c)(1)(iii), if at any time before January 1, 1971, one or more individuals—

(i) Who are substantial contributors (as described in section 507(d)(2)), or members of the family within the meaning of section 4946(d) of one or more substantial contributors, to such private foundation, and

(ii) Who on May 26, 1969, held in the aggregate more than 15 percent of the voting stock in the enterprise,

made an election in the manner described in 26 CFR 143.6 (rev. as of Apr. 1, 1974).

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

Example (1). Assume that F, a private foundation, owns, on May 26, 1969, 50 shares of voting stock in corporation X representing 50 percent of the voting power in X and 25 percent of the value of all outstanding shares of all classes of stock in X. Assume further that A and B, the only disqualified persons with respect to F, own five shares each of voting stock in X on such date. The 10 shares of voting stock in X owned by A and B together represent 10 percent of the voting power in X and 5 percent of the value of all outstanding shares of all classes of stock in X. Under the provisions of § 53.4943-3, the excess business holdings of F in X (determined without regard to section 4943(c)(4)) as of such date are, therefore, 40 percent of X voting stock. Accordingly, since the combined holdings of F, A, and B in X are, on such date, less than 75 percent of the voting stock in X and less than 75 percent of the value of all outstanding shares of all classes of stock in X, under the provisions of section 4943(c)(4)(B)(iii), all holdings of F in X (i.e., 50 percent of X voting stock) will be treated as held by a disqualified person through May 25, 1979.

Example (2). Assume the facts as stated in Example (1), except that F, on December 15, 1969, purchases an additional 10 shares of voting stock in X representing 10 percent of X voting power. Assume, further, that there were no other transactions in the stock in X during 1969. While the 50 percent of X voting stock held by F on May 26, 1969, will be deemed held by a disqualified person through May 25, 1979, the additional 10 shares of X voting stock acquired by purchase by F on December 15, 1969, will not be deemed to be so held. Accordingly, since, under the provisions of § 53.4943-3, such 10 shares represent excess business holding of F in X, such 10 shares will be subject to the imposition of tax under the provisions of section 4943(a).

Example (3). Assume the facts as stated in Example (1), except that F, on December 15, 1971, acquires an additional 10 shares of voting stock in X (representing 10 percent of X voting power) under the terms of a will which was executed before May 26, 1969, to which section 4943(c)(5) applies. While the 50 percent of X voting stock held by F on May 26, 1969, will be deemed held by a disqualified person through May 25, 1979, the additional 10 percent of X voting stock acquired by F on December 15, 1971, will, under the provisions of section 4943(c)(5), be deemed held by a disqualified person through December 14, 1981. See § 53.4943-5.

Example (4). Assume that F, a private foundation, owns on May 26, 1969, 50 shares of voting stock in corporation Y representing 50 percent of the voting power in Y. Assume further that C and D, the only disqualified persons with respect to F, own on such date 15 shares each of Y voting stock and that the 30 shares of Y voting stock owned by C and D together represent 30 percent of the voting power in Y. Under the provisions of § 53.-4943-3 the excess business holdings of F in Y (determined without regard to section 4943(c)(4)) as of such date are, therefore, 50 percent of Y voting stock. Accordingly, since the combined holdings of F, C, and D in Y represent, on such date, more than 75 percent of the voting stock in Y, under the provisions of section 4943(c)(4)(B)(ii), all holdings of F in Y (i.e., 50 percent of Y voting stock) will be treated as held by a disqualified person through May 25, 1984.

Example (5). M, a private foundation, owns on May 26, 1969, sole proprietorship S. Since, under the provisions of § 53.5954-3, M's ownership of S constitutes excess business holdings (determined without regard to section 4943(c)(4) as of May 26, 1969, and since M's interest in S is greater than 95 percent on such date, under the provisions of this paragraph a disqualified person will be treated as the owner of S for the 20-year period beginning on such date. If S is later incorporated, that percentage of the interest in S retained by M, even though less than a 95-percent interest, shall continue to be treated as held by a disqualified person through May 25, 1989.

Example (6). A and B, individuals, together own on May 26, 1969, 40 shares of voting stock in corporation X representing 40 percent of the voting power in X and 20 percent of the value of all outstanding shares of all classes of stock in X. A and B are both disqualified persons with respect to F, a private foundation, which owns no stock in X on May 26, 1969. On January 1, 1973, A and B donate the 40 shares of X voting stock held by them to F. Since F had no excess business holdings on May 26, 1969, section 4943(c)(4) does not apply. See however, section 4943(c)(6) and § 53.4943-6.

Example (7). Assume the facts as stated in Example (6), except that F, on May 26, 1969, owns 50 shares of voting stock in X, representing 50 percent of the voting power in X and 25 percent of the value of all outstanding shares of all classes of stock in X. Under the provisions of this paragraph, the 50 shares of X voting stock held by F on May 26, 1969 shall be treated in accordance with the provisions of section 4943(c)(4), while the 40 shares of X voting stock acquired by F on January 1, 1973 shall be treated in accordance with the provisions of section 4943(c)(6). See § 53.4943-6.

(d) *Permitted holdings under section 4943(c)(4)*—(1) *In general.* The permitted holdings of a private foundation to which section 4943(c)(4) applies in a business enterprise shall be as follows:

(i) The excess of the substituted combined voting level over the disqualified person voting level, and separately,

(ii) The excess of the substituted combined value level over the disqualified person value level.

(2) *Definitions.* For purposes of paragraph (d) of this section—

(i) The term "disqualified person voting level" on any given date means the percentage of voting stock held by all disqualified persons together on such date (including stock deemed held by such a person by reason of section 4943(c)(4), (5), or (6)).

(ii) The term "disqualified person value level" on any given date means the percentage of the total value of all outstanding shares of all classes of stock in a business enterprise held by all disqualified persons together on such date (including stock deemed held by such a person by reason of section 4943(c)(4), (5), or (6)).

(iii) The term "foundation voting level" prior to the second phase is equal to zero. After the first phase, such term on any given date means the lowest percentage of voting stock held by a private foundation (without regard to section 4943(c)(4)(B)) in a business enterprise on May 26, 1969, and at all times thereafter up to such date. See section 4943(c)(5) and § 53.4943-5 for the effect of interests acquired pursuant to the terms of certain wills or trusts in effect on May 26, 1969.

(iv) The term "foundation value level" prior to the second phase is equal to zero. After the first phase, such term on any given date means the lowest percentage of the total value of all outstanding shares of all classes of stock held by a private foundation (without regard to section 4943(c)(4)(B)) in a business enterprise on May 26, 1969, and at all times thereafter up to such date. See section 4943(c)(5) and § 53.4943-5 for the effect of interests acquired pursuant to the terms of certain wills or trusts in effect on May 26, 1969.

(v) The term "substituted combined voting level" means the lowest percentage to which the sum of the foundation voting level plus the disqualified person voting level has been reduced since May 26, 1969, by paragraph (d)(4) of this section (the "downward ratchet rule"), subject to the following modifications:

(A) In no event shall such substituted level exceed 50 percent; and

(B) Such substituted level shall be increased (but not above 50 percent) in accordance with section 4943(c)(5) and § 53.4943-5 for certain interests acquired by such foundation pursuant to the terms of a will or trust in effect on May 26, 1969.

(vi) The term "substituted combined value level" means the lowest percentage to which the sum of the foundation value level plus the disqualified person value level has been reduced since May 26, 1969, by paragraph (d)(4) of this section (the "downward ratchet rule"), subject to the following modifications:

(A) In no event shall such substituted level exceed 50 percent; and

(B) Such substituted level shall be increased (but not above 50 percent) in accordance with section 4943(c)(5) and § 53.4943-5 for certain interests acquired by such foundation pursuant to the terms of a will or trust in effect on May 26, 1969.

(vii) In the case of an interest in a partnership or joint venture, definitions (i) through (iv) of this subparagraph shall be applied by substituting "profit interests" for "voting stock" and "all partnership interests" for "all outstanding shares of all classes of stock."

(viii) In the case of an interest in a business enterprise other than a corporation, partnership or joint venture, definitions (i) through (iv) of this subparagraph shall be applied by substituting "beneficial remainder interests" for "voting stock" and "all beneficial remainder interests" for "all outstanding shares of all classes of stock."

(ix) Each level defined in paragraph (d)(2) (iii), (iv), (v) and (vi) as of any date shall be carried over to the subsequent date subject to any adjustments prescribed for such level.

(3) *Permitted holdings—First phase.* Since during the first phase the substituted combined voting level generally does not exceed the disqualified person voting level, and the substituted combined value level generally does not exceed the disqualified person value level, the permitted holdings during the first phase are generally equal to zero. The permitted holdings during the first phase exceed zero only where the 20 percent (or 35 percent) limitation on the downward ratchet rule contained in paragraph (d)(4)(ii)(B) of this section applies.

(4) *Downward ratchet rule*—(i) *In general.* Except as provided in paragraph (d)(4)(ii) of this section and section 4943(c)(5)—

(A) *Scope of rule.* In general, when the percentage of the holdings in a business enterprise held by a private foundation and all disqualified persons together to which section 4943(c)(4) applies decreases, or when the percentage of the holdings of the private foundation alone in such business enterprise decreases, such holdings may not be increased (except as provided under section 4943(c)(5) or (6)). This so-called "downward ratchet rule" is designed to prevent the private foundation from purchasing additional holdings in the business enterprise until the substituted combined voting level reduced to the 20-percent (or 35 percent) figure prescribed by section 4943(c)(2).

(B) *Levels affected.* Under the downward ratchet rule any decrease after May 26, 1969, in the percentage of holdings comprising either the substituted combined voting level, the substituted combined value level, the foundation voting level or the foundation value level shall cause the respective level to be decreased to such decreased percentage for purposes of determining the foundation's permitted holdings.

(C) *Implementation of reductions.* Thus, if at any time the sum of the foundation voting level and the disqualified person voting level is less than the immediately preceding substituted combined voting level, the substituted level shall be decreased so that it equals such sum. For example, if on May 26, 1969, a foundation and all disqualified persons together have holdings in a business enterprise equal to 50 percent, on such date the substituted combined voting level and the disqualified person voting level equal 50 percent (since such holdings of the foundation are treated as held by a disqualified person). If the private foundation or a disqualified person on May 27, 1969, sold 2 percent of such holdings to a nondisqualified person, the disqualified person voting level would be decreased to 48 percent (50%−2%), causing the substituted combined voting level to be decreased to 48 percent. As a further example, assume that on May 26, 1969, a foundation and all disqualified persons together have holdings in a business enterprise equal to 50 percent, and when the first phase expires on May 26, 1979, the substituted combined voting level is still 50 percent, the foundation voting level is 10 percent, and the disqualified person voting level is 40 percent. If a disqualified person thereafter sells 2 percent to a nondisqualified person so that the sum of the disqualified person voting level (40%−2%=38%) and the foundation voting level (10%) equals 48 percent (38%+10%), then the substituted combined voting level is decreased to 48 percent. Similarly, if at any time the sum of the foundation value level and the disqualified person value level is less than the immediately preceding substituted combined value level, the substituted combined value level shall be decreased so that it equals such sum.

(D) *Restrictions on increases in levels.* In addition, none of the four levels referred to in paragraph (d)(4)(i)(B) of this section may be adjusted upward to reflect any increase in the holdings comprising such level, except as provided in section 4943(c)(5) and § 53.4943-5. As a result, any transfer of May 26, 1969, holdings from a disqualified person to a private foundation shall not increase the foundation voting level or the foundation value level (unless the transfer qualifies under section 4943(c)(5)), and thus may reduce the substituted combined value level (and, where appropriate, the substituted combined voting level). Thus, in the last preceding example, if the disqualified person, instead of selling the 2 percent interest to a nondisqualified person, had sold such interest to the foundation, the substituted combined voting level would still be reduced to 48 percent, since the disqualified person voting level would be reduced by 2 percent (to 38%) but the foundation voting level would not be increased by 2 percent (remaining at 10%). However, any transfer of May 26, 1969, holdings from a private foundation to a disqualified person under section 101(l)(2)(B) of the Tax Reform Act of 1969, shall reduce the foundation value level (and, where appropriate, the foundation voting level), but will not reduce the substituted combined value level or the substituted combined voting level. The disqualified person voting level and disqualified person value level are correspondingly increased, not being limited to interests held since May 26, 1969. In addition, a transfer of May 26, 1969, holdings from one disqualified person to another, for example, by bequest, shall not reduce the substituted combined voting level nor the substituted combined value level.

(ii) *Exceptions*—(A) *One percent de minimus rule.* If after May 26, 1969, there are one or more decreases in the holdings comprising any of the four levels referred to in paragraph (d)(4)(i)(B) of this section during any taxable year of a private foundation, and if such decreases are attributable to issuances of stock (or such issuances coupled with redemptions), then, unless the aggregate of such decreases equals or exceeds 1 percent, the determination of whether there is a decrease in such level for purposes of this paragraph (d)(4) shall be made only at the close of such taxable year. If, however, the aggregate of such decreases equals or exceeds 1 percent, such level shall be decreased at that time as if the previous sentence had never applied.

(B) *Twenty percent (or 35 percent) floor.* In no event shall the downward rachet rule contained in paragraph (d)(4)(i) of this section decrease the substituted combined voting level or the substituted combined value level below 20 percent, or, for purposes of section 4943(c)(2)(B), below 35 percent.

(iii) *Special rules*—(A) *Change of foundation managers*. In the case of a foundation manager (as defined in section 4946(b)) who on May 26, 1969, owns holdings in a business enterprise and who is replaced by another foundation manager, the decrease in the substituted combined voting or value levels shall be limited to the excess, if any, of the departing foundation manager's holdings over his successor's holdings.

(B) *Termination of private foundation status under section 507*. If an organization gives the notification described in section 507(b)(1)(B)(ii) of the commencement of a 60-month termination period and fails to meet the requirements of section 509(a) (1), (2) or (3) for the entire period, then such organization will be treated as a private foundation during the entire 60-month period for purposes of this paragraph (d)(4) and section 4946(a)(1)(H). For example, X, a private foundation gives notification of the commencement of a 60-month termination commencing on January 1, 1972. X and Y, another private foundation, are effectively controlled by the same persons within the meaning of section 4946(a)(1)(H). X and Y hold 25 percent each of the voting stock of Z corporation on May 26, 1969, so that the substituted combined voting level for X or Y is 50 percent on such date. If X meets the requirements of section 509(a) (1), (2), or (3) for the entire 60-month period, section 4946(a)(1)(H) is inapplicable to X, and, under the downward ratchet rule, the substituted combined voting level for Y is decreased by 25 percent. On the other hand, if X meets the requirements of section 509(a)(2) for its taxable years 1972 and 1973, but fails to meet the requirements of section 509(a) (1), (2), or (3) in 1974, 1975, and 1976, then solely for purposes of section 4943(c)(4)(A)(ii) and this paragraph (d)(4), X will be treated as a disqualified person with respect to Y, and Y will be treated as a disqualified person with respect to X, for taxable years 1972 through 1976 pursuant to section 4946(a)(1)(H). Thus, for purposes of section 4943(c)(4)(A)(ii), the substituted combined voting level for X or Y will not be decreased by reason of the fact that X was attempting to terminate under section 507(b)(1)(B), and assuming no other transactions, such level will remain at 50 percent.

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

Example (1). F, a private foundation, owns on May 26, 1969, 50 shares of voting stock in corporation X representing 50 percent of the voting stock in X and 25 percent of the value of all outstanding shares of all classes of stock in X. A and B, the only disqualified persons with respect to F, together own, on such date, 2 shares of voting stock in X representing 2 percent of the voting stock in X and 1 percent of the value of all outstanding shares of all classes of stock in X. In addition, on such date, F owns 30 shares of nonvoting stock in X, representing 30 percent of the value of all outstanding shares of all classes of stock in X, and A and B together own 15 shares of nonvoting stock in X representing 15 percent of the value of all outstanding shares of all classes of stock in X. The provisions of section 4943(c)(4)(B)(iii) apply and during the 10-year period beginning on May 26, 1969, a disqualified person is deemed to hold all interests of F in X. Assume that on February 1, 1972, F sells to C, an unrelated individual, 12 shares of voting stock in X representing 12 percent of the voting stock in X and 6 percent of the value of all outstanding shares of all classes of stock in X.

(i) Beginning on May 26, 1969, the disqualified person voting level is 52 percent, the foundation voting level is zero, and the substituted combined voting level is 50 percent; the disqualified person value level is 71 percent, the foundation value level is zero, and the substituted combined value level is 50 percent.

(ii) Beginning on February 1, 1972, the disqualified person voting level is 40 percent (52%−12%), the foundation voting level is zero, and the substituted combined voting level is 40 percent; the disqualified person value level is 65 percent (71%−6%), the foundation value level is zero and the substituted combined value level is 50 percent.

Example (2). F, a private foundation on the calendar year basis, holds, on May 26, 1969, 30 percent of the voting stock in corporation Y. C and D, the only disqualified persons with respect to F, together hold, on such date, 10 percent of the voting stock in Y. The provisions of section 4943(c)(4)(B)(iii) apply with respect to F, and disqualified persons are deemed to hold all interests of F in Y for the 10-year period beginning on May 26, 1969, so that the substituted combined voting level as of such date is 40 percent. On February 1, 1973, a stock issuance by Y causes the combined holdings of voting power by F, C, and D in Y to decrease by 0.3 percent. On June 1, 1973, another such issuance causes such combined holdings to decrease by 0.5 percent. In September 1, 1973, an unrelated stock redemption by Y causes such combined holdings to increase by 0.4 percent. Under this paragraph the determination whether there is a decrease in the substituted combined voting level for purposes of the downward ratchet rule shall not be made before January 1, 1974, since the aggregate of the decreases occurring on February 1 and June 1 of 1973 is less than 1 percent (0.3%+0.5%). Therefore, the substituted combined voting level as of January 1, 1974, is 39.6 percent (40%−[(0.3%+0.5%)−0.4%].)

Example (3). Assume the facts as stated in Example (2), except that, on October 1, 1973, a stock issuance by Y causes the combined holdings of voting power by F, C, and D in Y to decrease by 0.3 percent. Since the aggregate of the decreases occurring on February 1, June 1, and October 1, of 1973 exceeds 1 percent, the determination whether there is a decrease in the substituted combined voting level shall be made as of October 1, 1973. At that time the substituted combined voting level shall be reduced to 39.2 percent (40%−0.3%−0.5%), the lowest actual combined holdings during the period that the de minimis rule was in effect.

(5) *Permitted holdings—Second phase*—(i) *In general*.—For purposes of section 4943 and this section, the term "second phase" means the 15-year period immediately following the first phase. Upon the expiration of the first phase with respect to an interest to which section 4943(c)(4) applies, such interest shall no longer be treated as held by a disqualified person under section 4943(c)(4)(B). During the second phase, the manner of determining the permitted holdings of a private foundation to which section 4943(c)(4) applies shall be the same as applicable to the first phase, except that a 25 percent maximum shall apply under certain conditions specified in paragraph (d)(5)(ii) of this section. For these purposes the substituted combined voting level and the substituted combined value level in effect for the foundation at the end of the first phase shall be carried over to the second phase. The substituted levels are carried over because although there is a decrease in the disqualified person levels (since holding are no longer treated as held by disqualified persons under section 4943(c)(4)(B)), a corresponding increase in the foundation levels occurs. For example, if a private foundation on May 26, 1969, held 10 percent of the voting stock in a corporation and disqualified persons held 40 percent of the voting stock, both the disqualified person voting level and the substituted combined voting level equal 50 percent (10%+40%). Assuming no transactions during the first phase, on May 26, 1979, the disqualified person voting level would be decreased to 40 percent (50%−10%), but the foundation voting level would be increased to 10 percent so that the substituted combined voting level would remain at 50 percent. In addition, the downward ratchet rule of paragraph (d)(4) of this section shall continue to apply, to prevent the foundation and disqualified persons from purchasing any additional interest in the same enterprise until the substituted combined voting level decreases below 20 percent.

(ii) *25 percent maximum on foundation holdings*. If, or as soon as, the disqualified person voting level exceeds 2 percent after the expiration of the first phase, the permitted holdings shall not thereafter exceed 25 percent of the voting stock or 25 percent of the value of all outstanding shares of all classes of stock, even though the holdings of the foundation and all disqualified persons combined do not exceed the substituted level. Solely for purposes of determining whether the 25 percent limitation of this subdivision (ii) applies, the disqualified person voting level shall not be treated as exceeding 2 percent solely as a result of the holdings of a private foundation which are treated as held by a disqualified person by reason of section 4943(c)(5) or (6). For example, where under the constructive ownership rules for trusts in § 53.4943–8(b), a private foundation is deemed to own more than 2 percent of the voting stock of a business enterprise but such stock is treated as held by a disqualified person under section 4943(c)(5), the determination of the substituted percentage for permitted holdings in the second phase will be as if the foundation owned the stock held by the trust. Similarly, where a private foundation is the only remainder beneficiary of a trust that is a disqualified person under section 4946(a)(1)(H), the disqualified person voting level shall not be treated as exceeding 2 percent solely as a result of the holdings of such a trust.

(6) *Permitted holdings—Third phase.* For purposes of section 4943 and this section, the term "third phase" means the entire period following the second phase. During the third phase the manner of determining the permitted holdings of a private foundation to which section 4943(c)(4) applies shall be the same as applicable to the second phase under paragraph (d)(5) of this section (including the carryover of levels from the earlier phase). However, if the 25 percent limit of paragraph (d)(5)(ii) of this section never applied during the second phase, the substituted combined voting level and the substituted combined value level each shall not exceed 35 percent during the third phase.

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

Example (1). F, a private foundation, owns, on May 26, 1969, 30 shares of voting stock in corporation Z representing 30 percent of the voting power in Z and 15 percent of the value of all outstanding shares of all classes of stock in Z, and owns, on such date, 10 shares of nonvoting stock in Z representing 10 percent of the value of all outstanding shares of all classes of stock in Z. E and G, the only disqualified persons with respect to F, own, on such date, 5 shares each of nonvoting stock in Z. The 10 shares of nonvoting stock in Z owned by E and G together represent 10 percent of the value of all outstanding shares of all classes of stock in Z. Assume further that F cannot meet the requirements for the 35 percent test of section 4943(c)(2)(B). For purposes of applying section 4943(c)(4)(B) and this paragraph, F has excess business holdings in Z (determined without regard to section 4943(c)(4)), because under section 4943(c)(2)(A) F's permitted holdings are 20 percent (20% − 0%) of the voting stock since disqualified persons have no holdings of voting stock. Therefore, section 4943(c)(4)(B) and this paragraph apply, and a disqualified person is treated as holding F's shares of both voting and nonvoting stock in Z for the 10-year period through May 25, 1979. Thus, since all holdings by F in Z are treated as held by a disqualified person during the first phase, F cannot be subject to tax under section 4943(a) on its May 26, 1969, holdings prior to the termination of the first phase, regardless of whether or not disqualified persons purchase additional shares of Z during the first phase.

Example (2). Assume the same facts as in Example (1), and further assume that there were no transactions in the stock of Z during the first phase (May 26, 1969 through May 25, 1979). During the first phase the permitted holdings by F in Z for both the voting stock and the value is zero. The disqualified person voting level and the substituted combined voting level are each 30 percent, and the disqualified person value level and the substituted combined value level are each 35 percent (15% + 10% + 10%). The substituted levels are carried over into the second phase. The disqualified person voting level on May 26, 1979, the beginning of the second phase, is zero, because the voting shares held by F are no longer treated as held by a disqualified person. Therefore, F's permitted holdings on such date are 30 percent of the voting stock, because such percentage is equal to the excess of the substituted combined voting level (30%) over the disqualified person voting level (0%). The disqualified person value level on May 26, 1979, is 10 percent, because the voting and nonvoting shares held by F are no longer treated as held by a disqualified person. Therefore, F's permitted holdings on such date are 25 percent of the value of Z stock, because such percentage is equal to the excess of the substituted combined value level (35%) over the disqualified person value level (10%) as of such date.

Example (3). Assume the facts as stated in Example (2), except that E and G acquire, on February 1, 1970, 10 shares of Z voting stock representing 10 percent of the voting power in Z and 5 percent of the value of all outstanding shares of all classes of stock in Z. During the first phase such permitted holdings remain zero, and prior to May 25, 1979, the substituted combined voting level and substituted combined value level remain 30 and 35 percent, respectively, because such levels may not be increased by acquisitions by disqualified persons. However, the disqualified person voting level and the disqualified person value level are each increased to 40 percent (30% + 10%) and 40 percent (35% + 5%) respectively. During the first phase the excess of the disqualified person voting level over the substituted combined voting level (40% − 30%) and the excess of the disqualified person value level over the substituted combined value level (40% − 35%) indicate how much stock F must dispose of during the first phase to avoid the initial tax when it expires. On May 25, 1979, the last day of the first phase, F disposes of 12 shares of Z voting stock, representing 12 percent of the voting power in Z and 6 percent of the value of all such outstanding shares. The disposition by F reduces the interest F owns to 18 percent (30% − 12%) of the voting power, and 19 percent (25% − 6%) of the value of all outstanding shares of all classes of stock, in Z. Since the disqualified person voting level decreases to 28 percent (40% − 12%), the substituted combined voting level as of May 25, 1979, accordingly is decreased to 28 percent under the downward ratchet rule. Similarly, the substituted combined value level is decreased to 34 percent, as the disqualified person value level as of such date is 34 percent (40% − 6%). On May 26, 1979, the disqualified person voting level is 10 percent (28% − 18%), and the disqualified person value level is 15 percent (34% − 19%), since the shares owned by F are no longer treated as held by a disqualified person as of such date. Accordingly, on May 26, 1979, the permitted holdings by F and Z are 18 percent of the voting power in Z, because such percentage is equal to the excess of the substituted combined voting level (28%) over the disqualified person voting level (10%) as of such date. Similarly, the permitted holdings of F in Z by value are 19 percent (34% − 15%). If F had not disposed of the 12 shares, then on May 26, 1979, F's permitted holdings in voting power and value would be 20 percent (30% − 10%) and 20 percent (35% − 15%), respectively.

Example (4). F, a private foundation, owns on May 26, 1969, 35 shares of voting stock in corporation Y representing 35 percent of the voting stock in Y and 17.5 percent of the value of all classes of stock in Y, and owns on such date 45 shares of nonvoting stock representing 22.5 percent of the value of all outstanding shares of all classes of stock in Y. No disqualified person with respect to F owns, on such date, any stock in Y. Assume further that Y cannot meet the requirements of the 35 percent test of section 4943(c)(2)(B). For purposes of applying section 4943(c)(4)(B) and this paragraph, F has excess business holdings in Y (determined without regard to section 4943(c)(4)), because under section 4943(c)(2)(A) F's permitted holdings are 20 percent (20% − 0%) of the voting stock since disqualified persons have no holdings of voting stock. Therefore, section 4943(c)(4)(B) and this paragraph apply, and a disqualified person is treated as holding F's shares of both voting and nonvoting stock in Y for the 10-year period through May 25, 1979. During the first phase the permitted holdings by F in Y of both the voting stock and of value are zero. The disqualified person voting level and the substituted combined voting level are each 35 percent, and the disqualified person value level and the substituted combined value level are each 40 percent (17.5% + 22.5%). The substituted levels are carried over into the second phase. The disqualified person voting level and value level on May 26, 1979, are both zero, because the shares held by F are no longer treated as held by a disqualified person. Therefore, F's permitted holdings on such date are 35 percent of the voting power (35% − 0%) and 40 percent of the value (40% − 0%). Assume that on February 1, 1981, A, a disqualified person, acquires 6 percent of the voting stock in Y representing 3 percent of the value of all outstanding shares of all classes of stock in Y. The permitted holdings by F in Z on February 1, 1981, are thus reduced to 25 percent of the voting stock (the lesser of the separate 25% second phase limitation or 29% (35% substituted combined voting level minus 6% disqualified person voting level)) and 25 percent of the value (the lesser of the separate 25% second phase limitation or 37% (40% substituted combined value level minus 3% disqualified person value level)). But see paragraph (d)(8) of this section for limitations on restrictions with respect to nonvoting stock.

Example (5). Assume the same facts as in Example (4) except that A does not acquire the 6 shares of voting stock until February 1, 1996 (in the third phase), rather than on February 1, 1981. Thus, F's permitted holdings in Y would remain at 35 percent of the voting stock and 40 percent of the value during the second phase, which expired on May 25, 1994. Assume that on May 25, 1994, the last day of the second phase, F disposes of 10 shares of nonvoting stock representing 5 percent of the value of all outstanding shares in Y to meet the 35 percent third phase limit. In accordance with the downward ratchet rule, the substituted combined value level and F's permitted holdings in Y would be reduced to 35 Percent of value. On February 1, 1996, F's permitted holdings in Y would be reduced to 25 percent of the voting stock (the lesser of the separate 25% third phase limitation or 29% (35% substituted combined voting level minus 6% disqualified person level)) and 25 percent of the value (the lesser of the separate 25% third phase limitation or 32% (35% substituted combined value level minus 3% disqualified person value level)). But see paragraph (d)(8) of this section for limitations on restrictions with respect to nonvoting stock.

(8) *Special rule where all holdings are permitted under section 4943(c)(2).* (i) Since section 4943(c)(4) and this paragraph provide transitional rules for foundations which would otherwise have had excess business holdings on May 26, 1969, no holdings shall cease to be permitted holdings under this paragraph where such holdings would be permitted holdings under section 4943(c)(2) and § 53.4943-3. Thus, for example, where the substituted combined voting level has been reduced to 20 percent, the provisions of § 53.4943-3(b)(2) concerning nonvoting stock as permitted holdings generally apply.

(ii) The provisions of this paragraph (d)(8) may be illustrated by the following example:

Example. (A) F, a private foundation, owns, on May 26, 1969, 40 shares of voting stock in corporation X representing 40 percent of the voting stock in X and 20 percent of the value of all outstanding shares of all classes of stock in X, and owns, on such date, 60 shares of nonvoting stock in X, representing 30 percent of the value of all outstanding shares of all classes of stock in X. A, the only disqualified person with respect to F, owns, on such date, 10 shares of voting stock in X, representing 10 percent of the voting stock in X and 5 percent of the value of all outstanding shares of all classes of stock in X. Under section 4943(c)(4)(B)(iii), a disqualified person is deemed the owner of all holdings by F in X for the 10-year period beginning on May 26, 1969.

(B) Assume that the only transaction in X stock during the first phase is the disposition of 30 shares of voting stock by F on May 1, 1975. The voting stock held by F is permitted holdings under § 53.4943-3 and under such section since all disqualified persons together do not own more than 20 percent of the voting stock in X, all nonvoting stock held by F shall also be treated as permitted holdings. Therefore, all the stock held by F is permitted holdings.

(C) Assume that on May 1, 1975, F had disposed of only 15 shares of voting stock and also had disposed of 35 shares of nonvoting stock. On May 26, 1979, at the beginning of the second phase, this paragraph (d)(8) would not apply since F would have excess business holdings under § 53.4943-3. Under the provisions of this section, the permitted holdings by F in X on such date are 25 percent of the voting stock (35% substituted combined voting level minus 10% disqualified person voting level) and 25 percent of the value (30% substituted combined value level minus 5% disqualified person value level)).

(9) *Special rule for certain private foundations.* In the case of a private foundation—

(i) Which was incorporated before January 1, 1951,

(ii) Substantially all of the assets of which on May 26, 1969, consisted of more than 90 percent of the stock of an incorporated business enterprise which is licensed and regulated, the sales or contracts of which are regulated, and the professional representatives of which are licensed, by State regulatory agencies in at least 10 States;

(iii) Which acquired such stock solely by gift, devise, or bequest;

(iv) Which does not purchase any stock or other interest in such enterprise after May 26, 1969, and does not acquire any stock or other interest in any other business enterprise which constitutes excess business holdings under § 53.4943-3; and

(v) Which, in the last 5 taxable years ending on or before December 31, 1970, expended substantially all of its adjusted net income (as defined in section 4942 (f)) for the purpose or function for which it is organized and operated;

paragraph (d) (1) through (5) of this section (permitted holdings during the first and second phase) shall be applied with respect to the holdings of such foundation in such incorporated business enterprise by substituting "51 percent" for "50 percent," and section 4943 (c) (4) (D) (third phase) shall not apply with respect to such holdings. For purposes of the preceding sentence, stock of such enterprise in a trust created before May 27, 1969, of which the foundation is the remainder beneficiary shall be deemed to be held by such foundation on May 26, 1969, if such foundation held (without reagrd to such trust) more than 20 percent of the stock of such enterprise on May 26, 1969.

§ 53.4943-5 Present holdings acquired by trust or a will.

(a) *Interests to which section 4943(c)(5) applies*—(1) *In general.* Section 4943 (c)(5) provides that section 4943(c)(4) (other than the 20-year first phase holding period) applies to an interest in a business enterprise acquired after May 26, 1969 by a private foundation under the terms of a trust which was irrevocable on May 26, 1969, or under the terms of a will executed on or before May 26, 1969, which were in effect on May 26, 1969, and at all times thereafter, as if such interest were held on May 26, 1969. However the first phase holding period prescribed by § 53.4943-4(c)(1) (ii) or (iii) shall commence for such an interest on the date of distribution to the foundation. Unlike section 4943(c) (4) and § 53.4943-4, section 4943(c)(5) and this section treat only the interest so acquired (and not the entire interest held by the foundation in such enterprise on the date of distribution) as held by a disqualified person during a first phase holding period. (See, however, section 4943(c)(6) and paragraph (b)(2) of § 53.4943-6 for the treatment of other holdings of the foundation in the same enterprise if an interest to which section 4943(c)(5) applies is acquired from a person who was not a disqualified person prior to the acquisition.) In addition, section 4943(c)(5) and this section shall not apply if after the acquisition of such an interest the foundation would not haye excess business holdings (determined without regard to section 4943 (c) (4), (5), or (6)).

(2) *After-acquired interests.* Section 4943(c)(5) and this section shall not apply to any interest acquired after May 26, 1969, by an estate or trust, other than by reason of the death of the decedent. For example, where a foundation is a residuary beneficiary under the terms of a will executed before May 26, 1969, and the residue of the estate consists of cash, then stock subsequently purchased with this cash for distribution to the foundation will not be treated as an interest acquired under the terms of a will executed on or before May 26, 1969.

(3) *Certain revocable trusts.* If an interest in a business enterprise actually passes to a private foundation under a trust which would have met the tests referred to in paragraph (a)(1) of this section but for the fact that the trust was revocable (even though it was not in fact revoked) and such interest would have passed to such foundation under a will that meets those tests but for the fact that the grantor died without having revoked the trust, then for purposes of section 4943(c)(5) and this section, such an interest shall be treated as having been acquired by the foundation under the will.

(4) *Modification of will*—(i) *In general.* For purposes of section 4943(c)(5) and this section, an amendment or republication of a will which was executed on or before May 26, 1969, does not prevent any interest in a business enterprise which was to pass under the terms (which were in effect on May 26, 1969, and at all times thereafter) of such will from being treated as a present holding under section 4943(c) (4) or (5)—

(A) Solely because there is a reduction in the interest in the business enterprise which the foundation was to receive under the terms of the will (for example, if the foundation is to receive the residuary estate, and if one class of stock is disposed of by the decedent during his lifetime or by a subsequent codicil);

(B) Solely because such amendment or republication is necessary in order to comply with section 508(e) and the regulations thereunder;

(C) Solely because there is a change in the executor of the will; or

(D) Solely because of any other change which does not otherwise change the rights of the foundation with respect to such interest in the business enterprise.

However, if under such amendment or republication there is an increase in the interest in the business enterprise which the foundation was to receive under the terms of the will in effect on May 26, 1969, such increase shall not be treated as present holdings under section 4943 (c) (4) or (5). Under such circumstances the interest which would have been acquired before such increase shall remain present holdings. See section 4943(c)(6) and § 53.4943-6 with respect to the treatment of such increase in holdings of a private foundation.

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

Example (1). On May 9, 1985, A modifies by codicil his will which was in effect on May 26, 1969, and was unchanged until such modification. The purpose of the codicil was, in the event of A's death, to increase the number of shares in X Corporation that would pass to the W foundation from 70 percent of all the voting power and value to 80 percent. Under these facts, if A dies without further modifying the terms of the will which apply to W's interest in X, section 4943(c)(5) will apply to 70 percent of the X voting power and value and section 4943(c)(6) will apply to 10 percent of the X voting power and value, since 10 percent of the X voting power and value would not pass under a provision of the will which was in effect on May 26, 1969, and at all times thereafter. Accordingly, if the stock is distributed to W on July 6, 1988, then, assuming that on May 26, 1969, W and all disqualified persons owned less than 75% of the voting stock in X, an amount of such stock representing 70 percent of X voting power and value shall be treated as held by a disqualified person through July 5, 1998, and an amount of such stock representing 10 percent of X voting power and value shall be treated as held by a disqualified person through July 5, 1993.

Example (2). Assume the facts as stated in Example (1), except that the sole purpose of the codicil was to change the executor of the will. Under paragraph (a)(4)(i) of this section, such codicil will not prevent the X voting stock which was bequeathed to W from being treated as held by a disqualified person through July 5, 1998.

(b) *Holding periods*—(1) *In general.* An interest to which section 4943(c)(5) applies shall be entitled to a 15-year holding period starting on the date of distribution only if the interests actually or constructively owned by a private foundation and all disqualified persons on May 26, 1969, in a business enterprise exceed 75 percent of the voting stock (or of the profits or beneficial interest) or 75 percent of the value of all outstanding shares of all classes of stock (or of the profits and capital interest) in such enterprise. For purposes of the preceding sentence, interests held by the foundation on May 26, 1969, shall be deemed to include an interest to which section 4943(c)(5) applies and which has been acquired (on or before the date of distribution for the interest in question) from a person who was not a disqualified person on May 26, 1969. Therefore, if under the terms of a will in effect on May 26, 1969, and at all times thereafter, a private foundation is created on July 1, 1975, and receives 76 percent of the voting stock of a business enterprise on that date, such stock shall be treated as held by a disqualified person until June 30, 1990. Any interest to which section 4943(c)(5) applies but which is not entitled to a 15-year holding period shall be entitled to a 10-year holding period starting on the date of distribution. For purposes of this paragraph the date of distribution shall be deemed to occur no later than the date on which the trust or estate is considered to be terminated under § 1.641(b)-(3) of this chapter (Income Tax Regulations).

(2) *Constructive ownership prior to date of distribution.* To the extent that an interest to which section 4943(c)(5) applies is constructively held by a private foundation under section 4943(d)(1) and § 53.4943-8 prior to the date of distribution, it shall be treated as held by a disqualified person prior to such date by reason of section 4943(c)(5). In addition, in the case of a foundation's interest in a trust which was irrevocable on May 26, 1969, and to which both sections 4943 (c)(4) and (c)(5) apply, the first phase holding period for such interest shall end with whichever such period under section 4943(c) (4) or (5) ends later. For example, if under the terms of such a trust, 96 percent of the voting stock in a business enterprise was constructively held by a private foundation on May 26, 1969, and was distributed to such foundation on June 30, 1970, such interest is entitled to a 20-year holding period beginning on May 26, 1969.

(c) *Permitted holdings*—(1) *In general.* The permitted holdings of a private foundation which has an interest in a business enterprise to which section 4943(c)(5) applies shall be determined in accordance with the rules of paragraph (d) of § 53.4943-4. The levels referred to in such paragraph shall be adjusted to take into account the acquisition of such an interest as if it were treated as held by a disqualified person from May 26, 1969, until the date of acquisition. See also § 53.4943-6(b)(2) for the special rule for interests held by a private foundation at the time it acquires a section 4943(c)(5) interest from a nondisqualified person. Thus, for example, if on June 30, 1975, the disqualified person voting level and the substituted combined voting level in corporation X with respect to foundation F are 45 percent, and a nondisqualified person's 10 percent voting interest in X is acquired by F on July 1, 1975, in a transaction to which section 4943(c)(5) applies, the above-mentioned levels shall be increased to 55 and 50 percent respectively, on July 1, 1975. However, if such interest had been acquired from a person who was a disqualified person on May 26, 1969, rather than from a nondisqualified person, no adjustments in such levels would have taken place on July 1, 1975. In such a case, though, at the beginning of the second phase on July 1, 1985, the foundation voting level would be increased by 10 percent, and the disqualified person voting level decreased by 10 percent (assuming that none of the acquired stock had been disposed of prior to such date).

(2) *Separate phases.* The phases for each interest to which section 4943(c)(5) applies start independently from those for any other interest of the foundation in the same enterprise to which section 4943(c) (4) or (5) applies. Therefore, until an interest enters its own second phase, the 25 percent limit described in paragraph (d)(5) of § 53.4943-4 shall not apply to such interest since such interest (and any subsequently acquired section 4943(c)(5) interest in the first phase) is still treated as held by a disqualified person for purposes of that 25 percent limit. In addition, if such an interest enters its second phase and at such time all disqualified persons together do not have holdings in excess of 2 percent of the voting stock in the same business enterprise, then the 25 percent limit of section 4943(c)(4)(D)(i) shall not then apply to such interest, even though such limit may have been applicable to an interest with an earlier second phase. Moreover, the 35 percent limit of section 4943(c)(4)(D)(ii) shall cause only interests which have entered the third phase to become excess business holdings, taking into account, however, interests in prior phases in determining the holdings subject to such limit.

(3) *Examples.* The provisions of this paragraph may be illustrated by the following examples: (After each example is a chart setting forth the chronological changes in the various levels referred to in paragraph (d) of § 53.4943-4.)

Example (1). On May 26, 1969, F, a private foundation, owns no stock in M Corporation, and A, a disqualified person owns 40 percent of the voting stock (voting power and value) in M. A dies on May 1, 1971, leaving 30 percent of the voting stock in M to F and leaving the other 10 percent to a disqualified person. Distribution is made on June 1, 1972, and assume that section 4943(c)(5) applies. No transactions in the stock of M, other than those described in this example, occur. On May 26, 1969, the substituted combined voting level is 40 percent, the disqualified person voting level is deemed to be 40 percent, and the permitted holdings by F in M is deemed to be 0 percent (40% − 40%). On May 1, 1971 (the date that F acquired the M stock by reason of its constructive ownership of A's estate), the various levels remain unchanged. On May 1, 1971, the 30 percent interest is treated as held by a disqualified person for a period extending through May 31, 1982. On June 1, 1981, F disposes of 6 percent of the voting stock to a nondisqualified person. The substituted combined voting level and the disqualified person voting level thereby are reduced to 34 percent (40% − 6%) each. On June 1, 1982, at the beginning of the second phase, the foundation voting level increases to 24 percent (30% − 6%) and the disqualified person voting level is reduced to 10 percent (34% − 10%). The substituted combined voting level as of June 1, 1982, remains at 34 percent. The permitted holdings as of such date are 24 percent (34% − 10%). If F had not disposed of any holdings prior to June 1, 1982, F's permitted holdings would have been 25 percent, the lesser of 25 percent (the limitation of section 4943(c)(4)(D)(i)), or 30 percent (40% − 10%). Since on such date the 30 percent interest would no longer have been treated as held by a disqualified person, F would have had excess business holdings of 5 percent (30% − 25%).

Date	F owns (percent)	Interest treated as held by disqualified person (percent)	Disqualified persons own (percent)	Foundation voting level (percent)	Substituted combined voting level (percent)	Disqualified person voting level (percent)	Permitted holdings (percent)	Comments
May 26, 1969	0	0	40	0	40	40	0	
May 1, 1971	+30	+30	−30					A dies.
Do	30	30	10	0	40	40	0	
June 1, 1972	30	30	10	0	40	40	0	Distribution.
June 1, 1981	−6	−6			−6	−6		F sells 6 pct.
Do	24	24	10	0	34	34	0	
June 1, 1982		−24		+24		−24	+24	2d phase begins.
Do	24	0	10	24	34	10	24	

Example (2). (i) On May 26, 1969, F, a private foundation, owns 30 percent of the voting stock of N Corporation (voting power and value) and disqualified persons own 20 percent of the voting stock of N Corporation. On May 1, 1971, B, a disqualified person, dies leaving 15 percent of the voting stock to F. Assume that distribution was made on June 1, 1972, and that section 4943(c)(5) applies. On May 26, 1969, the substituted combined voting level and the disqualified person voting levels are each 50 percent and the permitted holdings are 0 percent (50%−50%). On May 1, 1971, and June 1, 1972, these levels remain unchanged. On May 1, 1971, the 15 percent interest is treated as held by a disqualified person for a period extending through May 31, 1982.

(ii) On July 1, 1978, F sells 6 percent of the P stock to a nondisqualified person, thereby reducing the disqualified person voting level and the substituted combined voting level to 44 percent (50%−6%). On May 26, 1979, at the beginning of the second phase for F's 1969 holdings, the foundation voting level is 24 percent (30%−6%), the substituted combined voting level is still 44 percent, and the disqualified person voting level is 20 percent (44%−24%). The permitted holdings are 24 percent (44%−20%). In addition F's 24 percent holdings do not exceed the 25 percent limitation of section 4943(c)(4)(D)(i) and paragraph (d)(5)(ii) of § 53.4943-4.

(iii) On August 1, 1981, F sells 16 percent of the N stock to a nondisqualified person, thereby reducing the foundation voting level to 8 percent (24%−16%), and reducing the substituted combined voting level to 28 percent (44%−16%). The disqualified person voting level remains at 20 percent. On June 1, 1982, at the beginning of the second phase for F's holdings acquired by will, the substituted combined voting level is still 28 percent, the foundation voting level is 23 percent (8%+15%), the disqualified person voting level is 5 percent (20%−15%), and the permitted holdings are 23 percent (28%−5%).

(iv) If F had not disposed of the 6 percent on July 1, 1978, then on May 26, 1979, at the beginning of the second phase for F's 1969 holdings, F's permitted holdings would have been 25 percent, the lesser of 25 percent (the limitation of section 4943(c)(4)(D)(i)), or 30 percent (50%−20%). Since F's 30 percent interest would no longer have been treated as held by a disqualified person on May 26, 1979, F would have had excess business holdings of 5 percent (30%−25%). Similarly, if F had not disposed of the 16 percent interest on August 1, 1981 (but had disposed of the 6 percent interest), on July 1, 1982, at the beginning of the second phase for F's holdings acquired by will, F's permitted holdings would have been 25 percent, the lesser of 25 percent (under section 4943(c)(4)(D)(i)), or 39 percent (44%−5%). Since as of such date F's entire holdings of 39 percent would no longer have been treated as held by a disqualified person, F would have had excess business holdings of 14 percent (39%−25%).

Date	F owns (percent)	F's interest 1969 (percent)	F's interest 1971 (percent)	Interest treated as held by disqualified person (percent)	Disqualified persons own (percent)	Foundation voting level (percent)	Substituted combined voting level (percent)	Disqualified person voting level (percent)	Permitted holdings (percent)	Comments
May 26, 1969	30	30		30	20	0	50	50	0	
May 1, 1971	+15		+15	+15	−15					B dies.
Do	45	30	15	45	5	0	50	50	0	
June 1, 1972	45	30	15	45	5	0	50	50	0	Distribution.
July 1, 1978	−6	−6		−6			−6	−6		F sells 6 pct.
Do	39	24	15	39	5	0	44	44	0	
May 26, 1979				−24		+24		−24	+24	2d phase for 24 pct.
Do	39	24	15	15	5	24	44	20	24	
Aug. 1, 1981	−16	−16				−16	−16		−16	F sells 16 pct.
Do	23	8	15	15	5	8	28	20	8	
July 1, 1982				−15		+15		−15	+15	All in 2d phase.
Do	23	8	15	0	5	23	28	5	23	

Example (3). (i) On May 26, 1969, F, a private foundation owns 5 percent of the voting stock of O Corporation (voting power and value), and disqualified persons own 45 percent of the voting stock. C, a disqualified person, dies on May 1, 1971, and leaves 41 percent of the voting stock of O to F. Assume that distribution is made on June 1, 1972, and that section 4943(c)(5) applies. On May 26, 1969, the substituted combined voting level and the disqualified person voting level are 50 percent and the permitted holdings are 0 percent (50%−50%). On May 1, 1971, and June 1, 1972, the various levels remain unchanged. On May 1, 1971, the 41 percent interest is treated as held by a disqualified person for a period extending through May 31, 1982. On May 26, 1979, at the beginning of the second phase for F's 1969 holdings of 5 percent, the 5 percent is no longer treated as held by a disqualified person, the foundation voting level is 5 percent, the disqualified person voting level is reduced to 45 percent (50%—5%), and the substituted combined voting level remains at 50 percent. On such date F's permitted holdings are 5 percent (50%−45%). Since the 41 percent interest is treated as held by a disqualified person, the interest treated as held by F (5%) does not exceed the 25 percent limitation of section 4943(c)(4)(D)(i).

(ii) On August 1, 1981, F sells 22 percent of the O stock to a nondisqualified person, thereby reducing the foundation voting level to 0 percent. Since the reductions are first applied to the 1969 holdings of 5 percent, 17 percent (22%−5%) applies to the 41 percent interest, reducing such interest to 24 percent (41%−17%), and reducing the disqualified person voting level to 28 percent (45%−17%). The substituted combined voting level is reduced to 28 percent (0%+28%). On June 1, 1982, at the beginning of the second phase for F's holdings acquired by will, the substituted combined voting level remains at 28 percent, the foundation voting level is 24 percent, the disqualified person voting level is reduced to 4 percent (28%—4%).

(iii) If F had not disposed of the 22 percent interest prior to June 1, 1982, F's permitted holdings would have been 25 percent, the lesser of 25 percent (under section 4943(c)(4)(D)(i)), or 46 percent (50%−4%). Since as of such date, F's entire holdings of 46 percent would no longer have been treated as held by a disqualified person, F would have had excess business holdings of 21 percent (46%−25%).

Date	F owns (percent)	F's interest 1969 (percent)	F's interest 1971 (percent)	Interest treated as held by disqualified person (percent)	Disqualified persons own (percent)	Foundation voting level (percent)	Substituted combined voting level (percent)	Disqualified person voting level (percent)	Permitted holdings (percent)	Comments
May 26, 1969	5	5		5	45	0	50	50	0	
May 1, 1971	+41		+41	+41	−41					C dies.
Do	46	5	41	46	4	0	50	50	0	
June 1, 1972	46	5	41	46	4	0	50	50	0	Distribution
May 26, 1979				−5		+5		−5	+5	2d phase for 5 pct.
Do	46	5	41	41	4	5	50	45	5	
Aug. 1, 1981	−22	−5	−17	−17		−5	−22	−17	−5	F sells 22 pct.
Do	24	0	24	24	4	0	28	28	0	
June 1, 1982				−24		+24		−24	+24	2d phase for 24 pct.
Do	24	0	24	0	4	24	28	4	24	

Example (4). (i) On May 26, 1969, F, a private foundation, owns 30 percent of the voting stock in P Corporation (voting power and value), and disqualified persons own 20 percent. On May 1, 1971, D, a disqualified person, dies leaving 18 percent of the voting stock to F. Assume that distribution was made on June 1, 1972, and that section 4943 (c)(5) applies. On May 26, 1969, the substituted combined voting level and the disqualified person voting level are each 50 percent and the permitted holdings are 0 percent (50% − 50%). On May 1, 1971, and June 1, 1972, these levels remain unchanged. On May 1, 1971, the 18 percent interest is treated as held by a disqualified person for a period extending through May 31, 1982. On May 26, 1979, the foundation voting level increases to 30 percent, the disqualified person voting level decreases to 20 percent (50% − 30%), and the permitted holdings are 30 percent (50% − 20%). On June 1, 1982, the foundation voting level increases to 48 percent, the disqualified person voting level decreases to 2 percent and the permitted holdings are 48 percent (50% − 2%). Since at no time during the second phase for F's 1969 holdings did all disqualified persons together have holdings in excess of 2 percent of the voting stock of P, the 25 percent limitation of section 4943(c)(4)(D)(i) did not apply to F's 1969 holdings.

(ii) On July 1, 1993, F disposes of 16 percent of the stock in P, thereby reducing the substituted combined voting level to 34 percent (50% − 16%), and reducing the permitted holdings to 32 percent (34% − 2%). If F had not disposed of the 16 percent of the stock of P prior to May 26, 1994, on such date, under section 4943(c)(4)(D)(ii), F's substituted combined voting level for its 1969 holdings would have been 35 percent, and the permitted holdings would have been 33 percent (35% − 2%). Since none of F's holdings of 48 percent would have been treated as held by a disqualified person on such date (the beginning of the third phase for F's 1969 holdings), F would have had excess business holdings of 15 percent, the lesser of 30 percent (F's 1969 holdings in the third phase), or 15 percent (the excess of F's 48 percent holdings over the permitted holdings of 33 percent).

Date	F owns (percent)	1969 F's interest (percent)	1971 F's interest (percent)	Interest treated as held by disqualified person (percent)	Disqualified persons own (percent)	Foundation voting level (percent)	Substituted combined voting level (percent)	Disqualified person voting level (percent)	Permitted holdings (percent)	Comments
May 26, 1969	30	30		30	20	0	50	50	0	
May 1, 1971	+18		+18	+18	−18					D dies.
Do	48	30	18	48	2	0	50	50	0	
June 1, 1972	48	30	18	48	2	0	50	50	0	Distribution.
May 26, 1979				−30		+30		−30	+30	2d phase for 30 pct.
Do	48	30	18	18	2	30	50	20	30	
June 1, 1982				−18		+18		−18	+18	2d phase for 18 pct.
Do	48	30	18	0	2	48	50	2	48	
July 1, 1993	−16	−16				−16	−16		−16	F disposes of 16 pct.
Do	32	14	18	0	2	32	34	2	32	
May 26, 1994	32	14	18	0	2	32	34	2	32	3d phase for 14 pct.
June 1, 1997	32	14	18	0	2	32	34	2	32	3d phase for 18 pct.

Example (5). (i) On May 26, 1969, F, a private foundation, owns 5 percent of the voting stock in Q Corporation (voting power and value), and disqualified persons own 45 percent. On May 1, 1971, E, a disqualified person, dies leaving 43 percent of the voting stock to F. Assume that distribution was made on June 1, 1972, and that section 4943(c)(5) applies. On May 26, 1969, the substituted combined voting level and the disqualified person voting level are each 50 percent and the permitted holdings are 0 percent (50% − 50%). On May 1, 1971, and June 1, 1972, these levels remain unchanged. On May 1, 1971, the 43 percent interest is treated as held by a disqualified person for a period extending through May 31, 1982. On May 26, 1979, the foundation voting level increases to 5 percent, the disqualified person voting level decreases to 45 percent, and the permitted holdings are 5 percent (50% − 45%). On June 1, 1982, the foundation voting level increases to 48 percent, the disqualified person voting level decreases to 2 percent, and the permitted holdings are 48 percent (50% − 2%). At no time during the second phase for F's 1969 holdings did all disqualified persons together have holdings in excess of 2 percent of the voting stock of Q. Therefore, the 25 percent limitation of section 4943(c)(4)(D)(i) did not apply.

(ii) On July 1, 1993, F sells 6 percent of the stock in Q to a nondisqualified person. This reduces the substituted combined voting level to 44 percent and reduces the permitted holdings to 42 percent (44% − 2%). If F had not disposed of the 6 percent of the stock in 1993, on May 26, 1994, at the beginning of the third phase for F's 1969 holdings, F would have had 5 percent excess business holdings. The excess business holdings are 5 percent because although the excess business holdings computed for the third phase are 15 percent (the excess of F's actual holdings (48%) over the permitted holdings of 33 percent (35% − 2%)), only 5 percent of the holdings are in this phase and subject to the 35 percent combined holdings limitation.

(iii) On July 1, 1995, F sells 10 percent of the stock in Q, thereby reducing the substituted combined voting level to 34 percent and reducing the permitted holdings to 32 percent (34% − 2%). If F had not disposed of the 10 percent of the stock, on June 1, 1997, at the beginning of the third phase for F's acquired holdings, F would have had 9 percent excess business holdings (the excess of F's total holdings in the third phase (42%) over the permitted holdings of 33 percent (35% − 2%)).

Date	F owns (percent)	F's interest 1969 (percent)	F's interest 1971 (percent)	Interest treated as held by disqualified person (percent)	Disqualified persons own (percent)	Foundation voting level (percent)	Substituted combined voting level (percent)	Disqualified person voting level (percent)	Permitted holdings (percent)	Comments
May 26, 1969	5	5		5	45	0	50	50	0	
May 1, 1971	+43		+43	+43	−43					E dies.
Do	48	5	43	48	2	0	50	50	0	
June 1, 1972	48	5	43	48	2	0	50	50	0	Distribution
May 26, 1979				−5		+5		−5	+5	2d phase for 5 pct.
Do	48	5	43	43	2	5	50	45	5	
June 1, 1982				−43		+43		−43	+43	2d phase for 43 pct.
Do	48	5	43	0	2	48	50	2	48	
July 1, 1993	−6	−5	−1			−6	−6		−6	F sells 6 pct
Do	42	0	42	0	2	42	44	2	42	
July 1, 1995	−10		−10			−10	−10		−10	F sells 10 pct
Do	32	0	32	0	2	32	34	2	32	
June 1, 1997	32	0	32	0	2	32	34	2	32	3d phase for 32 pct.

Example (6). (i) On May 26, 1969, F, a private foundation, owns 30 percent of the voting stock in R Corporation (voting power and value), and disqualified persons own 20 percent. On August 1, 1978, F disposes of 6 percent of the stock to a nondisqualified person. On May 1, 1981, G, a disqualified person, dies leaving 15 percent of the voting stock to F. Assume that distribution was made one June 1, 1982, and that section 4943 (c) (5) applies. On May 26, 1969, the substituted combined voting level and the disqualified person voting level are each 50 percent, and the permitted holdings are 0 percent (50% − 50%). On August 1, 1978, these levels decrease to 44 percent (50% − 6%). On May 26, 1979, the foundation voting level increases to 24 percent (30% − 6%), the disqualified person voting level decreases to 20 percent (44% − 24%), and the permitted holdings are 24 percent (44% − 20%). If F had not disposed of the 6 percent of the stock prior to May 26, 1979, on May 26, 1979, the beginning of the second phase for F's 1969 holdings, F's permitted holdings would have been 25 percent, the lesser of 25 percent (under section 4943(c) (4) (*D*) (i)) or 30 percent (50% − 20%). Since the 30 percent interest would no longer have been treated as held by a disqualified person on such date, F would have had excess business holdings of 5 percent (30% − 25%).

(ii) On May 1, 1981, and June 1, 1982 (assuming F had disposed of the 6 percent holdings), the foundation voting level, the disqualified person voting level, the substituted combined voting level and permitted holdings remain respectively 24 percent, 20 percent, 44 percent and 24 percent. On May 1, 1981, the 15 percent interest is treated as held by a disqualified person for a period extending through May 31, 1992. On July 1, 1991, F sells 16 percent of the voting stock in R to a nondisqualified person, thereby reducing the substituted combined voting level to 28 percent (44% − 16%), and reducing the foundation voting level to 8 percent (24% − 16%). The disqualified person voting level remains at 20 percent. On June 1, 1992, at the beginning of the second phase for F's holdings acquired by will, the substituted combined voting level remains at 28 percent, the foundation voting level increases to 23 percent (8% + 15%) and the disqualified person voting level decreases to 5 percent (20% − 15%). The permitted holdings on such date are 23 percent (28% − 5%). If F had not disposed of the 16 percent interest prior to June 1, 1992, F's permitted holdings would have been 25 percent, the lesser of 25 percent (under section 4943 (c) (4) (D) (i)) or 39 percent (44% − 5%). Since as of such date, F's entire holdings of 39 percent would no longer have been treated as held by a disqualified person, F would have had excess business holdings of 14 percent (39% − 25%).

Date	F owns (percent)	1969 F's interest (percent)	1981 F's interest (percent)	Interest treated as held by disqualified person (percent)	Disqualified persons own (percent)	Foundation voting level (percent)	Substituted combined voting level (percent)	Disqualified person voting level (percent)	Permitted holdings (percent)	Comments
May 26, 1969	30	30		30	20	0	50	50	0	
Aug. 1, 1978	−6	−6		−6			−6	−6		F disposes of 6 pct.
Do	24	24		24	20	0	44	44	0	
May 26, 1979				−24		+24		−24	+24	2d phase for 24 pct
Do	24	24		0	20	24	44	20	24	
May 1, 1981	+15		+15	+15	−15					G dies
Do	39	24	15	15	5	24	44	20	24	
June 1, 1982	39	24	15	15	5	24	44	20	24	Distribution.
July 1, 1991	−16	−16				−16	−16		−16	F disposes of 16 pct.
Do	23	8	15	15	5	8	28	20	8	
June 1, 1992				−15		+15		−15	+15	2d phase for 15 pct
Do	23	8	15	0	5	23	28	5	23	

Example (7). On May 26, 1969, F, a private foundation, owns 5 percent of the voting stock in S Corporation (voting power and value), and disqualified persons own 45 percent. On May 1, 1980, H, a disqualified person, dies leaving 41 percent of the voting stock to F. Assume that distribution is made on June 1, 1981, and that section 4943(c)(5) applies. On May 26, 1969, the substituted combined voting level and disqualified person voting levels are each 50 percent. On May 26, 1979, the disqualified person voting level decreases to 45 percent, the foundation voting level increases to 5 percent, and the permitted holdings are 5 percent (50%−45%). On May 1, 1980, and June 1, 1981, the levels remain the same. Since the 41 percent holdings are treated as held by a disqualified person for the period beginning on May 1, 1980, and extending through May 31, 1991, F's remaining holdings of 5 percent do not exceed the 25 percent limitation of section 4943(c)(4)(D)(1).

(ii) On August 1, 1990, F sells 22 percent of the voting stock of S to a nondisqualified person, reducing the 5 percent foundation voting level to zero, leaving 17 percent (22%−5%) to reduce the disqualified person voting level to 28 percent (45%−17%) so that the substituted combined voting level equals 28 percent (50%−22%). On June 1, 1991, the beginning of the second phase for the remaining 24 percent (41%−17%) of F's holdings acquired by will, the foundation voting level increases from zero to 24 percent, the disqualified person voting level decreases to 4 percent (28%−24%), the substituted combined voting level remains at 28 percent, and the permitted holdings equal 24 percent (28%−4%).

(iii) If F had not disposed of the 22 percent holdings prior to June 1, 1991, F's permitted holdings would have been 25 percent, the lesser of 25 percent (under section 4943(c)(4)(D)(1)) or 46 percent (50%−4%). Since as of such date, F's entire holdings of 46 percent would no longer have been treated as held by a disqualified person, F would have had excess business holdings of 21 percent (46%−25%).

Date	F owns (percent)	1969 F's interest (percent)	1980 F's interest (percent)	Interest treated as held by disqualified person (percent)	Disqualified persons own (percent)	Foundation voting level (percent)	Substituted combined voting level (percent)	Disqualified person voting level (percent)	Permitted holdings (percent)	Comments
May 26, 1969	5	5		5	45	0	50	50	0	
Do				−5		+5		−5	+5	2d phase for 5 pct.
Do	5	5		0	45	5	50	45	5	
May 1, 1980	+41		+41	+41	−41					H dies.
Do	46	5	41	41	4	5	50	45	5	
June 1, 1981	46	5	41	41	4	5	50	45	5	Distribution.
Aug. 1, 1990	−22	−5	−17	−17		−5	−22	−17	−5	F disposes of 22 pct.
Do	24	0	24	24	4	0	28	28	0	
June 1, 1991				−24		+24		−24	+24	2d phase for 24 pct.
Do	24	0	24	0	4	24	28	4	24	

§ 53.4943–6 Five-year period to dispose of gifts, bequests, etc.

(a) *In general*—(1) *Application.* (i) Paragraph (6) of section 4943(c) prescribes transition rules for a private foundation, which, but for such paragraph, would have excess business holdings as a result of a change in the holdings in a business enterprise after May 26, 1969 (other than by purchase by such private foundation or by a disqualified person) to the extent that section 4943(c)(5) (relating to certain holdings acquired under a pre-May 27, 1969, will or trust) does not apply.

(ii) Subparagraph (A) of section 4943(c)(6) applies where, immediately prior to a change in holdings described in paragraph (a)(1)(i) of this section, the foundation has no excess business holdings in such enterprise (determined without regard to section 4943(c)(4), (5), or (6)). In such a case, the entire interest of the foundation in such enterprise (immediately after such change) shall (while held by the foundation) be treated as held by a disqualified person (rather than by the foundation) during the five-year period beginning on the date of such change.

(iii) Subparagraph (B) of section 4943(c)(6) applies where the foundation has excess business holdings in such enterprise (determined without regard to section 4943(c)(4), (5), or (6)) immediately prior to a change in holdings described in paragraph (a)(1)(i) of this section. In such a case, the interest of the foundation in such enterprise (immediately after such change) shall (while held by the foundation) be treated as held by a disqualified person (rather than the foundation) during the five-year period beginning on the date of such change, except that if and as soon as any holdings in such enterprise become excess business holdings during such period (determined without regard to such change (and the resulting application of section 4943(c)(6) to the foundation's interest in such enterprise)), such holdings shall no longer be treated as held by a disqualified person under this section, but shall constitute excess business holdings subject to the initial tax. In applying the preceding sentence, if holdings of the foundation which (but for such change in holdings (and the resulting application of section 4943(c)(6) to the foundation's interest in such enterprise)) would be subject to the 25 percent limit prescribed by section 4943(c)(4)(D) after the expiration of the first phase, such holdings shall be treated as subject to such percentage limitation for purposes of determining excess business holdings. For example, if a private foundation in 1978 has present holdings of 28 percent in a business enterprise to which section 4943(c)(4) applies, and such holdings would exceed the 25 percent limit of section 4943(c)(4)(D)(i) on May 26, 1979, a gift of 5 percent to the foundation in 1978 of an interest in such enterprise shall not prevent the 3 percent (28%−25%) excess over the 25 percent limit from constituting excess business holdings on May 26, 1979, if on such date disqualified persons hold more than a 2 percent interest in such enterprise (and no other transaction has taken place).

(2) *"Purchase" defined.* [Reserved]

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

Example (1). On January 4, 1985, A, an individual, makes a contribution to F, a private foundation, of 200 shares of X Corporation common stock. Assume that F had no X stock before January 4, 1985, and under section 4943(c)(1) the receipt of the X stock by F would cause some or all of the 200 shares of the X stock to be classified as excess business holdings. Under the provisions of section 4943(c)(6)(A) and this paragraph (a), since the contribution of the X stock to F is a gift and not a purchase, the X stock in F's hands is treated as held by disqualified persons and not by F through January 3, 1990.

Example (2). Assume the facts as stated in Example (1) except that F receives the X stock as a bequest pursuant to the terms of A's will executed on April 1, 1980. A dies on June 3, 1984, and the stock is distributed to F on February 16, 1985. As in Example (1), the bequest of X to F is not a purchase under this paragraph (a). Consequently, the X stock in F's hands is treated as held by disqualified persons and not by F through February 15, 1990.

Example (3). On February 1, 1980, F, a private foundation, owns 15 percent of the voting stock of X Corporation, and disqualified persons own 4 percent of the voting stock of X Corporation. On February 2, 1980, B, a nondisqualified person, contributes 8 percent of the voting stock of X to F in a transaction to which section 4943(c)(5) does not apply. Assuming that the 35 percent limit of section 4943(c)(2)(B) does not apply, under the provisions of section 4943(c)(6)(A) and paragraph (a) of this section the 23 percent voting stock owned by F on such date is treated as held by a disqualified person through February 1, 1985, since F would have had excess business holdings of 7 percent as a result of the contribution (23% actual holdings less 16% (20%−4%) permitted holdings). On March 1, 1984, C, another nondisqualified person, contributes 6 percent of the voting stock of X Corporation to F. But for this second contribution and the resulting application of section 4943(c)(6) to F's interest in X, F would have excess business holdings of 7 percent (23%−16%) within the five-year period beginning on the date of such contribution. Accordingly, under section 4943(c)(6)(B) and paragraph (a) of this section, all 29 percent (6%+23%) of the stock held by F on March 1, 1984, will be treated as held by a disqualified person until March 1, 1989, except that 7 percent will cease to be so treated on February 2, 1985. If prior to February 2, 1985, no further transactions occurred in the stock of X, F would have excess business holdings of 7 percent subject to the initial tax, since the amount still treated as held by disqualified persons (29%−7%) plus the amount actually held by disqualified persons (4%) already exceed 20 percent.

(b) *Special rules for acquisitions by will or trust*—(1) *In general.* In the case of an acquisition of holdings in a business enterprise by a private foundation pursuant to the terms of a will or trust, the five-year period described in section 4943(c)(6) in this section shall not commence until the date on which the distribution of such holdings from the estate or trust to the foundation occurs. See § 53.4943-5(b)(1) for rules relating to the determination of the date of distribution under the terms of a will or trust. To the extent that an interest to which 4943(c)(6) applies is constructively held by a private foundation under section 4943(d)(1) and § 53.4943-8 prior to the date of distribution, it shall be treated as held by a disqualified person prior to such date by reason of section 4943(c)(6). See § 53.4943-8 for rules relating to constructive ownership by a private foundation of business holdings held in an estate or trust for the benefit of the foundation.

(2) *Special rule for section 4943(c)(5) interests acquired from a nondisqualified person.* (i) In the case of holdings of a private foundation in a business enterprise to which section 4943(c)(5) (relating to certain holdings acquired under a pre-May 27, 1969, will or trust) applies which are acquired from a nondisqualified person, the interest of the foundation in such enterprise (immediately after such acquisition) shall (while held by the foundation) be treated as held by a disqualified person (rather than the foundation) under section 4943(c)(6)(B) and paragraph (a)(1)(iii) of this section from the date of acquisition until the end of the fifth year following the date of distribution of such holdings. Thereafter, only the holdings to which section 4943(c)(5) and § 53.4943-5(a)(1) apply shall continue to be treated as held by a disqualified person until the end of the first phase with respect thereto.

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

Example (1). On May 26, 1969, F, a private foundation, owns 5 percent of the voting stock of Corporation X and no disqualified persons own any stock in X. On June 30, 1977, a nondisqualified person bequeaths to F 33 percent of the voting stock in X to which section 4943(c)(5) applies. This 33 percent interest is distributed to F on August 17, 1978. Under section 4943(c)(6)(A) the entire 38 percent (5%+33%) of the X voting stock shall be treated as held by a disqualified person from June 30, 1977 (the date the 33 percent interest is constructively acquired by F) until August 17, 1983 (five years after the date of distribution of the 33 percent interest to F). However, assuming that the 35 percent limit of section 4943(c)(2)(B) does not apply, the substituted combined voting level on June 30, 1977 is only 33 percent because there was no interest to which section 4943(c) (4) or (5) applied immediately before that date and thus there was no substituted combined voting level at that time. In that case, since the 3-phase holding period is only available for the interest acquired by will (33%) under section 4943(c)(5), the substituted combined voting level on June 30, 1977 is only 33 percent, not 38 percent. Assuming that the substituted combined voting level remains 33 percent at all relevant times, and prior to August 17, 1983, no further transactions occur in the stock of X, F on that date would have excess business holdings of 5 percent subject to the initial tax. The amount treated as held by disqualified persons at that time (33%) would equal the substituted combined voting level at that time (33%), and thus permitted holdings would be zero. Under section 4943(c)(5) the 33 percent interest will continue to be treated as held by a disqualified person until August 17, 1988 (10 years after the date of distribution).

Example (2). On May 26, 1969, F, a private foundation, owns 29 percent of the stock (voting power and value) of Corporation X, and on June 30, 1977, a nondisqualified person bequeaths to F 23 percent of the stock (voting power and value) in X to which section 4943(c)(5) does apply. This 23 percent interest is distributed to F on August 17, 1978. Disqualified persons hold no stock of X. Although the substituted combined voting and value levels cannot exceed 50 percent on May 26, 1979 (at the start of the second phase with respect to the 29 percent interest), under section 4943(c)(6)(B) the entire 52 percent (29%+23%) of the X voting stock shall be treated as held by a disqualified person from June 30, 1977 (the date the 23% interest is constructively acquired by F) until August 17, 1983 (five years after the date of distribution of the 23% interest to F). On June 1, 1980, during such second phase, D, a disqualified person, purchases 3 percent of the X stock (voting power and value). On such date, but for the acquisition by F of the 23 percent interest, F would have had excess business holdings of 4 percent. The purchase by D of more than 2 percent of the voting stock of X causes the 25 percent limit of section 4943(c)(4)(D)(i) to apply to the 29 percent interest (29%−25%=4%). Thus, on June 1, 1980, 4 percent of the X voting stock held by F since May 27, 1969, shall cease to be treated as held by a disqualified person under section 4943(c)(6)(B) and become excess business holdings subject to the initial tax. See § 53.4943-2(a)(1)(ii) for the 90-day period in which to dispose of these excess business holdings resulting from the purchase by the disqualified person.

(c) *Exceptions.* (1) Section 4943(c)(6) and this section shall not apply to any transfer of holdings in a business enterprise by one private foundation to another private foundation which is related to the first foundation within the meaning of section 4946(a)(1)(H).

(2) Section 4943(c)(6) and this section shall not apply to an increase in the holdings of a private foundation in a business enterprise that is part of a plan whereby disqualified persons will purchase additional holdings in the same enterprise during the five-year period beginning on the date of such change, e.g., to maintain control of such enterprise, since such increase shall be treated as caused in part by the purchase of such additional holdings.

(3) The purchase of holdings by an entity whose holdings are treated as constructively owned by a foundation or a disqualified person under section 4943(d)(1) shall be treated as purchased by such foundation or disqualified person. Thus, if a foundation receives a specific bequest of 40 percent of the voting stock of a corporation and $20,000 in cash, and the estate uses the cash to purchase additional voting stock of the same corporation, the provisions of this section shall only apply to the 40 percent originally held by the estate, and the additional stock will be treated as if purchased by the foundation.

§ 53.4943-7 Special rules for corporate organizations, reorganizations, redemptions, and distributions. [Reserved]

§ 53.4943-8 Business holdings; constructive ownership.

(a) *Constructive ownership*—(1) *In general.* For purposes of section 4943, in computing the holdings in a business enterprise of a private foundation, or a disqualified person (as defined in section 4946), any stock or other interest owned, directly or indirectly, by or for a corporation, partnership, estate or trust shall be considered as being owned proportionately by or for its shareholders, partners, or beneficiaries except as otherwise provided in paragraphs (b), (c) and (d) of this section. Any interest in a business enterprise actually or constructively owned by a shareholder of a corporation, a partner of a partnership, or a beneficiary of an estate or trust shall not be considered as constructively held by the corporation, partnership, trust or estate. Further, if any corporation, partnership, estate or trust has a warrant or other option to acquire an interest in a business enterprise, such interest is not deemed to be constructively owned by such entity until the option is exercised. (See paragraph (b)(2) of §53.4943-3 for rules that options are not stock for purposes of determining excess business holdings.)

(2) *Powers of appointment.* Any interest in business enterprise over which a foundation or a disqualified person has a power of appointment exercisable in favor of the foundation or a disqualified person shall be considered owned by the foundation, or disqualified person holding such power of appointment.

(b) *Estates and trusts*—(1) *In general.* Any interest actually or constructively owned by an estate or trust is deemed constructively owned, in the case of an estate, by its beneficiaries or, in the case of a trust, by its remainder beneficiaries except as provided in paragraphs (b)(2), (3) and (4) of this section (relating to certain split-interest trusts described in section 4947(a)(2), to trusts of qualified pension, profit-sharing, and stock bonus plans described in section 401(a) and to revocable trusts). Thus, if a trust owns 100 percent of the stock of a corporation A, and if, on an actuarial basis, W's life interest in the trust is 15 percent, Y's life interest is 25 percent, and Z's remainder interest is 60 percent, under this paragraph (b), Z will be considered to be the owner of 100 percent of the stock of corporation A. See § 53.4943-4, § 53.4943-5 and § 53.4943-6 for rules relating to certain actual or constructive holdings of a foundation being treated as held by a disqualified person. For the treatment of certain property acquired by an estate or trust after May 26, 1969, see paragraph (a)(2) of § 53.4943-5.

(2) *Split-interest trusts*—(i) *Amounts transferred in trust after May 26, 1969.* In the case of an interest in a business enterprise which was transferred to a trust described in section 4947(a)(2) af-

ter May 26, 1969, for the benefit of a private foundation, no portion of such interest shall be considered as owned by the private foundation—

(A) If the foundation holds only an income interest in the trust, or

(B) If the foundation holds only a remainder interest in the trust (unless the foundation can exercise primary investment discretion with respect to such interest)

until such trust ceases to be so described. See section 4947(a)(2) and (b)(3) and the regulations thereunder for rules relating to such trusts. See also sections 4946(a)(1)(G) and (H) and the regulations thereunder for rules relating to when a trust described in this paragraph (b)(2) is itself a disqualified person.

(ii) *Amounts transferred in trust on or before May 26, 1969.* In the case of an interest in a business enterprise which was transferred to a trust described in section 4947(a)(2) (without regard to section 4947(a)(2)(C)) on or before May 26, 1969, for the benefit of a private foundation, no portion of such interest shall be considered as owned by the foundation until it is actually distributed to the foundation or until the trust ceases to be so described. See section 4943(c)(5) and § 53.4943-5 for rules relating to certain trusts which were irrevocable on May 26, 1969.

(3) *Employee benefit trusts.* An interest in a business enterprise owned by a trust described in section 401(a) (pension and profit-sharing plans) shall not be considered as owned by its beneficiaries, unless disqualified persons (within the meaning of section 4946) control the investment of the trust assets.

(4) *Revocable trusts.* An interest in a business enterprise owned by a revocable trust shall be treated as owned by the grantor of such trust.

(5) *Estates.* For purposes of applying section 4943(d)(1) to estates, the term "beneficiary" includes any person (including a private foundation) entitled to receive property of a decedent pursuant to a will or pursuant to laws of descent and distribution. However, a person shall no longer be considered a beneficiary of an estate when all the property to which he is entitled has been received by him, when he no longer has a claim against the estate and when there is only a remote possibility that it will be necessary for the estate to seek the return of property or to seek payment from him by contribution or otherwise to satisfy claims against the estate or expenses of administration. When pursuant to the preceding sentence, a person (including a private foundation) ceases to be a beneficiary, stock or another interest in a business enterprise owned by the estate shall not thereafter be considered owned by such person. If any person is the constructive owner of an interest in a business enterprise actually held by an estate, the date of death of the testator or decedent intestate shall be the first day on which such person shall be considered a constructive owner of such interest. See § 53.4943-5 for rules relating to wills executed on or before May 26, 1969.

(c) *Corporation actively engaged in a trade or business.* [Reserved]

(d) *Partnerships.* [Reserved]

(e) *Examples.* [Reserved]

§ 53.4943-9 Business holdings; certain periods.

(a) *Taxable period*—(1) *In general.* For purposes of section 4943, the term "taxable period" means, with respect to any excess business holdings of a private foundation in a business enterprise, the period beginning with the first day on which there are such excess business holdings and ending on whichever of the following is the earlier:

(i) The date of mailing of a notice of deficiency under section 6212 with respect to the tax imposed on such holdings by section 4943(a); or

(ii) The date on which such excess is eliminated.

For example, M, a private foundation, first has excess business holdings in X, a corporation, on February 5, 1972. A notice of deficiency is mailed under section 6212 to M on June 1, 1974. With respect to M's excess business holdings in X, the taxable period begins on February 5, 1972, and ends on June 1, 1974.

(2) *Special rule.* Where a notice of deficiency referred to in subparagraph (1)(i) of this paragraph is not mailed because there is a waiver of the restrictions on assessment and collection of a deficiency, or because the deficiency is paid, the date of filing of the waiver or the date of such payment, respectively, shall be treated as the end of the taxable period.

(3) *Suspension of taxable period for 90 days.* In any case in which a private foundation has excess business holdings solely because of the acquisition of an interest in a business enterprise to which paragraph (a)(1) (ii) or (iii) of § 53.4943-2 applies, the taxable period described in paragraph (a) of this section shall be suspended for the 90-day period (as extended) starting with the date on which the foundation knows or has reason to know of the acquisition, provided that at the end of such period the foundation has disposed of such excess holdings.

(b) *Correction period*—(1) *In general.* For purposes of section 4943, the correction period shall begin with the first day on which the private foundation has excess business holdings in a business enterprise and end 90 days after the date of mailing of a notice of deficiency under section 6212 with respect to the tax imposed by section 4943(b).

(2) *Extensions of correction period.* (i) The correction period referred to in subparagraph (1) of this paragraph shall be extended by any period in which a deficiency cannot be assessed under section 6213(a). In addition, the correction period shall be extended in accordance with subdivisions (ii), (iii), and (iv) of this subparagraph, except that such subdivision (iii) or (iv) shall not operate to extend a correction period with respect to which a taxpayer has filed a petition with the Tax Court for redetermination of a deficiency within the time prescribed by section 6213(a).

(ii) The correction period referred to in subparagraph (1) of this paragraph may be extended by any period which the Commissioner determines is reasonable and necessary to permit orderly disposition of excess business holdings. The Commissioner ordinarily will not extend the correction period pursuant to this subdivision unless the following factors are present:

(*a*) The foundation or an appropriate State officer (as defined in section 6104(c)(2)) is actively in good faith seeking to dispose of such holdings;

(*b*) Orderly disposition of such holdings cannot reasonably be expected to result during the unextended correction period; and

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

(iii) If, within the unextended correction period, the tax imposed by section 4943(a) is paid and is accompanied by a statement of the taxpayer's intent to file a claim for refund with respect to such tax, then the Commissioner shall extend the correction period to the later of—

(*a*) A period of 90 days after the payment of such tax, or

(*b*) The period determined without regard to this subdivision.

(iv) If prior to the expiration of the correction period (including extensions) a claim for refund with respect to a tax imposed by section 4943(a) is filed, the Commissioner shall extend the correction period during the pendency of the claim plus an additional 90 days. If within such time, a suit or proceeding referred to in section 7422(b) with respect to such claim is filed, the Commissioner shall extend the correction period during the pendency of such suit or proceeding. (See § 301.7422-1(d) of this chapter (Regulations on Procedure and Administration) for rules relating to pendency of such suit or proceeding.)

(c) *Correction.* For purposes of section 4943, correction shall be considered as made when no interest in the enterprise held by the foundation is classified as an excess business holding under section 4943(c)(1). In any case where the private foundation has excess business holdings which are constructively held for it under section 4943(c)(1), correction shall be considered made when either a corporation, partnership, estate, or trust in which holdings in such enterprise are constructively held for the foundation or a disqualified person; the foundation itself; or a disqualified person disposes of a sufficient interest in the enterprise so that no interest in the enterprise held by the foundation is classified as excess business holdings under section 4943(c)(1).

§ 53.4943-10 Business enterprise; definition.

(a) *In general.* (1) Except as provided in paragraph (b) or (c) of this section, under section 4943(d)(4) the term "business enterprise" includes the active conduct of a trade or business, including any activity which is regularly carried on for the production of income from the sale of goods or the performance of services and which constitutes an unrelated trade or business under section 513. For purposes of the preceding sentence, where an activity carried on for profit constitutes an unrelated trade or business, no part of such trade or business shall be excluded from the classification of a business enterprise merely because it does not result in a profit.

(2) Notwithstanding paragraph (a) (1) of this section, a bond or other evidence of indebtedness does not constitute a holding in a business enterprise unless such bond or evidence of indebtedness is otherwise determined to be an equitable interest in such enterprise. Similarly, a lease-hold interest in real property does not constitute an interest in a business enterprise, even though rent payable under such lease is dependent, in whole or in part, upon the income or profits derived by another from such property, unless such leasehold interest constitutes an interest in the income or profits of an unrelated trade or business under section 513.

(b) *Certain program-related activities.* For purposes of section 4943(d)(4) the term "business enterprise" does not include a functionally related business as defined in section 4942(j)(5). See § 53.4942(a)-2(c)(3)(iii). In addition, business holdings do not include program-related investments (such as investments in small businesses in central cities or in corporations to assist in neighborhood renovation) as defined in section 4944(c) and the regulations thereunder.

(c) *Income derived from passive sources*—(1) *In general.* For purposes of section 4943(d)(4), the term "business enterprise" does not include a trade or business at least 95 percent of the gross income of which is derived from passive sources; except that if in the taxable year in question less than 95 percent of the income of a trade or business is from passive sources, the foundation may, in applying this 95 percent test, substitute for the passive source gross income in such taxable year the average gross income from passive sources for the 10 taxable years immediately preceding the taxable year in question (or for such shorter period as the entity has been in existence). Thus, stock in a passive holding company is not to be considered a holding in a business enterprise even if the company is controlled by the foundation. Instead, the foundation is treated as owning its proportionate share of any interests in a business enterprise held by such company under section 4943(d)(1).

(2) *Gross income from passive sources.* Gross income from passive sources, for purposes of this paragraph, includes the items excluded by section 512(b)(1) (relating to dividends, interest, and annuities), 512(b)(2) relating to royalties), 512(b)(3) (relating to rent) and 512(b)(5) (relating to gains or losses from the disposition of certain property). Any income classified as passive under this paragraph does not lose its character merely because section 512(b)(4) or 514 (relating to unrelated debt-financed income) applies to such income. In addition, income from passive sources includes income from the sale of goods (including charges or costs passed on at cost to purchasers of such goods or income received in settlement of a dispute concerning or in lieu of the exercise of the right to sell such goods) if the seller does not manufacture, produce, physically receive or deliver, negotiate sales of, or maintain inventories in such goods. Thus, for example, where a corporation purchases a product under a contract with the manufacturer, resells it under contract at a uniform markup in price, and does not physically handle the product, the income derived from that markup meets the definition of passive income for purposes of this paragraph. On the other hand, income from individually negotiated sales, such as those made by a broker, would not meet such definition even if the broker did not physically handle the goods.

(d) *Application of section 4943(c)(6)*—(1) *Program related activities.* If a private foundation holds an interest which is not an interest in a business enterprise because of paragraph (b) of this section (relating to program related activities), and such interest later becomes an interest in a business enterprise solely by reason of failing to meet the requirements of such paragraph (b), such interest will then be subject to section 4943(c)(6) (regardless of when it was originally acquired) and will be treated as having been acquired other than by purchase for purposes of section 4943(c)(6).

(2) *Holding companies.* [Reserved]

(e) *Sole proprietorship.* For purposes of section 4943 and the regulations thereunder, the term "sole proprietorship" means any business enterprise (as defined in paragraphs (a), (b), and (c) of this section—

(1) Which is actually and directly owned by a private foundation,

(2) In which the foundation has a 100 percent equity interest, and

(3) Which is not held by a corporation, trust, or other business entity for such foundation.

A foundation may be considered to own a sole proprietorship even though the foundation is itself a corporation or a trust. However, a sole proprietorship which is owned by a foundation shall cease to be treated as a sole proprietorship when the foundation no longer has a 100-percent interest in the equity of the business enterprise. Thus, if and when a foundation sells a 10-percent interest in a sole proprietorship, such business enterprise shall be treated as a partnership under section 4943 and the regulations thereunder.

§ 53.4943–11 Effective date.

(a) *In general.* Section 4943 and §§ 53.4943–1 through 53.4943–11 shall take effect for taxable years beginning after December 31, 1969, except as otherwise provided by such sections.

(b) *Special transitional rule.* In the case of any acquisition of excess holdings prior to February 2, 1973, section 4943(a)(1) shall not apply if correction occurs (within the meaning of paragraph (c) of § 53.4943–9) within a period ending 90 days after July 5, 1977 extended (prior to the expiration of the original period) by any period which the Commissioner determines is reasonable and necessary (within the meaning of paragraph (b) of § 53.4943–9) to bring about such correction.

[FR Doc.77–26856 Filed 9–14–77;8:45 am]

Title 33—Navigation and Navigable Waters

CHAPTER 1—COAST GUARD, DEPARTMENT OF TRANSPORTATION

[CGD 76–139a]

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Dodge Island, Fla.

AGENCY: Coast Guard, DOT.

ACTION: Correction.

SUMMARY: In FR Doc. 77–16705 appearing at page 30178 of the June 13, 1977, issue of the FEDERAL REGISTER, the heading of § 117.446f is corrected by adding the words, "AIWW mile 1089.4, Miami, Florida", after the words, "Dodge Island bridges".

FOR FURTHER INFORMATION CONTACT:

Frank L. Teuton, Jr., Chief, Drawbridge Regulations Branch (G–WBR/73), Room 7300, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590 (202–426–0942).

(Sec. 5, 28 Stat. 362, as amended, sec. 6(g)(2), 80 Stat. 937; 33 U.S.C. 499, 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5))

Dated: September 1, 1977.

O. W. SILER,
Admiral, U.S. Coast Guard, Commandant.

[FR Doc.77–26515 Filed 9–14–77;8:45 am]

Title 36—Parks, Forests, and Public Property

CHAPTER I—NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR

PART 17—CONVEYANCE OF FREEHOLD AND LEASEHOLD INTERESTS ON LANDS OF THE NATIONAL PARK SYSTEM

AGENCY: National Park Service.

ACTION: Final rule.

SUMMARY: This is to establish regulations governing the criteria for conveyance of freehold or leasehold interests in lands within units of the National Park System to private parties and the procedures under which such conveyances would be made.

EFFECTIVE DATE: September 15, 1977.

FOR FURTHER INFORMATION CONTACT:

C. Allen Harpine (202–523–5252).

SUPPLEMENTARY INFORMATION: On January 4, 1977 there was published in the FEDERAL REGISTER (42 FR 814-815) a notice of proposed rulemaking setting forth the proposed regulations. Interested parties were given the opportunity to submit written comments, suggestions, or objections, on or before February 3, 1977. This date was later extended to April 3, 1977.

As a result of comments received there has been an addition in §§ 17.3 and 17.8 to assure that no conveyance is made without first complying with the requirements of Executive Order 11593, Section 2(b), and assuring that such land is surveyed for National Register properties and appropriate action taken.

Therefore, title 36 of the Code of Federal Regulations, Chapter I is amended by adding a new Part 17 to read as set forth below.

WILLIAM J. WHALEN,
Director, National Park Service.

SEPTEMBER 2, 1977.

AUTHORITY: Sec. 5(a), of the Act of July 15, 1968, 82 Stat. 354, 16 U.S.C. 4601-22(a).

§ 17.1 **Authority.**

Section 5(a) of the Act of July 15, 1968, 82 Stat. 354, 16 U.S.C. 4601-22(a), authorizes the Secretary of the Interior, under specified conditions, to convey a leasehold or freehold interest on Federally owned real property acquired by the Secretary from non-federal sources within any unit of the National Park System except national parks and those national monuments of scientific significance. This legislation is referred to as "the act" in regulations in this part.

§ 17.2 **Definitions.**

As used in the regulations in this part:

(a) "Secretary" shall mean Secretary of the Interior and his authorized representatives.

(b) "Authorized officer" shall mean an officer or employee of the National Park Service designated to conduct the sale or lease and delegated authority to execute all necessary documents, including deeds and leases.

(c) The term "unit" of the National Park System means any area of land or water administered by the Secretary of the Interior through the National Park Service for park, monument, historic, parkway, recreational, or other purposes.

(d) The term "national park" means any unit of the National Park System the organic act of which declares it to be a "national park."

(e) The term "national monument of scientific significance" means a unit of the National Park System designated as a national monument by statute or proclamation for the purpose of preserving landmarks, structures, or objects of scientific interest.

(f) The term "person" includes but is not necessarily limited to an individual, partnership, corporation, or association.

(g) The term "freehold interest" means an estate in real property of permanent or of indefinite duration.

(h) The term "leasehold interest" means an estate in real property for a fixed term of years or an estate from month-to-month or from year-to-year.

(i) The term "fair market value" means the appraised value as set forth in an approved appraisal made for the Secretary for the interest to be sold or leased.

§ 17.3 **Lands subject to disposition.**

The Act is applicable to any Federally owned real property acquired by the Secretary fron non-federal sources within any unit of the National Park System other than national parks and those national monuments of scientific significance. No leasehold or freehold conveyance shall be made except as to lands which the General Management Plan for the particular unit of the National Park System has designated as a Special Use Zone for the uses that are permitted by the freehold or leasehold conveyance. No leasehold or freehold conveyance shall be made unless the lands have been surveyed for natural, historical, and cultural values and a determination made by the Secretary that such leasehold or freehold conveyance will not be inconsistent with any natural, historical, or cultural values found on the land.

§ 17.4 **Notice.**

(a) When the Secretary has determined in accordance with these regulations that a freehold or leasehold interest will be offered, he will have a notice published in the FEDERAL REGISTER and, subsequently, once weekly for five consecutive weeks in a newspaper of general circulation in the vicinity of the property. Publication of the notice shall be completed not less than 30 nor more than 120 days of the date for bid opening. The notice shall contain, at a minimum, (1) a legal description of the land by public lands subdivisions, metes-and-bounds, or other suitable method, (2) a statement of the interest to be conveyed, including restrictions to be placed on the use of the property, (3) a statement of the fair market value of the interest as determined by the Secretary below which the interest will not be conveyed, together with information as to where the Government's appraisal may be inspected, (4) information as to any preference rights of former owners to acquire the interest upon matching the highest bid, (5) an outline of bid procedure and a designation of the time and place for submitting bids, and (6) an outline of conveyance procedures, requirements, and time schedule.

(b) If the property has been in Federal ownership for less than two years, the last owner or owners of record shall be sent a notice by certified mail to their present or last known address providing the information in the published notice and advising them of their right under section 5(a) of the act to acquire the interest upon payment or agreement to pay an amount equal to the highest bid price.

§ 17.5 **Bids.**

Bids may be made by the principal or his agent, either personally or by mail. Bids will be considered only if received at the place and prior to the hour fixed in the notice. No particular form is specified for bids. However, a bid must be in writing, clearly identify the bidder, be signed by the bidder or his designated agent, state the amount of the bid, and refer to the notice. Bids conditioned in ways not provided for by the notice will not be considered. Bids must be accompanied by certified checks, post office money orders, bank drafts, or cashier's checks made payable to the United States of America for the amount of the bid in case of a freehold interest or for the amount of the first year's rent in the case of leasehold interest. This payment will be refunded to unsuccessful bidders. A separate nonrefundable payment of $100 to cover costs of publication and of processing of bids will also be included with the bid. The bid and payments must be enclosed in a sealed envelope upon which the prospective bidder shall write (a) bid on interest in land of the National Park System, and (b) the scheduled date the bids are to be opened. In the event two or more valid bids are received in the same amount, the determination of which is the highest will be by drawing. Bids will be opened at the time and place specified in the notice. Bidders, their agents or representatives, and any other persons may attend the bid opening. No bid in an amount less than the fair market value, as herein defined, shall be considered.

§ 17.6 **Action at close of bidding.**

The person who is declared by the authorized officer to be the high bidder shall be bound by his bid and the regulations in this part to complete the purchase in accordance therewith unless his bid is rejected or he is released therefrom by the authorized officer. The declared high bid on property for which a preference right exists will be conditionally accepted subject to the exercise of the preference as described below.

§ 17.7 **Preference rights.**

On any property which has been in Federal ownership less than two years, the Secretary, in addition to the notice specified in § 17.4, shall inform the last owner or owners of record by certified mail at their present or last known address of the highest bid on the interest and advise them of their right to acquire the interest for an amount equal to the highest bid if within 30 days they notify the Secretary of their desire to do so and make payment or agree to make payment of an amount equal to that specified in § 17.5.

If within 30 days of mailing of such notification, the former owner or owners do not indicate a desire to acquire the interest and make payment or agree to make payment for such interest in an amount equal to the declared high bid, or, if they do indicate such a desire but fail to consummate the transaction within the time period established for the conveyance, then the bid of the declared high bidder will be accepted. In the event that a former owner who indicates a desire to repurchase pursuant to this procedure fails to consummate the transaction within the established time period the declared high bidder shall be permitted, but not required, to consummate the transaction. If the declared high bidder does not choose to consummate the transaction in this circumstance, the entire transaction will be cancelled, and, if appropriate, a new bidding procedure instituted.

§ 17.8 Conveyance.

Conveyance of a leasehold or freehold interest shall be by lease or deed, as appropriate, at the highest bid price, but not less than fair market value. All conveyance of leasehold or freehold interests shall contain such terms and conditions as the Secretary deems necessary to assure use of the property in a manner consistent with the purpose for which the area was authorized by Congress. The conveyancing or leasing document shall contain such provisions and restrictions as may be determined by the Secretary to be necessary to protect the natural, historic, cultural or other values present on the lands. All conveyances shall be without warranty.

[FR Doc.77-26775 Filed 9-14-77;8:45 am]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

[FRL 790-4]

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

Delegation of Authority to State of Wyoming

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This rule will change the address to which reports and applications must be sent by owners and operators of new and modified sources in the State of Wyoming. The address change is the result of delegation of authority to the State of Wyoming for New Source Performance Standards (40 CFR Part 60).

ADDRESS: Any questions or comments should be sent to Director, Enforcement Division, Environmental Protection Agency, 1860 Lincoln Street, Denver, Colo. 80295.

FOR FURTHER INFORMATION CONTACT:

Mr. Irwin L. Dickstein, 303-837-3868.

SUPPLEMENTARY INFORMATION: The amendments below institute certain address changes for reports and applications required from operators of new and modified sources. EPA has delegated to the State of Wyoming authority to review new and modified sources. The delegated authority includes the review under 40 CFR Part 60 for the standards of performance for new stationary sources.

A notice announcing the delegation of authority is published today in the FEDERAL REGISTER (Notices Section). The amendments now provide that all reports, requests, applications, submittals, and communications previously required for the delegated reviews will now be sent to the Air Quality Division of the Wyoming Department of Environmental Quality instead of EPA's Region VIII.

The Regional Administrator finds good cause for foregoing prior public notice and for making this rulemaking effective immediately in that it is an administrative change and not one of substantive content. No additional substantive burdens are imposed on the parties affected. The delegation which is reflected by this administrative amendment was effective on August 2, 1977, and it serves no purpose to delay the technical change of this addition of the State address to the Code of Federal Regulations.

(Sec. 111, Clean Air Act, as amended (42 U.S.C. 1857, 1857c-5, 6, 7, 1857g).

Dated: August 25, 1977.

JOHN A. GREEN,
Regional Administrator.

Part 60 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

1. In § 60.4 paragraph (b) is amended by revising subparagraph (ZZ) to read as follows:

§ 60.4 Address.

* * * * *

(b) * * *

(ZZ) State of Wyoming, Air Quality Division of the Department of Environmental Quality, Hathaway Building, Cheyenne, Wyo. 82002.

* * * * *

[FR Doc.77-26905 Filed 9-14-77;8:45 am]

SUBCHAPTER E—PESTICIDE PROGRAMS

[OPP-260023A; FRL 790-6]

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Naled

AGENCY: Office of Pesticide Programs, Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule (1) corrects an error in the naled regulation, (2) updates the regulation, and (3) editorially revises the format. The amendment was proposed by the Agency. This rule will provide the public with more accurate information in an easier to read style.

EFFECTIVE DATE: September 15, 1977.

FOR FURTHER INFORMATION, CONTACT:

Mr. Edward Gross, Federal Register Section, Technical Services Division (WH-569), Office of Pesticide Programs, EPA, 401 M Street SW., Washington, D.C. (202-755-4854).

SUPPLEMENTARY INFORMATION: On July 8, 1977, the EPA published a notice of proposed rulemaking in the FEDERAL REGISTER (42 FR 35172) proposing that (1) section 180.215 be reformatted, (2) section 180.319 be amended to delete all interim tolerances for naled and (3) section 180.215 be amended to update and clarify the tolerances and to eliminate a contradiction in the tolerances. No comments or requests for referral to an advisory committee were received in response to this notice of proposed rulemaking.

It has been concluded, therefore, that the proposed amendments to 46 CFR 180.215 and 180.319 should be adopted without change, and it has been determined that these regulations will protect the public health.

Any person adversely affected by these regulations may, on or before October 17, 1977, file written objections with the Hearing Clerk, EPA, Room 1019, East Tower, 401 M St. SW., Washington D.C. 20460. Such objections should be submitted in quintuplicate and should specify both the provisions of the regulations deemed to be 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.

Effective September 15, 1977, Part 180, Subpart C, §§ 180.215 and 180.319 are amended as set forth below.

(Section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)).)

Dated: September 8, 1977.

EDWIN L. JOHNSON,
Deputy Assistant Administrator for Pesticide Programs.

Section 180.215 is amended by revising the entire section to read as follows:

§ 180.215 Naled; tolerances for residues.

Tolerances are established for residues of the insecticide naled (1,2-dibromo-2, 2-dichloroethyl dimethyl phosphate) and its conversion product 2,2-dichlorovinyl dimethyl phosphate, expressed as naled, resulting from the application of the pesticide to growing crops or from direct application to livestock and poultry, in or on the following raw agricultural commodities:

Commodity:	*Parts per million*
Almonds (hulls)	0.5
Almonds (nuts)	0.5
Beans (dry)	0.5
Beans (succulent)	0.5
Beets, sugar, roots	0.5
Beets, sugar, tops	0.5