

eral Regulations, be amended by adding a new Section 260.21 as follows:

§ 260.21 Form No. 64, Report of Producer Expenditures, Exploration and Development Activity, Production, Reserve Additions, and Revenues; Including Those of Any Affiliate (Associate) or Subsidiary of Each Person Found by the Commission to be a "natural-gas company" within the meaning of the Natural Gas Act.

Exempted from filing the initial report of Form 64 are all natural gas companies, which, together with their affiliate(s) produced for direct sale and for sale for resale in interstate commerce 250,000 Mcf or less of gas at 14.73 psia and 60° Fahrenheit during the year 1974. This exemption will continue for each subsequent annual report until the annual volume of 250,000 Mcf is exceeded.

(a) The Form of Natural Gas Companies, Annual Report of Producer Expenditures, Exploration and Development Activity, Production, Reserve Additions, and Revenues as FPC Form No. 64 is adopted.

(b) Each person required to report pursuant to this order shall prepare and file with the Commission an original and four copies of Schedule Nos. 1, 2, and 3, FPC Form No. 64.

(c) For the U.S., excluding Alaska and Hawaii, certain Form No. 64 data shall be reported for the years 1970-1974 and each subsequent year with the exception of productivity data on Schedule No. 3, Items (3) (a) through (3) (f) which shall only be reported for the years 1965-1973.

(d) For Alaska and adjacent offshore areas, complete Form No. 64 data, including productivity data, shall be reported for the year 1974 and each subsequent year.

(e) The initial report and the annual report for 1975 shall be filed within six months after the date of the issuance of this order. Subsequent reports shall be filed no later than March 31 of each year.

(f) Information filed pursuant to this order shall be made available at the Commission's offices for public inspection.

(B) We amend Section 3.170 of Part 3, Subchapter A, Chapter I, Title 18 of the Code of Federal Regulations by revising paragraph (a) (27) as follows:

§ 3.170 Approved forms, etc.

(a) The following is a list of approved forms, statements, and reports, under the Natural Gas Act, descriptions of which have been published in Subchapter G, Parts 250 and 260 of this chapter.

(27) Form No. 64, Report of Producer Expenditures, Exploration and Development Activity, Production, Reserve Additions, and Revenues of each person found by the Commission to be a "natural-gas company" within the meaning of the Natural Gas Act, and their jurisdictional affiliates and subsidiaries as defined in 18 C.F.R. § 157.40(a) (2) of the Commission's Regulations. (§ 261.21 of this Chapter)

(C) This order is effective as of the date of issuance.

(D) The Secretary shall cause prompt publication of this notice to be made in the Federal Register.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Secretary.

[FR Doc.75-33935 Filed 12-17-75; 8:45 am]

[Docket No. RM74-16]

PART 260—STATEMENTS AND REPORTS (SCHEDULES)

Natural Gas Companies Annual Report of Proved Domestic Gas

DECEMBER 10, 1975.

On November 10, 1975, Sabine Royalty Corporation and Dalco Oil Company (Sabine) petitioned for rehearing of the order issued October 29, 1975 granting extensions of time to file Form No. 40 until March 1, 1976 but denying, among others, the petition of Sabine for a partial waiver of the filing requirements or, in the alternative, permission to file its report for 1974 on April 1, 1977. In its petition of November 10, 1975 Sabine also requests that, pending the completion of judicial review,¹ the Commission stay its orders of October 10 and 29, 1975 requiring respondents to file Form No. 40 to continue to gather the information requested on that form.

In its petition Sabine asserts that the Commission acted in an arbitrary and capricious manner in denying Sabine relief. In the October 29, 1975 order the Commission noted that only thirteen respondents, including Sabine and Dalco, had requested an extension of time beyond March 1, 1976, and the Commission further stated that these few requests were "not reasonable." Sabine asserts that, for the reasons expressed in its original request for waiver or an extension of time, the Commission could only conclude that petitioner had proven its right to relief and, therefore, the denial of that relief was an abuse of discretion by the Commission.

Sabine's petition, filed on November 10, 1975, fails to note the statement in our order of October 29, 1975 that the Commission had the power to act on the requests for extension of time granted therein only until the record was docketed before the Court in the case on appeal, *Union Oil Company of California v. Federal Power Commission*. Since Sabine is a party to that proceeding, it is aware that the record was filed with the Court prior to the instant Sabine petition. Therefore, the Commission, pursuant to Section 19(b) of the Natural Gas

Act,² does not have the authority to act on the Sabine petition.

The Notice of Proposed Rulemaking setting forth the reporting requirements of Form No. 40 and the justification therefor was issued on April 15, 1974. Order No. 526, issued February 25, 1975, which promulgated Form No. 40, set the date for filing offshore and onshore 1974 reserve data as July 1, 1975. At that time we set forth our urgent need for this information.³ In Order No. 526-A the Commission postponed the filing date for 1974 data pertaining to the onshore and state controlled offshore to October 2, 1975. Subsequent postponements resulted in the March 1, 1976 date that is presently applicable to Sabine. Thus, petitioner has been on notice since April 15, 1974 as to the type of information which might be required in this proceeding. The petition of Sabine and Dalco is no different from that of all of the other respondents to Form No. 40, none of whom petitioned for rehearing of the October 29, 1975 order setting the March 1, 1976 filing date.

We recognized in our original order,⁴ and subsequently,⁵ that Form No. 40 imposed a burden on the reporting companies, but we found the public interest in obtaining the requested reserve data far outweighed the imposition Form No. 40 placed on the respondents. Since the original promulgation of the form we have granted several of the requests of certain reporting entities for extensions of time. The March 1, 1976 date set by the October 29, 1975 order provided a more than adequate period in which respondents can reorient their record-keeping so as to comply with Form No. 40. Only Sabine and Dalco protest that the interim until March 1, 1976 is insufficient and, as we stated in our October 29, 1975 order, such a request for an extension past March 1, 1976 is not reasonable.

Sabine also requests that the Commission stay the effect of the October 29, 1975 order pending the completion of judicial review. As we stated in that order, a stay in the compilation of the necessary data by the producers in preparation of filing is not in the public interest.⁶

The Commission orders. The petition of Sabine and Dalco for rehearing and reconsideration is rejected. The motion for stay of Sabine and Dalco is rejected.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Secretary.

[FR Doc.75-34191 Filed 12-17-75; 8:45 am]

¹ 15 U.S.C. 717r(b).

² Order Prescribing Procedures and Instituting Uniform Annual Filing of National Proved Domestic Natural Gas Reserves Information, Order No. 526, Docket No. RM74-16, --- F.P.C. ---, mimeo pp. 6-10 (February 25, 1975).

³ Id. at 23.

⁴ Order Making Regulation Effective, Clarifying Order, and Denying Rehearing, Order No. 526-A, Docket No. RM74-16, --- F.P.C. ---, mimeo pp. 7-9 (August 18, 1975).

⁵ Order Granting Extensions of Time, Docket No. RM74-16, --- F.P.C. ---, mimeo p. 2 (October 29, 1975).

Title 21—Food and Drugs

CHAPTER I—FOOD AND DRUG ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 546—TETRACYCLINE ANTIBIOTIC DRUGS FOR ANIMAL USE

Chlortetracycline Boluses

Correction

In FR Doc. 75-33155 appearing on page 57455 in the issue for Wednesday, December 10, 1975, the third complete paragraph, the address for the Hearing Clerk which presently reads "560 Fishers Lane" should read "5600 Fishers Lane".

Title 23—Highways

CHAPTER I—FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

SUBCHAPTER D—NATIONAL HIGHWAY INSTITUTE

PART 260—EDUCATION AND TRAINING PROGRAMS

Revision

• Purpose. The purpose of this document is to publish revised information and requirements with respect to training programs of The National Highway Institute. •

The National Highway Institute was established pursuant to Section 321 of Title 23, United States Code, to develop and administer, in connection with the State highway departments, training programs of instruction for Federal Highway Administration and State or local highway/transportation agency employees engaged or to be engaged in Federal-aid highway work. Regulations published hereby provide notice of the establishment of related fellowship and scholarship programs.

General notice of proposed rulemaking is not required inasmuch as the regulations relate to benefits or contracts pursuant to 5 U.S.C. 553(a)(2).

This regulation is effective December 29, 1975.

Issued on: December 10, 1975.

J. R. COUPAL, Jr.,
Acting Federal
Highway Administrator.

Title 23 CFR, Part 260 is revised to read as follows:

Subpart A—Highway Safety

- Sec. 260.101 Purpose.
- 260.103 Definitions.
- 260.105 Objectives.
- 260.107 Eligibility.
- 260.109 Selection.
- 260.111 Responsibilities of Educational Institutions.
- 260.113 Responsibilities of Employing Agencies.
- 260.115 Equal Opportunity.
- 260.117 Application Procedures.

Subpart B—Highway Transportation Research and Education

- 260.201 Purpose.
- 260.203 Definitions.
- 260.205 Objectives.
- 260.207 Eligibility.

- Sec. 260.209 Selection.
- 260.211 Responsibilities of Educational Institutions.
- 260.213 Responsibilities of Employing Agencies.
- 260.215 Equal Opportunity.
- 260.217 Application Procedures.

Subpart C—Highway Technology

- 260.301 Purpose.
- 260.303 Definitions.
- 260.305 Objectives.
- 260.307 Eligibility.
- 260.309 Selection.
- 260.311 Responsibilities of Educational Institutions.
- 260.313 Responsibilities of Employing Agencies.
- 260.315 Equal Opportunity.
- 260.317 Application Procedures.

Subpart A—Highway Safety

§ 260.101 Purpose.

The purpose of this subpart is to establish the policy and eligibility requirements and selection criteria for the Federal Highway Administration (FHWA) Fellowship Program in Highway Safety as administered by the National Highway Institute pursuant to sections 307(a), 315, 321, and 403, of Title 23, United States Code. This subpart also provides information relative to the application process.

§ 260.103 Definitions.

The following definitions shall apply for the purpose of this subpart:

(a) Candidate—one who has completed and submitted the necessary forms and documents in order to be considered for selection for a fellowship.

(b) Employing agency—the agency for which the candidate works. This may be either a State or local highway/transportation agency.

(c) Fellowship—the grant presented to the successful candidate to assist this candidate financially during the period of graduate study.

(d) State highway/transportation agency—the agency with the responsibility for initiating and carrying forward a highway program, or public transportation program utilizing highways at the State level.

(e) Local highway/transportation agency—the agency or metropolitan planning organization with the responsibility for initiating and carrying forward a highway program, or public transportation program utilizing highways at the local level, usually the city or county level.

(f) National Highway Institute (NHI)—the organization located within the FHWA responsible for the administration of the FHWA Fellowship Program in Highway Safety.

(g) Recipient—the successful candidate receiving a fellowship.

§ 260.105 Objectives.

(a) The objective of the fellowship program is to assist State and local agencies in developing the expert manpower needed for the implementation of their highway safety programs and to assist in the development of more effective high-

way safety programs at all levels of government.

(b) To meet its objective, the program shall provide for 9 to 12 months of full-time or up to 24 months of part-time graduate study in the field of highway safety. The program for each year shall be announced by an FHWA Notice.¹ This notice will contain an application form and will announce the number of Fellowship grants to be awarded and their value.

§ 260.107 Eligibility.

(a) Prior recipients of FHWA Scholarships or Fellowships are not eligible.

(b) Candidates shall be employees of State or local highway/transportation agencies.

(c) A candidate shall have earned a Bachelor's or comparable college level degree in a discipline that impinges on highway transportation prior to beginning advanced study under this program.

(d) Candidates must submit evidence of acceptance or probable acceptance for advanced study in highway safety, design, and traffic engineering or safety management courses in schools offering strong comprehensive programs that serve to promote and advance highway safety. Study programs that are not principally oriented toward the roadway environment are not considered to be within the scope of this fellowship program. General planning and engineering study programs are not encouraged under this program. Evidence of probable acceptance may be a letter from the department chairman, graduate school official, or other authorized person.

(e) Candidates shall agree to pursue certain minimum study loads as determined by the FHWA and designated in the FHWA Notice announcing the program each year.

(f) Prior to final selection, each candidate shall agree, in writing, to work in public service with a State or local highway/transportation agency in the field of highway safety for at least 3 years after completing the study period, or to repay the grant or pro-rata amount of the grant.

(g) Candidates shall agree to respond to brief questionnaires designed to assist the NHI in program evaluation both during and following the study period.

(h) Concurrent with the FHWA grant, candidates may accept salary support from their employers. Candidates may also accept salary or wages for part-time work performed. However, acceptance of salary support and part-time salary or wages is subject to the terms of the nonprofit criterion stipulated in section 260.107(j) of this subpart. Funds from this grant shall not be used to support the student's work on research projects for which the institution is being paid Federal funds. Candidates shall not accept other types of scholarship or fellowship assistance with

¹ The Federal Highway Notices are available for inspection and copying as prescribed in 49 CFR Part 7, Appendix D.

the exception of benefits under programs administered by the Veterans Administration (VA) subject to the regulations governing VA programs.

(i) Recipients of awards for full-time study shall agree to limit their part-time employment as stipulated in the FHWA Notice announcing the program.

(j) Candidates shall not profit financially from FHWA fellowships. Where acceptance of the living stipend portion of the grant would result in a profit to the candidate, as determined by comparing the candidate's regular full-time salary with the candidate's part-time salary and employer salary support plus living stipend, the grant amount shall be reduced accordingly except in cases where a candidate must relocate and maintain two households. If a candidate must relocate and maintain two households in order to participate in the program, the candidate's part-time salary and employer salary support plus the living stipend may exceed the candidate's regular full-time salary by an amount not to exceed the cost of maintaining the second household.

(k) Candidates shall be citizens, or shall declare their intent to become citizens of the United States.

§ 260.109 Selection.

(a) Candidates shall be rated by a selection panel appointed by the Director of the NHI. Members of the panel shall represent the highway safety interests of government, industry, and the academic community.

(b) Candidates, including otherwise qualified handicapped individuals, shall be rated without regard to their race, color, sex, national origin, age, or handicap.

(c) The main factors to be considered by the panel are given in priority order as follows:

(1) Candidate's potential to contribute to a State or local highway safety program. These categories of candidates are listed in the order of their preference if other factors that bear on selection are roughly equal:

(i) Present employees of State or local highway/transportation agencies who demonstrate intent to return to work for their agencies, and

(ii) Present employees of State or local highway/transportation agencies who are committed to work for State or local highway/transportation agencies upon completion of the study.

(2) Relevance of a candidate's study program to the objectives of the fellowship program.

(3) Relevant experience.

(4) Academic and professional achievements.

(d) Using ratings given by the selection panel, the Director of the NHI shall select candidates for awards and designate alternates.

(e) The FHWA may designate in the FHWA Notice announcing the program the maximum number of awards that will be made to employees of any one agency.

§ 260.111 Responsibilities of Educational Institutions.

(a) The college or university chosen by the fellowship recipient shall enter into an appropriate agreement with the FHWA providing for the administration of the grant by the college or university. The institution shall arrange with the recipient for the disbursement of the grant funds throughout the study period.

(b) The college or university chosen by the fellowship recipient shall designate a faculty advisor prior to the commitment of funds by the FHWA. The faculty advisor will be requested to submit reports of the recipient's study progress following completion of each study period. These reports are oriented toward total program evaluation. To assure the recipient's rights to privacy, the FHWA will obtain appropriate advance concurrence from the recipients.

§ 260.113 Responsibilities of Employing Agencies.

(a) A candidate's employing agency is responsible for furnishing statements concerning the relevancy of the candidate's study to agency requirements. The agency is encouraged to identify educational and training priorities and to provide back-up to support its priority candidates for this program. The employer's statements are highly relevant to the selection process.

(b) Employing agencies are encouraged to give favorable consideration to the requests of candidates for educational leave and salary support for the study period to facilitate the candidates' applications. Agency decisions involving salary support and educational leave that will affect the acceptance of awards by recipients should be made at the earliest possible date to provide adequate time for the FHWA to select alternates to replace candidates that decline their awards. Agencies are responsible for negotiations with their candidates concerning conditions of reinstatement and the candidates' commitments to return to work.

(c) Employing agencies are encouraged to publicize the availability of these fellowships throughout the agencies, to implement procedures for internal evaluation of applications, and to forward the applications to the FHWA Division office in their State.

(d) Employing agencies that choose to process their employees' applications are responsible for observing the cut-off date for the FHWA to receive applications. This date will be stipulated in the FHWA Notice announcing the program for each academic year.

§ 260.115 Equal Opportunity.

(a) Consistent with the provisions of the Civil Rights Act of 1964 and Title VI Assurances executed by each State, 23 U.S.C. 324, and 29 U.S.C. 794, no applicant, including otherwise qualified handicapped individuals, shall on the grounds of race, color, sex, national origin, or handicap, be excluded from participation in, be denied benefits of, or be otherwise

subjected to discrimination under this program.

(b) In accordance with Executive Order 11141, no individual shall be denied the benefits of this program because of age.

(c) State agencies should make information on this program available to all eligible employees, including otherwise qualified handicapped individuals, so as to assure nondiscrimination on the grounds of race, color, sex, national origin, age, or handicap.

§ 260.117 Application Procedures.

(a) The FHWA Notices announcing the program for each year and containing the application form may be obtained from FHWA regional and division offices, State highway agencies, metropolitan planning organizations, Governors' Highway Safety Representatives, and from colleges and universities. Forms may also be obtained from the National Highway Institute, NHI-3, Federal Highway Administration, Washington, D.C. 20590.

(b) In order to become a candidate, the applicant shall complete and forward the application form according to the instructions in the FHWA Notice announcing the program. The cut-off date for submitting the application stipulated in the Notice should be observed.

Subpart B—Highway Transportation Research and Education

§ 260.201 Purpose.

The purpose of this subpart is to establish the policy and eligibility requirements and selection criteria for the Federal Highway Administration (FHWA) Fellowship Program in Highway Transportation Research and Education as administered by the National Highway Institute (NHI) pursuant to sections 307 (a), 315, and 321 of title 23, United States Code, and § 1.48 (b) and (c) of title 49, Code of Federal Regulations. This subpart also provides information relative to the application process.

§ 260.203 Definitions.

The following definitions shall apply for the purpose of this subpart:

(a) Candidate—one who has completed and submitted the necessary forms and documents in order to be considered for selection for a fellowship.

(b) Employing Agency—the agency for which the candidate works. This may be either a State or local highway/transportation agency.

(c) Fellowship—the grant presented to the successful candidate to assist this candidate financially during the period of graduate study.

(d) State highway/transportation agency—the agency with the responsibility for initiating and carrying forward a highway program or public transportation program utilizing highways at the State level.

(e) Local highway/transportation agency—the agency or metropolitan planning organization with the responsibility for initiating and carrying forward

a highway program or public transportation program utilizing highways at the local level, usually the city or county level.

(f) National Highway Institute (NHI)—the organization located within the FHWA responsible for the administration of the FHWA Fellowship Program in Highway Transportation Research and Education.

(g) Recipient—the successful candidate receiving a fellowship.

§ 260.205 Objectives.

(a) The objective of the Fellowship Program in Highway Transportation Research and Education is to assist State and local agencies in developing the expert manpower needed for the implementation of their highway programs and to assist in the development of more effective transportation programs at all levels of government.

(b) This program shall provide for 9 to 12 months of full-time or up to 24 months of part-time graduate study in the field of highway transportation. The program for each year shall be announced by an FHWA Notice. This Notice will contain an application form and will announce the number of Fellowship grants to be awarded and their value.

§ 260.207 Eligibility.

(a) Prior recipients of FHWA Scholarships or Fellowships are not eligible.

(b) A candidate shall have earned a Bachelor's or comparable college level degree in a discipline that impinges on highway transportation prior to beginning advanced study under this program.

(c) Candidates shall submit evidence of acceptance or probable acceptance for advanced study in schools offering opportunities for research and study in highway transportation or related fields. Evidence of probable acceptance may be a letter from the department chairman, graduate school official, or other authorized person.

(d) Candidates shall agree to pursue certain minimum study loads as determined by the FHWA and designated in the FHWA Notice announcing the program each year.

(e) Prior to final selection, each candidate shall agree, in writing, to work in public service with a State or local highway/transportation agency in the field of highway transportation for at least 3 years after completing the study period, or to repay the grant or a pro-rata amount of the grant.

(f) Candidates shall agree to respond to brief questionnaires designed to assist the NHI in program evaluation both during and following the study period.

(g) Concurrent with the FHWA grant, candidates may accept salary support from their employers. Candidates may also accept salary or wages for part-time work performed. However, acceptance of salary support and part-time salary or wages is subject to the terms of the non-profit criterion stipulated in § 260.207(1) of this subpart. Funds from this grant shall not be used to support the student's work on research projects for which the

institution is being paid Federal funds. Candidates shall not accept other types of scholarship or fellowship assistance with the exception of benefits under programs administered by the Veterans Administration (VA) subject to the regulations governing VA programs.

(h) Recipients of awards for full-time study shall agree to limit their part-time employment as stipulated in the FHWA Notice announcing the program.

(i) Candidates shall not profit financially from FHWA fellowships. Where acceptance of the living stipend portion of the grant would result in a profit to the candidate, as determined by comparing the candidate's regular full-time salary with the candidate's part-time salary and employer salary support plus living stipend, the grant amount shall be reduced accordingly except in cases where a candidate must relocate and maintain two households. If a candidate must relocate and maintain two households in order to participate in the program, the candidate's part-time salary and employer salary support plus the living stipend may exceed the candidate's regular full-time salary by an amount not to exceed the cost of maintaining the second household.

(j) Candidates shall be citizens, or shall declare their intent to become citizens of the United States.

§ 260.209 Selection.

(a) Candidates shall be rated by a selection panel appointed by the Director of the NHI. Members of the panel shall represent the highway transportation interests of government, industry, and the academic community.

(b) Candidates, including otherwise qualified handicapped individuals, shall be rated without regard to their race, color, sex, national origin, age, or handicap.

(c) The main factors to be considered by the panel are given in priority order as follows:

(1) Candidate's potential to contribute to a State or local highway transportation program. These categories of candidates are listed in the order of their preference if other factors that bear on selection are roughly equal:

(i) Present employees of State or local highway/transportation agencies who demonstrate intent to return to work for their agencies.

(ii) Present employees of State or local highway/transportation agencies who are committed to work for State or local highway/transportation agencies upon completion of the study.

(iii) Students and industry representatives who have job commitments with State or local highway/transportation agencies.

(2) Relevance of a candidate's study program to the objectives of the fellowship program.

(3) Relevant experience.

(4) Academic and professional achievements.

(d) Using ratings given by the selection panel, the Director of the NHI shall select candidates for awards and designate alternates.

(e) The FHWA may designate in the FHWA Notice announcing the program the maximum number of awards that will be made to employees of any one agency.

§ 260.211 Responsibilities of Educational Institutions.

(a) The college or university chosen by the fellowship recipient shall enter into an appropriate agreement with the FHWA providing for the administration of the grant by the college or university. The institution shall arrange with the recipient for the disbursement of the grant funds throughout the study period.

(b) The college or university chosen by the fellowship recipient shall designate a faculty advisor prior to the commitment of funds by the FHWA. The faculty advisor will be requested to submit reports of the recipient's study progress following completion of each study period. These reports are oriented toward total program evaluation. To assure the recipient's rights to privacy, the FHWA will obtain appropriate advance concurrences from the recipients.

§ 260.213 Responsibilities of Employing Agencies.

(a) A candidate's employing agency is responsible for furnishing statements concerning the relevancy of the candidate's study to agency requirements. The agency is encouraged to identify educational and training priorities and to provide back-up to support its priority candidates for this program. The employers' statements are highly relevant to the selection process.

(b) Employing agencies are encouraged to give favorable consideration to the requests of candidates for educational leave and salary support for the study period to facilitate the candidates' applications. Agency decisions involving salary support and educational leave that will affect the acceptance of awards by recipients should be made at the earliest possible date to provide adequate time for the FHWA to select alternates to replace candidates that decline their awards. Agencies are responsible for negotiations with their candidates concerning conditions of reinstatement and the candidates' commitments to return to work.

(c) Employing agencies are encouraged to publicize the availability of these fellowships throughout the agencies, to implement procedures for internal evaluation of applications, and to forward the applications to the FHWA Division office in their State.

(d) Employing agencies that choose to process their employees' applications are responsible for observing the cut-off date for the FHWA to receive applications. This date will be stipulated in the FHWA Notice announcing the program for each academic year.

§ 260.215 Equal Opportunity.

(a) Consistent with the provisions of the Civil Rights Act of 1964 and Title VI Assurances executed by each State, 23 U.S.C. 324, and 29 U.S.C. 794, no appli-

cant, including otherwise qualified handicapped individuals, shall on the grounds of race, color, sex, national origin, or handicap, be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination under this program.

(b) In accordance with Executive Order 11141, no individual shall be denied the benefits of this program because of age.

(c) State agencies should make information on this program available to all eligible employees, including otherwise qualified handicapped individuals, so as to assure nondiscrimination on the grounds of race, color, sex, national origin, age, or handicap.

§ 260.217 Application Procedures.

(a) The FHWA Notices announcing the program each year and containing the application form may be obtained from FHWA regional and division offices, State highway agencies, metropolitan planning organizations, Governors' Highway Safety Representatives, and from colleges and universities. Forms may also be obtained from the National Highway Institute, HHI-3, Federal Highway Administration, Washington, D.C. 20590.

(b) In order to become a candidate, the applicant shall complete and forward the application form according to the instructions in the FHWA Notice announcing the program. The cut-off date for submitting the application stipulated in the Notice should be observed.

Subpart C—Highway Technology

§ 260.301 Purpose.

The purpose of this subpart is to establish the policy and eligibility requirements and selection criteria for the Federal Highway Administration (FHWA) Scholarship Program in Highway Technology as administered by the National Highway Institute (NHI) pursuant to sections 307(a), 315, 321 and 403 of title 23, United States Code, and sections 1.48 (b) and (h) of title 49, Code of Federal Regulations. This subpart also provides information relative to the application process.

§ 260.303 Definitions.

The following definitions shall apply for the purpose of this subpart:

(a) **Candidate**—One who has completed and submitted the necessary forms and documents in order to be considered for selection for a scholarship.

(b) **Employing Agency**—The agency for which the candidate works. This may be either a State or local highway/transportation agency or the Federal Highway Administration (FHWA).

(c) **State highway/transportation agency**—The agency with the responsibility for initiating and carrying forward a highway program, or public transportation program utilizing highways, at the State level.

(d) **Local highway/transportation agency**—The agency or the metropolitan planning organization with the responsibility for initiating and carrying forward a highway program, or public transportation

program utilizing highways, at the local level, usually the city or county level.

(e) **National Highway Institute (NHI)**—The organization located within the FHWA responsible for the administration of the FHWA Scholarship Program in Highway Technology.

(f) **Recipient**—The successful candidate receiving a scholarship.

(g) **Scholarship**—The grant presented to the successful candidate to assist this candidate financially during the period of post-secondary study.

§ 260.305 Objectives.

(a) The objective of the Scholarship Program in Highway Technology is to assist State and local agencies and the FHWA in developing the expert manpower needed for the implementation of their programs and to assist in the development of more effective transportation programs at all levels of government.

(b) To meet its objective the program provides 9 to 12 months of full-time or up to 24 months of part-time post-secondary study in the field of highway transportation. The program for each year shall be announced by an FHWA Notice. This Notice will contain an application form and will announce the number of scholarship grants to be awarded and their value.

§ 260.307 Eligibility.

(a) Prior recipients of FHWA Scholarships are not eligible.

(b) Preference will be given to candidates who are presently employed by the FHWA and by State or local highway/transportation agencies. Candidates who are students with job commitments to work in the field of highway transportation for State and local highway/transportation agencies are eligible.

(c) Candidates shall submit evidence of acceptance, or probable acceptance, for study in programs that will enhance their contribution to their employers. Evidence of probable acceptance may be a letter from the department chairman or other school official.

(d) Candidates shall agree to pursue certain minimum study loads as determined by the FHWA and designated in the FHWA Notice announcing the program each year.

(e) Prior to final selection, a candidate who is an FHWA employee shall agree, in writing, to continue working for the FHWA for at least 3 years after completing the study period or to repay the grant or a pro rata amount of the grant. A candidate who is an employee of a State or local highway/transportation agency shall agree, in writing, to work in public service with a State or local highway/transportation agency for at least 3 years after completing the study period, or to repay the grant, or a pro rata amount of the grant.

(f) Candidates shall agree to respond to brief questionnaires designed to assist the NHI in program evaluation both during and following the study period.

(g) Concurrent with the FHWA grant, candidates may accept salary support

from their employers. Candidates may also accept salary or wages for part-time work performed. However, acceptance of salary support and part-time salary or wages is subject to the terms of the non-profit criterion stipulated in Section 260.307(d) of this subpart. Funds from this grant shall not be used to support the student's work on research projects for which the institution is being paid Federal funds. Candidates shall not accept other types of scholarship or fellowship assistance with the exception of benefits under programs administered by the Veterans Administration (VA) subject to the regulations governing VA programs.

(h) Recipients of awards for full-time study shall agree to limit their part-time employment as stipulated in the FHWA Notice announcing the program.

(i) Candidates shall not profit financially from FHWA Scholarships. Where acceptance of the living stipend portion of the grant would result in a profit to the candidate, as determined by comparing the candidate's regular full-time salary with the candidate's part-time salary and employer salary support plus living stipend, the grant amount will be reduced accordingly, except in cases where a candidate must relocate and maintain two households. If a candidate must relocate and maintain two households in order to participate in the program, the candidate's part-time salary and employer salary support plus the living stipend may exceed the candidate's regular full-time salary by an amount not to exceed the cost of maintaining the second household.

(j) Candidates shall be citizens, or shall declare their intent to become citizens of the United States.

§ 260.309 Selection.

(a) Candidates shall be rated by a selection panel appointed by the Director of the NHI. Members of the panel shall represent the highway transportation interests of government, industry, and the academic community.

(b) Candidates, including otherwise qualified handicapped individuals, shall be rated without regard to their race, color, sex, national origin, age, or handicap.

(c) The main factors to be considered by the panel are given in priority order as follows:

(1) Academic and professional achievements.

(2) Candidate's potential to contribute to a Federal, State, or local highway program.

(3) Relevant experience.

(4) Relevance of a candidate's study program to the objectives of the scholarship program.

(d) Using ratings given by the selection panel, the Director of the NHI shall select candidates for awards and designate alternates.

(e) The FHWA may designate in the FHWA Notice announcing the program the maximum number of awards that will be made to employees of any one agency.

§ 260.311 Responsibilities of Educational Institutions.

(a) The college or university chosen by the scholarship recipient shall enter into an appropriate agreement with the FHWA providing for the administration of the grant by the college or university. The institution shall arrange with the recipient for the disbursement of the grant funds throughout the study period.

(b) The college or university chosen by the scholarship recipient shall designate a faculty advisor prior to the commitment of funds by the FHWA. The faculty advisor will be requested to submit reports of the recipient's study progress following completion of each study period. These reports are oriented toward total program evaluation. To assure the recipient's rights to privacy, the FHWA will obtain appropriate advance concurrence from the recipients.

§ 260.313 Responsibilities of Employing Agencies.

(a) A candidate's employing agency is responsible for furnishing statements concerning the relevancy of the candidate's study to agency requirements. The agency is encouraged to identify educational and training priorities and to provide back-up to support its priority candidates for this program. The employers' statements are highly relevant to the selection process.

(b) Employing agencies are encouraged to give favorable consideration to the requests of candidates for educational leave and salary support for the study period to facilitate the candidates' applications. Agency decisions involving salary support and educational leave that will affect the acceptance of awards by recipients should be made at the earliest possible date to provide adequate time for the FHWA to select alternates to replace candidates that decline their awards. Agencies are responsible for negotiations with their candidates concerning conditions of reinstatement and the candidates' commitments to return to work.

(c) Employing agencies are encouraged to publicize the availability of these scholarships throughout the agencies, to implement procedures for internal evaluation of applications, and to forward the applications to the FHWA Division office in their State.

(d) Employing agencies that choose to process their employees' applications are responsible for observing the cut-off date for the FHWA to receive applications. This date will be stipulated in the Notice announcing the program for each academic year.

§ 260.315 Equal Opportunity.

(a) Consistent with the provisions of the Civil Rights Act of 1964 and Title VI Assurances executed by each State, 23 U.S.C. 324, and 29 U.S.C. 794, no applicant, including otherwise qualified handicapped individuals, shall on the grounds of race, color, sex, national origin, or handicap, be excluded from participation in, be denied benefits of,

or be otherwise subjected to discrimination under this program.

(b) In accordance with Executive Order 11141, no individual shall be denied benefits of this program because of age.

(c) State agencies should make information on this program available to all eligible employees, including otherwise qualified handicapped individuals, so as to assure nondiscrimination on the grounds of race, color, sex, national origin, age, or handicap.

§ 260.317 Application Procedures.

(a) The FHWA Notice announcing the program for each year and containing the application form may be obtained from FHWA regional and division offices, State highway agencies, metropolitan planning organizations, Governors' Highway Safety Representatives, and from colleges and universities. Forms may also be obtained from the National Highway Institute, HHI-3, Federal Highway Administration, Washington, D.C. 20590.

(b) In order to become a candidate, the applicant shall complete and forward the application form according to the instructions in the FHWA Notice announcing the program. The cut-off date for submitting the application stipulated in the Notice should be observed.

[FR Doc. 75-34126 Filed 12-17-75; 8:45 am]

Title 24—Housing and Urban Development

CHAPTER II—OFFICE OF THE ASSISTANT SECRETARY FOR HOUSING PRODUCTION AND MORTGAGE CREDIT—FEDERAL HOUSING COMMISSIONER (FEDERAL HOUSING ADMINISTRATION), DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. R-75-364]

PART 200—INTRODUCTION

Delegations to Particular Positions

Pursuant to section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d), the Assistant Secretary-Commissioner is revising the delegations of authority under 24 CFR, subpart D. These revisions are necessary to implement section 8 of the U.S. Housing Act of 1937 and amendments to sections 235 and 236 of the National Housing Act as contained in Title II of the Housing and Community Development Act of 1974 in relation to the establishment of income ceilings. Because this amendment relates to agency management and personnel, comment and public procedure are unnecessary.

Accordingly, Part 200, subpart D of Title 24 is amended by:

1. Section 200.56 is amended by adding a new paragraph (i) to read as follows:

§ 200.56 Director, Office of Underwriting Standards.

(i) To establish income ceilings for individual areas in the United States for "lower-income families" and "very low income families" as these terms are used for housing assistance under section 8

of the U.S. Housing Act of 1937, as amended; for families eligible for single-family mortgage assistance under section 235 of the National Housing Act, as amended; and for tenants eligible for occupancy in projects receiving multi-family mortgage assistance under section 236 of the National Housing Act, as amended; including establishing income ceilings higher or lower than 80 per centum of the median for individual areas on the basis of findings that such variations are necessary because of prevailing levels of construction costs, unusually high or low family incomes, or other factors.

2. Section 200.56d is amended by adding a new paragraph (c) to read as follows:

§ 200.56d Director, Economic and Market Analysis Division.

(c) Under the general supervision of the Director, Office of Underwriting Standards, to establish income ceilings for individual areas in the United States for "lower-income families" and "very low income families" as these terms are used for housing assistance under section 8 of the U.S. Housing Act of 1937, as amended; for families eligible for single-family mortgage assistance under section 235 of the National Housing Act, as amended; and for tenants eligible for occupancy in projects receiving multi-family mortgage assistance under section 236 of the National Housing Act, as amended; including establishing income ceilings higher or lower than 80 per centum of the median for individual areas on the basis of findings that such variations are necessary because of prevailing levels of construction costs, unusually high or low family incomes, or other factors.

Effective date. This amendment is effective as of January 1, 1976.

DAVID S. COOK,
Assistant Secretary for Housing
Production and Mortgage
Credit — Federal Housing
Commissioner.

[FR Doc. 75-34098 Filed 12-17-75; 8:45 am]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

[T.D. 7392]

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

Advertising, etc., Activities

On September 11, 1971, a notice of proposed rule making with respect to the amendment of the Income Tax Regulations (26 CFR Part 1) relating to the advertising income of exempt organizations under section 513(c) of the Internal Revenue Code of 1954, as amended by section 121(c) of the Tax Reform Act of 1969 (83 Stat. 542), was published in the FEDERAL REGISTER (36 F.R. 18316).

The amendments to the regulations provide rules regarding the computation of unrelated business tax on exempt or-

ganization from the sale of advertising in periodicals. In general the regulations allow an organization to reduce their advertising income from a periodical (i.e., the amount by which gross advertising income exceeds direct advertising costs) by the excess of readership costs over circulation income attributable to such periodical. Where periodicals are furnished dues paying members of the organization without further charge, a portion of the dues must be allocated to the circulation income of the periodical. The notice of proposed rule making set forth seven factors to be used in making this allocation. The amendments adopted by this document simplify the allocation rule by reducing the factors to three (1) subscription price charged to nonmembers; (2) subscription price charged to members and; (3) pro rata allocation of membership receipts based upon cost.

The amendments also allow consolidation of two or more periodicals if such periodicals are published for the production of income. Rules are set forth to determine if a periodical is published for the production of income.

ADOPTION OF AMENDMENTS TO THE REGULATIONS

After consideration of all such relevant matter as was presented by interested persons regarding the rule proposed, the amendment of the Income Tax Regulations (26 CFR Part 1) is hereby adopted, subject to the changes set forth below:

Paragraph 1. Section 1.512 (a)-1 as set forth in paragraph 1 of the appendix of the notice of proposed rule making is changed by revising paragraphs (f) (4) and (5) to read as follows:

§ 1.512 (a)-1 Definition.

(f) Determination of unrelated business taxable income derived from sale of advertising in exempt organization periodical.

(4) Allocable membership receipts. The allocable membership receipts of an exempt organization periodical shall be determined in accordance with the following rules:

(i) Subscription price charged to nonmembers. If 20 percent or more of the total circulation of a periodical consist of sales to nonmembers, the subscription price charged to such nonmembers shall determine the price of the periodical for purposes of allocating membership receipts to the periodical.

(ii) Subscription price to nonmembers. If paragraph (f) (4) (i) of this section does not apply and if the membership dues from 20 percent or more of the members of an exempt organization are less than those received from the other members because the former members do not receive the periodical, the amount of the reduction in membership dues for a member not receiving the periodical shall determine the price of the periodical for purposes of allocating membership receipts to the periodical.

(iii) Pro rata allocation of membership receipts. Since it may generally be assumed that membership receipts and gross advertising income are equally available for all the exempt activities (including the periodical) of the organization, the share of membership receipts allocated to the periodical, where paragraphs (f) (4) (i) and (ii) of this section do not apply, shall be an amount

equal to the organization's membership receipts multiplied by a fraction the numerator of which is the total periodical costs and the denominator of which is such costs plus the cost of other exempt activities of the organization. For example, assume that an exempt organization has total periodical costs of \$30,000 and other exempt costs of \$70,000. Further assume that the membership receipts of the organization are \$60,000 and that paragraphs (f) (4) (i) and (ii) of this section do not apply. Under these circumstances \$18,000 (\$60,000 times \$30,000/\$100,000) is allocated to the periodical's circulation income.

(5) Examples. The rules set forth in paragraph (f) (4) of this section may be illustrated by the following examples. For purposes of these examples it is assumed that the exempt organization periodical contains advertising, and that the production and distribution of the readership content of the periodical is related to the organization's exempt purpose.

Example (1). U is an exempt scientific organization with 10,000 members who pay annual dues of \$15 per year. One of U's activities is the publication of a monthly periodical which is distributed to all of its members. U also distributes 5,000 additional copies of its periodical to nonmember subscribers at a cost of \$10 per year. Pursuant to paragraph (f) (4) (i) of this section, since the nonmember circulation of U's periodical represents 33 1/3 percent of its total circulation the subscription price charged to nonmembers will be used to determine the portion of U's membership receipts allocable to the periodical. Thus, U's allocable membership receipts will be \$100,000 (\$10 times 10,000 members), and U's total circulation income for the periodical will be \$150,000 (\$100,000 from members plus \$50,000 from sales to nonmembers).

Example (2). Assume the facts as stated in example (1), except that U sells only 500 copies of its periodical to nonmembers, at a price of \$10 per year. Assume further that U's members may elect not to receive the periodical, in which case their annual dues are reduced from \$15 per year to \$6 per year, and that only 3,000 members elect to receive the periodical and pay the full dues of \$15 per year. U's stated subscription price to members of \$9 consistently results in an excess of total income (including gross advertising income) attributable to the periodical over total costs of the periodical. Since the 500 copies of the periodical distributed to nonmembers represents only 14 percent of the 3,500 copies distributed, pursuant to paragraph (f) (4) (i) of this section, the \$10 subscription price charged to nonmembers will not be used in determining the portion of membership receipts allocable to the periodical. On the other hand, since 70 percent of the members elect not to receive the periodical and pay \$9 less per year in dues, pursuant to paragraph (f) (4) (ii) of this section, such \$9 price will be used in determining the subscription price charged to members. Thus, the allocable membership receipts will be \$9 per member, or \$27,000 (\$9 times 3,000 copies) and U's total circulation income will be \$32,000 (\$27,000 plus \$5,000).

Example (3). (a) W, an exempt trade association, has 800 members who pay annual dues of \$50 per year. W publishes a monthly journal the editorial content and advertising of which are directed to the business interests of its own members. The journal is distributed to all of W's members and no receipts are derived from nonmembers.

(b) W has total receipts of \$100,000 of which \$40,000 (\$50 × 800) are membership receipts and \$60,000 are gross advertising income. W's total costs for the journal and other exempt activities is \$100,000. W has

total periodical costs of \$76,000 of which \$41,000 are direct advertising costs and \$35,000 are readership costs.

(c) Paragraph (f) (4) (i) of this section will not apply since no copies are available to nonmembers. Therefore, the allocation of membership receipts shall be made in accordance with paragraph (f) (4) (iii) of this section. Based upon pro rata allocation of membership receipts (40,000) by a fraction the numerator of which is total periodical costs (\$76,000) and the denominator of which is the total costs of the journal and the other exempt activities (\$100,000), \$30,400 (\$76,000/\$100,000 times \$40,000) of membership receipts in circulation income.

(This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).)

WILLIAM E. WILLIAMS,
Acting Commissioner of
Internal Revenue

Approved: December 12, 1975.

WILLIAM M. GOLDSTEIN,
Deputy Assistant Secretary
of the Treasury.

On September 11, 1971, a notice of proposed rule making with respect to the amendment of the Income Tax Regulations (26 CFR Part 1) relating to the advertising income of exempt organizations under section 513(c) of the Internal Revenue Code of 1954, as amended by section 121(c) of the Tax Reform Act of 1969 (83 Stat. 542), was published in the FEDERAL REGISTER (36 FR 18316).

The amendments to the regulations provide rules regarding the computation of unrelated business tax on exempt organization from the sale of advertising in periodicals. In general the regulations allow an organization to reduce their advertising income from a periodical (i.e., the amount by which gross advertising income exceeds direct advertising costs) by the excess of readership costs over circulation income attributable to such periodical. Where periodicals are furnished dues paying members of the organization without further charge, a portion of the dues must be allocated to the circulation income of the periodical. The notice of proposed rule making set forth seven factors to be used in making this allocation. The amendments adopted by this document simplify the allocation rule by reducing the factors to three (1) subscription price charged to nonmembers; (2) subscription price charged to members and; (3) pro rata allocation of membership receipts based upon cost.

The amendments also allow consolidation of two or more periodicals if such periodicals are published for the production of income. Rules are set forth to determine if a periodical is published for the production of income.

ADOPTION OF AMENDMENTS TO THE REGULATIONS

After consideration of all such relevant matter as was presented by interested persons regarding the rule proposed, the amendment of the Income Tax Regulations (26 CFR Part 1) is hereby adopted, subject to the changes set forth below:

PARAGRAPH 1. Section 1.512(a)-1 is amended to read as follows:

§ 1.512(a)-1 Definition.

(a) *In general.* Section 512 defines "unrelated business taxable income" as the gross income derived from any unrelated trade or business regularly carried on, less those deductions allowed by chapter 1 of the Code which are directly connected with the carrying on of such trade or business, subject to the modifications referred to in § 1.512(b)-1. To be deductible in computing unrelated business taxable income, expenses, depreciation and similar items not only must qualify as deductions allowed by chapter 1 of the Code but also must be directly connected with the carrying on of an unrelated trade or business activity. Except as provided in paragraphs (d) (2) and (f) of this section, to be "directly connected with" the conduct of an unrelated business activity for purposes of section 512, an item of deduction must have proximate and primary relationship to the carrying on of that business activity. In the case of an organization which derives gross income from the regular conduct of two or more unrelated business activities, unrelated business taxable income is the aggregate of gross income from all such unrelated business activities less the aggregate of the deductions allowed with respect to all such unrelated business activities.

(b) *Expenses attributable solely to unrelated business activities.* Expenses, depreciation, and similar items attributable solely to the conduct of unrelated business activities are proximately and primarily related to that business activity, and therefore qualify for deduction to the extent that they meet the requirements of section 162, section 167, or other relevant provisions of the Code, connected with the conduct of that activity and are deductible in computing unrelated business taxable income if they otherwise qualify for deduction under the requirements of section 162. Similarly, depreciation of a building used entirely in the conduct of unrelated business activities would be an allowable deduction to the extent otherwise permitted by section 167.

(c) *Dual use of facilities or personnel.* Where facilities are used both to carry on exempt activities and to conduct unrelated trade or business activities, expenses, depreciation and similar items attributable to such facilities (as, for example, items of overhead), shall be allocated between the two uses on a reasonable basis. Similarly, where personnel are used both to carry on exempt activities and to conduct unrelated trade or business activities, expenses and similar items attributable to such personnel (as, for example, items of salary) shall be allocated between the two uses on a reasonable basis. The portion of any such item so allocated to the unrelated trade or business activity is proximately and primarily related to that business activity, and shall be allowable as a deduction

in computing unrelated business taxable income in the manner and to the extent permitted by section 162, section 167, or other relevant provisions of the Code. Thus, for example, assume that X, an exempt organization subject to the provisions of section 511, pays its president a salary of \$20,000 a year. X derives gross income from the conduct of unrelated trade or business activities. The president devotes approximately 10 percent of his time during the year to the unrelated business activity. For purposes of computing X's unrelated business taxable income, a deduction of \$2,000 (10 percent of \$20,000), would be allowable for the salary paid to its president.

(d) *Exploitation of exempt activities—(1) In general.* In certain cases, gross income is derived from an unrelated trade or business activity which exploits an exempt activity. One example of such exploitation is the sale of advertising in a periodical of an exempt organization which contains editorial material related to the accomplishment of the organization's exempt purpose. Except as specified in subparagraph (2) of this paragraph and paragraph (f) of this section, in such cases, expenses, depreciation and similar items attributable to the conduct of the exempt activities are no deductible in computing unrelated business taxable income. Since such items are incident to an activity which is carried on in furtherance of the exempt purpose of the organization, they do not possess the necessary proximate and primary relationship to the unrelated trade or business activity and are therefore not directly connected with that business activity.

(2) *Allowable deductions.* Where an unrelated trade or business activity is of a kind carried on for profit by taxable organizations and where the exempt activity exploited by the business is a type of activity normally conducted by taxable organizations in pursuance of such business, expenses, depreciation, and similar items which are attributable to the exempt activity qualify as directly connected with the carrying on of the unrelated trade or business activity to the extent that:

(i) The aggregate of such items exceeds the income (if any) derived from or attributable to the exempt activity; and

(ii) The allocation of such excess to the unrelated trade or business activity does not result in a loss from such unrelated trade or business activity.

Under the rule of the preceding sentence, expenses, depreciation and similar items paid or incurred in the performance of an exempt activity must be allocated first to the exempt activity to the extent of the income derived from or attributable to the performance of that activity. Furthermore, such items are in no event allocable to the unrelated trade or business activity exploiting such exempt activity to the extent that their deduction would result in a loss carryover or carryback with respect to that trade or business activity. Similarly, they may not be taken into account in computing un-

related business taxable income attributable to any unrelated trade or business activity not exploiting the same exempt activity. See paragraph (f) of this section for the application of these rules to periodicals published by exempt organizations.

(e) *Example.* Paragraphs (a) through (d) of this section are illustrated by the following example:

Example. W is an exempt business league with a large membership. Under an arrangement with an advertising agency W regularly mails brochures, pamphlets and other advertising materials to its members, charging the agency an agreed amount per enclosure. The distribution of the advertising materials does not contribute importantly to the accomplishment of the purpose for which W is granted exemption. Accordingly, the payments made to W by the advertising agency constitute gross income from an unrelated trade or business activity. In computing W's unrelated business taxable income, the expenses attributable solely to the conduct of the business, or allocable to such business under the rule of paragraph (c) of this section, are allowable as deductions in accordance with the provisions of section 162. Such deductions include the costs of handling and mailing, the salaries of personnel used full-time in the unrelated business activity and an allocable portion of the salaries of personnel used both to carry on exempt activities and to conduct the unrelated business activity. However, costs of developing W's membership and carrying on its exempt activities are not deductible. Those costs are necessary to the maintenance of the intangible asset exploited in the unrelated business activity—W's membership—but are incurred primarily in connection with W's fundamental purpose as an exempt organization. As a consequence, they do not have proximate and primary relationship to the conduct of the unrelated business activity and do not qualify as directly connected with it.

(f) *Determination of unrelated business taxable income derived from sale of advertising in exempt organization periodicals—(1) In general.* Under section 513 (relating to the definition of unrelated trade or business) and § 1.513-1, amounts realized by an exempt organization from the sale of advertising in a periodical constitute gross income from an unrelated trade or business activity involving the exploitation of an exempt activity, namely, the circulation and readership of the periodical developed through the production and distribution of the readership content of the periodical. Paragraph (d) of this section provides for the allowance of deductions attributable to the production and distribution of the readership content of the periodical. Thus, subject to the limitations of paragraph (d) (2) of this section, where the circulation and readership of an exempt organization periodical are utilized in connection with the sale of advertising in the periodical, expenses, depreciation, and similar items of deductions attributable to the production and distribution of the editorial or readership content of the periodical shall qualify as items of deductions directly connected with the unrelated advertising activity. Subparagraphs (2) through (6) of this paragraph provide rules for determining the amount of unrelated business taxable income attrib-

utable to the sale of advertising in exempt organization periodicals. Subparagraph (7) of this paragraph provides rules for determining when the unrelated business taxable income of two or more exempt organization periodicals may be determined on a consolidated basis.

(2) *Computation of unrelated business taxable income attributable to sale of advertising.*—(i) *Excess advertising costs.* If the direct advertising costs of an exempt organization periodical (determined under subparagraph (6)(ii) of this paragraph) exceed gross advertising income (determined under subparagraph (3)(ii) of this paragraph), such excess shall be allowable as a deduction in determining unrelated business taxable income from any unrelated trade or business activity carried on by the organization.

(ii) *Excess advertising income.* If the gross advertising income of an exempt organization periodical exceeds direct advertising costs, paragraph (d)(2) of this section provides that items of deduction attributable to the production and distribution of the readership content of an exempt organization periodical shall qualify as items of deduction directly connected with unrelated advertising activity in computing the amount of unrelated business taxable income derived from the advertising activity to the extent that such items exceed the income derived from or attributable to such production and distribution, but only to the extent that such items do not result in a loss from such advertising activity. Furthermore, such items of deduction shall not qualify as directly connected with such advertising activity to the extent that their deduction would result in a loss carryback or carryover with respect to such advertising activity. Similarly, such items of deduction shall not be taken into account in computing unrelated business taxable income attributable to any unrelated trade or business activity other than such advertising activity. Thus—

(a) If the circulation income of the periodical (determined under subparagraph (3)(iii) of this paragraph) equals or exceeds the readership costs of such periodical (determined under subparagraph (6)(iii) of this paragraph), the unrelated business taxable income attributable to the periodical is the excess of the gross advertising income of the periodical over direct advertising costs; but

(b) If the readership costs of an exempt organization periodical exceed the circulation income of the periodical, the unrelated business taxable income is the excess, if any, of the total income attributable to the periodical (determined under subparagraph (3) of this paragraph) over the total periodical costs (as defined in subparagraph (6)(i) of this paragraph).

See subparagraph (7) of this paragraph for rules relating to the consolidation of two or more periodicals.

(iii) *Examples.* The application of this paragraph may be illustrated by the following examples. For purposes of these

examples it is assumed that the production and distribution of the readership content of the periodical is related to the organization's exempt purpose.

Example (1). X, an exempt trade association, publishes a single periodical which carries advertising. During 1971, X realizes a total of \$40,000 from the sale of advertising in the periodical (gross advertising income) and \$80,000 from sales of the periodical to members and nonmembers (circulation income). The total periodical costs are \$90,000 of which \$50,000 is directly connected with the sale and publication of advertising (direct advertising costs) and \$40,000 is attributable to the production and distribution of the readership content (readership costs). Since the direct advertising costs of the periodical (\$50,000) exceed gross advertising income (\$40,000), pursuant to subdivision (i) of this subparagraph, the unrelated business taxable income attributable to advertising is determined solely on the basis of the income and deductions directly connected with the production and sale of the advertising:

Gross advertising revenue.....	\$40,000
Direct advertising costs.....	(50,000)
Loss attributable to advertising.....	(10,000)

X has realized a loss of \$10,000 from its advertising activity. This loss is an allowable deduction in computing X's unrelated business taxable income derived from any other unrelated trade or business activity.

Example (2). Assume the facts as stated in example (1), except that the circulation income of X periodical is \$100,000 instead of \$80,000, and that of the total periodical costs, \$25,000 are direct advertising costs, and \$65,000 are readership costs. Since the circulation income (\$100,000) exceeds the total readership costs (\$65,000), pursuant to subdivision (ii)(a) of this subparagraph the unrelated business taxable income attributable to the advertising activity is \$15,000, the excess of gross advertising income (\$40,000) over direct advertising costs (\$25,000).

Example (3). Assume the facts as stated in example (1), except that the total periodical costs, \$20,000 are direct advertising costs and \$70,000 are readership costs. Since the readership costs of the periodical (\$70,000), exceed the circulation income (\$80,000), pursuant to subdivision (ii)(b) of this subparagraph the unrelated business taxable income attributable to advertising is the excess of the total income attributable to the periodical over the total periodical costs. Thus, X has unrelated business taxable income attributable to the advertising activity of \$10,000 (\$100,000 total income attributable to the periodical less \$90,000 total periodical costs).

Example (4). Assume the facts as stated in example (1), except that the total periodical costs are \$120,000 of which \$30,000 are direct advertising costs and \$90,000 are readership costs. Since the readership costs of the periodical (\$90,000), exceed the circulation income (\$80,000), pursuant to subdivision (ii)(b) of this subparagraph the unrelated business taxable income attributable to advertising is the excess, if any, of the total income attributable to the periodical over the total periodical costs. Since the total income of the periodical (\$100,000) does not exceed the total periodical costs (\$120,000), X has not derived any unrelated business taxable income from the advertising activity. Further, only \$70,000 of the \$90,000 of readership costs may be deducted in computing unrelated business taxable income since as provided in subdivision (ii) of this

subparagraph, such costs may be deducted, to the extent they exceed circulation income, only to the extent they do not result in a loss from the advertising activity. Thus, there is no loss from such activity, and no amount may be deducted on this account in computing X's unrelated trade or business income derived from any other unrelated trade or business activity.

(3) *Income attributable to exempt organization periodicals.*—(i) *In general.* For purposes of this paragraph the total income attributable to an exempt organization periodical is the sum of its gross advertising income and its circulation income.

(ii) *Gross advertising income.* The term "gross advertising income" means all amounts derived from the unrelated advertising activities of an exempt organization periodical (or for purposes of this paragraph in the case of a taxable organization, all amounts derived from the advertising activities of the taxable organization).

(iii) *Circulation income.* The term "circulation income" means the income attributable to the production, distribution or circulation of a periodical (other than gross advertising income) including all amounts realized from or attributable to the sale or distribution of the readership content of the periodical, such as amounts realized from charges made for reprinting or republishing articles and special items in the periodical and amounts realized from sales of back issues. Where the right to receive an exempt organization periodical is associated with membership or similar status in such organization for which dues, fees or other charges are received (hereinafter referred to as "membership receipts"), circulation income includes the portion of such membership receipts allocable to the periodical (hereinafter referred to as "allocable membership receipts"). Allowable membership receipts is the amount which would have been charged and paid if—

- The periodical was that of a taxable organization.
- The periodical was published for profit, and
- The member was an unrelated party dealing with the taxable organization at arm's length.

See subparagraph (4) of this paragraph for a discussion of the factors to be considered in determining allocable membership receipts of an exempt organization periodical under the standard described in the preceding sentence.

(4) *Allocable membership receipts.* The allocable membership receipts of an exempt organization periodical shall be determined in accordance with the following rules:

(i) *Subscription price charged to nonmembers.* If 20 percent or more of the total circulation of a periodical consist of sales to nonmembers, the subscription price charged to such nonmembers shall determine the price of the periodical for purposes of allocating membership receipts to the periodical.

(ii) *Subscription price to nonmembers.* If paragraph (f)(4)(i) of this section does not apply and if the membership

dues from 20 percent or more of the members of an exempt organization are less than those received from the other members because the former members do not receive the periodical, the amount of the reduction in membership dues for a member not receiving the periodical shall determine the price of the periodical for purposes of allocating membership receipts to the periodical.

(iii) *Pro rata allocation of membership receipts.* Since it may generally be assumed that membership receipts and gross advertising income are equally available for all the exempt activities (including the periodical) of the organization, the share of membership receipts allocated to the periodical, where paragraphs (f) (4) (i) and (ii) of this section do not apply, shall be an amount equal to the organization's membership receipts multiplied by a fraction the numerator of which is the total periodical costs and the denominator of which is such costs plus the cost of other exempt activities of the organization. For example, assume that an exempt organization has total periodical costs of \$30,000 and other exempt costs of \$70,000. Further assume that the membership receipts of the organization are \$60,000 and that paragraphs (f) (4) (i) and (ii) of this section do not apply. Under these circumstances \$18,000 (\$60,000 times \$30,000/\$100,000) is allocated to the periodical's circulation income.

(5) *Examples.* The rules set forth in paragraph (f) (4) of this section may be illustrated by the following examples. For purposes of these examples it is assumed that the exempt organization periodical contains advertising, and that the production and distribution of the readership content of the periodical is related to the organization's exempt purpose.

Example (1). U is an exempt scientific organization with 10,000 members who pay annual dues of \$15 per year. One of U's activities is the publication of a monthly periodical which is distributed to all of its members. U also distributes 5,000 additional copies of its periodical to nonmember subscribers at a cost of \$10 per year. Pursuant to paragraph (f) (4) (i) of this section, since the nonmember circulation of U's periodical represents 33 1/3 percent of its total circulation the subscription price charged to nonmembers will be used to determine the portion of U's membership receipts allocable to the periodical. Thus, U's allocable membership receipts will be \$100,000 (\$10 times 10,000 members), and U's total circulation income for the periodical will be \$150,000 (\$100,000 from members plus \$50,000 from sales to nonmembers).

Example (2). Assume the facts as stated in example (1), except that U sells only 500 copies of its periodical to nonmembers, at a price of \$10 per year. Assume further that U's members may elect not to receive the periodical, in which case their annual dues are reduced from \$15 per year to \$9 per year, and that only 3,000 members elect to receive the periodical and pay the full dues of \$15 per year. U's stated subscription price to members of \$9 consistently results in an excess of total income (including gross advertising income) attributable to the periodical over total costs of the periodical. Since the 500 copies of the periodical distributed to nonmembers represents only 14 percent of

the 3,500 copies distributed, pursuant to paragraph (f) (4) (i) of this section, the \$10 subscription price charged to nonmembers will not be used in determining the portion of membership receipts allocable to the periodical. On the other hand, since 70 percent of the members elect not to receive the periodical and pay \$9 less per year in dues, pursuant to paragraph (f) (4) (ii) of this section, such \$9 price will be used in determining the subscription price charged to members. Thus, the allocable membership receipts will be \$9 per member, or \$27,000 (\$9 times 3,000 copies) and U's total circulation income will be \$32,000 (\$27,000 plus \$5,000).

Example (3). (a) W, an exempt trade association, has 800 members who pay annual dues of \$50 per year. W publishes a monthly journal the editorial content and advertising of which are directed to the business interests of its own members. The journal is distributed to all of W's members and no receipts are derived from nonmembers.

(b) W has total receipts of \$100,000 of which \$40,000 (\$50 x 800) are membership receipts and \$60,000 are gross advertising income. W's total costs for the journal and other exempt activities is \$100,000. W has total periodical costs of \$76,000 of which \$41,000 are direct advertising costs and \$35,000 are readership costs.

(c) Paragraph (f) (4) (i) of this section will not apply since no copies are available to nonmembers. Therefore, the allocation of membership receipts shall be made in accordance with paragraph (f) (4) (iii) of this section. Based upon pro rata allocation of membership receipts (40,000) by a fraction the numerator of which is total periodical costs (\$76,000) and the denominator of which is the total costs of the journal and the other exempt activities (\$100,000), \$30,400 (\$76,000/\$100,000 times \$40,000) of membership receipts is circulation income.

(6) *Deductions attributable to exempt organization periodicals—(i) In general.* For purposes of this paragraph the term "total periodical costs" means the total deductions attributable to the periodical. For purposes of this paragraph the total periodical costs of an exempt organization periodical are the sum of the direct advertising costs of the periodical (determined under subdivision (ii) of this subparagraph) and the readership costs of the periodical (determined under subdivision (iii) of this subparagraph). Items of deduction properly attributable to exempt activities other than the publication of an exempt organization periodical may not be allocated to such periodical. Where items are attributable both to an exempt organization periodical and to other activities of an exempt organization, the allocation of such items must be made on a reasonable basis which fairly reflects the portion of such item properly attributable to each such activity. The method of allocation will vary with the nature of the item, but once adopted, a reasonable method of allocation with respect to an item must be used consistently. Thus, for example, salaries may generally be allocated among various activities on the basis of the time devoted to each activity; occupancy costs such as rent, heat and electricity may be allocated on the basis of the portion of space devoted to each activity; and depreciation may be allocated on the basis of space occupied and the portion of the particular asset utilized in each activity. Allocations based on dollar receipts from various exempt

activities will generally not be reasonable since such receipts are usually not an accurate reflection of the costs associated with activities carried on by exempt organizations.

(ii) *Direct advertising costs.* (a) The direct advertising costs of an exempt organization periodical include all expenses, depreciation, and similar items of deduction which are directly connected with the sale and publication of advertising as determined in accordance with paragraphs (a), (b), and (c) of this section. These items are allowable as deductions in the computation of unrelated business income of the organization for the taxable year to the extent they meet the requirements of section 162, section 167, or other relevant provisions of the Code. The items allowable as deductions under this subdivision do not include any items of deduction attributable to the production or distribution of the readership content of the periodical.

(b) The items allowable as deductions under this subdivision would include agency commissions and other direct selling costs, such as transportation and travel expenses, office salaries, promotion and research expenses, and direct office overhead directly connected with the sale of advertising lineages in the periodical. Also included would be other items of deduction commonly classified as advertising costs under standard account classification, such as art work and copy preparation, telephone, telegraph, postage, and similar costs directly connected with advertising.

(c) In addition to the items of deduction normally included in standard account classifications relating to advertising costs, it is also necessary to ascertain the portion of mechanical and distribution costs attributable to advertising lineage. For this purpose, the general account classifications of items includible in mechanical and distribution costs ordinarily employed in business-paper and consumer publication accounting provide a guide for the computation. Thus, the mechanical and distribution costs in such cases would include the portion of the costs and other expenses of composition, presswork, binding, mailing (including paper and wrappers used for mailing), and the bulk postage attributable to the advertising lineage of the publication. The portion of mechanical and distribution costs attributable to advertising lineage of the periodical will be determined on the basis of the ratio of advertising lineage to total lineage of the periodical, and the application of that ratio to the total mechanical and distribution costs of the periodical, where records are not kept in such a manner as to reflect more accurately the allocation of mechanical and distributions costs to advertising lineage of the periodical, and where there is no factor in the character of the periodical to indicate that such an allocation would be unreasonable.

(iii) *Readership costs.* The "readership costs" of an exempt organization periodical include expenses, depreciation or similar items which are directly connected with the production and distribution of the readership content of the

periodical and which would otherwise be allowable as deductions in determining unrelated business taxable income under section 512 and the regulations thereunder if such production and distribution constituted an unrelated trade or business activity. Thus, readership costs include all the items of deduction attributable to an exempt organization periodical which are not allocated to direct advertising costs under subdivision (ii) of this subparagraph, including the portion of such items attributable to the readership content of the periodical, as opposed to the advertising content, and the portion of mechanical and distribution costs which is not attributable to advertising lineage in the periodical.

(7) *Consolidation*—(i) *In general*. Where an exempt organization subject to unrelated business income tax under section 511 publishes two or more periodicals for the production of income, it may treat the gross income from all (but not less than all) of such periodicals and the items of deduction directly connected with such periodicals (including readership costs of such periodicals), on a consolidated basis as if such periodicals were one periodical in determining the amount of unrelated business taxable income derived from the sale of advertising in such periodical. Such treatment must, however, be followed consistently and once adopted shall be binding unless the consent of the Commissioner is obtained as provided in sections 446(e) and § 1.446-1(e).

(ii) *Production of income*. For purposes of this subparagraph, an exempt organization periodical is "published for the production of income" if—

(a) The organization generally receives gross advertising income from the periodical equal to at least 25 percent of the readership costs of such periodical, and

(b) The publication of such periodical is an activity engaged in for profit.

For purposes of the preceding sentence, the determination whether the publication of a periodical is an activity engaged in for profit is to be made by reference to objective standards taking into account all the facts and circumstances involved in each case. The facts and circumstances must indicate that the organization carries on the activity with the objective that the publication of the periodical will result in economic profit (without regard to tax consequences), although not necessarily in a particular year. Thus, an exempt organization periodical may be treated as having been published with such an objective even though in a particular year its total periodical costs exceed its total income. Similarly, if an exempt organization begins publishing a new periodical, the fact that the total periodical costs exceed the total income for the startup years because of a lack of advertising sales does not mean that the periodical was published without an objective of economic profit. The organization may establish that the activity was carried on with such an objective. This might be established by showing, for example, that there is

a reasonable expectation that the total income, by reason of an increase in advertising sales, will exceed costs within a reasonable time. See § 1.183-2 for additional factors bearing on this determination.

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

Example. Y, an exempt trade association, publishes three periodicals which it distributes to its members: a weekly newsletter, a monthly magazine, and quarterly journal. Both the monthly magazine and the quarterly journal contain advertising which accounts for gross advertising income equal to more than 25 percent of their respective readership costs. Similarly, the total income attributable to each such periodical has exceeded the total deductions attributable to each such periodical for substantially all the years they have been published. The newsletter carries no advertising and its annual subscription price is not intended to cover the cost of publication. The newsletter is a service of Y distributed to all of its members in an effort to keep them informed of changes occurring in the business world and is not engaged in for profit. Under these circumstances, Y may consolidate the income and deductions from the monthly and quarterly journals in computing its unrelated business taxable income, but may not consolidate the income and deductions attributable to the publication of the newsletter with the income and deductions of its other periodicals since the newsletter is not published for the production of income.

(g) *Foreign organizations*—(1) *In general*. The unrelated business taxable income of a foreign organization exempt from taxation under section 501(a) consists of:

(i) The organization's unrelated business taxable income which is derived from sources within the United States but which is not effectively connected with the conduct of a trade or business within the United States, plus

(ii) The organization's unrelated business taxable income effectively connected with the conduct of a trade or business within the United States (whether or not such income is derived from sources within the United States).

To determine whether income realized by a foreign organization is derived from sources within the United States or is effectively connected with the conduct of a trade or business within the United States, see part 1, subchapter N, chapter 1 of the Code (section 861 and following) and the regulations thereunder.

(2) *Effective dates*. Subparagraph (1) of this paragraph applies to taxable years beginning after December 31, 1969. For taxable years beginning on or before December 31, 1969, the unrelated business taxable income of a foreign organization exempt from taxation under section 501(a) consists of the organization's unrelated business taxable income which—

(i) For taxable years beginning after December 31, 1966, is effectively connected with the conduct of a trade or business within the United States, whether or not such income is derived from sources within the United States;

(ii) For taxable years beginning on or before December 31, 1966, is derived from sources within the United States.

(h) *Effective date*. Paragraphs (a) through (f) of this section are applicable with respect to taxable years beginning after December 12, 1967. However, if a taxpayer wishes to rely on the rules stated therein for taxable years beginning before December 13, 1967, he may do so.

PAR. 2. Section 513 is amended by revising section 513(c) and by adding an historical note. These amended and added provisions read as follows:

§ 1.513 Statutory provisions; unrelated trade or business.

Sec. 513 Unrelated trade or business. * * *

(c) *Advertising, etc., activities*. For purposes of this section, the term "trade or business" includes any activity which is carried on for the production of income from the sale of goods or the performance of services. For purposes of the preceding sentence, an activity does not lose identity as a trade or business merely because it is carried on within a larger aggregate of similar activities or within a larger complex of other endeavors which may, or may not, be related to the exempt purposes of the organization. Where an activity carried on for profit constitutes an unrelated trade or business no part of such trade or business shall be excluded from such classification merely because it does not result in profit.

[Sec. 513(c) as amended by sec. 121(c), Tax Reform Act 1969 (83 Stat. 542)]

PAR. 3. Section 1.513-1 is amended by revising paragraph (a), paragraph (b), and paragraph (f). These amended provisions read as follows:

§ 1.513-1 Definition of unrelated trade or business.

(a) *In general*. As used in section 512 the term "unrelated business taxable income" means the gross income derived by an organization from any unrelated trade or business regularly carried on by it, less the deductions and subject to the modifications provided in section 512. Section 513 specifies with certain exceptions that the phrase "unrelated trade or business" means, in the case of an organization subject to the tax imposed by section 511, any trade or business the conduct of which is not substantially related (aside from the need of such organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501 (or, in the case of an organization described in section 511(a)(2)(B), to the exercise or performance of any purpose or function described in section 501(c)(3)). (For certain exceptions from this definition, see paragraph (e) of this section. For a special definition of "unrelated trade or business" applicable to certain trusts, see section 513(b).) Therefore, unless one of the specific exceptions of section 512 or 513 is applicable, gross income of an exempt organization subject to the tax imposed by section 511 is includible in the computation of unrelated business taxable income if: (1) It is income from trade or business; (2) such trade or business is regularly carried on by the

organization; and (3) the conduct of such trade or business is not substantially related (other than through the production of funds) to the organization's performance of its exempt functions.

(b) *Trade or business.* The primary objective of adoption of the unrelated business income tax was to eliminate a source of unfair competition by placing the unrelated business activities of certain exempt organizations upon the same tax basis as the nonexempt business endeavors with which they compete. On the other hand, where an activity does not possess the characteristics of a trade or business within the meaning of section 162, such as when an organization sends out low-cost articles incidental to the solicitation of charitable contributions, the unrelated business income tax does not apply since the organization is not in competition with taxable organizations. However, in general, any activity of a section 511 organization which is carried on for the production of income and which otherwise possesses the characteristics required to constitute "trade or business" within the meaning of section 162—and which, in addition, is not substantially related to the performance of exempt functions—presents sufficient likelihood of unfair competition to be within the policy of the tax. Accordingly, for purposes of section 513 the term "trade or business" has the same meaning it has in section 162, and generally includes any activity carried on for the production of income from the sale of goods or performance of services. Thus, the term "trade or business" in section 513 is not limited to integrated aggregates of assets, activities and good will which comprise businesses for the purposes of certain other provisions of the Internal Revenue Code. Activities of producing or distributing goods or performing services from which a particular amount of gross income is derived do not lose identity as trade or business merely because they are carried on within a larger aggregate of similar activities or within a larger complex of other endeavors which may, or may not, be related to the exempt purposes of the organization. Thus, for example, the regular sale of pharmaceutical supplies to the general public by a hospital pharmacy does not lose identity as trade or business merely because the pharmacy also furnishes supplies to the hospital and patients of the hospital in accordance with its exempt purposes or in compliance with the terms of section 513(a)(2). Similarly, activities of soliciting, selling, and publishing commercial advertising do not lose identity as a trade or business even though the advertising is published in an exempt organization periodical which contains editorial matter related to the exempt purposes of the organization. However, where an activity carried on for the production of income constitutes an unrelated trade or business, no part of such trade or business shall be excluded from such classification merely because it does not result in profit.

(f) *Special rule respecting publishing businesses prior to 1970.* For a special rule for taxable years beginning before January 1, 1970, with respect to publishing businesses carried on by an organization, see section 513(c) of the Code prior to its amendment by section 121(c) of the Tax Reform Act of 1969 (83 Stat. 542).

PAR. 4. Section 1.513-2 is amended by revising paragraph (c) to read as follows:

§ 1.513-2 Definition of unrelated trade or business applicable to taxable years beginning before December 13, 1967.

(c) *Special rules respecting publishing businesses.* For a special rule with respect to publishing businesses carried on by an organization, see section 513(c) of the Code prior to its amendment by section 121(c) of the Tax Reform Act of 1969 (83 Stat. 542).

[FR Doc. 75-34148 Filed 12-17-75; 8:45 am]

Title 28—Judicial Administration
CHAPTER I—DEPARTMENT OF JUSTICE
[Order No. 635-75]

PART 0—ORGANIZATION OF THE
DEPARTMENT OF JUSTICE
Office of Professional Responsibility

This order establishes within the Department of Justice an Office of Professional Responsibility to be headed by a Counsel on Professional Responsibility. The Counsel's function will be to ensure that Departmental employees continue to perform their duties in accord with the professional standards expected of the Nation's principal law enforcement agency. To this end, the Office of Professional Responsibility will serve as a special review and advisory body, reporting directly to the Attorney General or, in appropriate cases, to the Deputy Attorney General or the Solicitor General.

By virtue of the authority vested in me by 28 U.S.C. 509, 510, and 5 U.S.C. 301, Part 0 of Chapter I of Title 28, Code of Federal Regulations, is amended as follows:

§ 0.1 [Amended]

1. Section 0.1 of Subpart A is amended by deleting "Office of Special Review" and by substituting in its place "Office of Professional Responsibility."

2. The existing Subpart G-2 is deleted and the following new Subpart G-2 is inserted in its place:

Subpart G-2—Office of Professional Responsibility

§ 0.39 Organization.

The Office of Professional Responsibility shall be headed by a Counsel, appointed by the Attorney General. The Counsel shall be subject to the general supervision and direction of the Attorney General or, whenever appropriate, of the

Deputy Attorney General or the Solicitor General.

§ 0.39a Functions.

The Counsel on Professional Responsibility shall:

(a) Receive and review any information or allegation presented to him concerning conduct by a Department employee that may be in violation of law, of Department regulations or orders, or of applicable standards of conduct. However, this provision does not preempt the primary responsibility of internal inspection units of the Department to receive such information or allegations and to conduct investigations.

(b) Make such preliminary inquiry as may be necessary to determine whether the matter should be referred to another official within the Department.

(c) Refer any matter that appears to warrant examination in the following manner:

(1) If the matter appears to involve a violation of law, to the head of the investigative agency having jurisdiction to investigate such violations;

(2) If the matter appears not to involve a violation of law, to the head of the office, division, bureau, or board to which the employee is assigned, or to the head of its internal inspection unit;

(3) If referral to the official indicated in paragraph (c) (1) or (2) would be inappropriate, to the Attorney General and the Deputy Attorney General or, if referral to both the Attorney General and the Deputy Attorney General would also be inappropriate, to whichever of them would be proper or to the Solicitor General.

(d) Recommend to the Attorney General, the Deputy Attorney General, or the Solicitor General what further action should be undertaken with regard to any matter referred to such official under paragraph (c) (3), including the assignment of any task force or individual to undertake the action recommended and any special arrangements that appear warranted.

(e) Undertake any investigation of a matter referred under paragraph (c) (3) that may be assigned by the Attorney General, the Deputy Attorney General, or the Solicitor General, or cooperate with any other organization, task force, or individual that may be assigned by such official to undertake the investigation.

(f) Submit to the Attorney General and the Deputy Attorney General or, if submission to both would be inappropriate, to whichever of them would be proper or to the Solicitor General:

(1) An immediate report concerning any matter referred under paragraph (c) (1) or (c) (2) that should be brought to the attention of a higher official;

(2) An immediate report concerning the adequacy of any investigation of a matter referred under paragraph (c), if the Counsel believes that a significant question exists as to the adequacy of such investigation;

(3) A monthly report summarizing all matters referred under paragraph (c) during the preceding month; and

[Order No. 634-75]

PART O—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

Authorizations With Respect to Personnel and Certain Administrative Matters

This order makes two technical amendments to the Department of Justice organizational regulations.

By virtue of the authority vested in me by 28 U.S.C. 509, 510 and 5 U.S.C. 301, Part O of Chapter I of Title 28, Code of Federal Regulations, is amended as follows:

1. Section 0.76(g) of Subpart O is revised to read as follows:

§ 0.76 Specific functions.

(g) Settling and authorizing payment of employee claims under the Military and Civilian Employees' Claims Act of 1964, as amended (31 U.S.C. 240-243).

2. Section 0.150 of Subpart X is revised to read as follows:

§ 0.150 Collection of erroneous payments.

The Director of the Federal Bureau of Investigation for the FBI and the Assistant Attorney General for Administration for all other organizational units of the Department are authorized, in accordance with the regulations prescribed by the Attorney General under Section 5514(b) of Title 5, United States Code, to collect indebtedness resulting from erroneous payments to employees.

Dated: December 8, 1975.

EDWARD H. LEVI,
Attorney General.

[FR Doc. 75-34125 Filed 12-17-75; 8:45 am]

Title 38—Pensions, Bonuses, and Veterans' Relief

CHAPTER I—VETERANS ADMINISTRATION

PART 1—GENERAL PROVISIONS

Safeguarding Personal Information in Veterans Administration Records

On page 51204 of the FEDERAL REGISTER of November 4, 1975, there was published a notice of proposed regulatory development to add paragraphs (h), (i), and (j) to § 1.576, Title 38, Code of Federal Regulations. These paragraphs implement the provisions of section 552a(1), title 5, United States Code insofar as they affect Veterans Administration records stored with General Services Administration, now or in the future.

Interested persons were given 30 days in which to submit comments, suggestions, or objections regarding the proposed regulation.

No written comments have been received and the proposed regulation is hereby adopted without change and is set forth below.

Effective date. This VA Regulation is effective September 27, 1975, the effective date of section 3, Pub. L. 93-579.

Approved: December 12, 1975.

By direction of the Administrator.

[SEAL] ODELL W. VAUGHN,
Deputy Administrator.

In § 1.576, paragraphs (h), (i) and (j) are added to read as follows:

§ 1.576 General policies, conditions of disclosure, accounting of certain disclosures, and definitions.

(h) The Veterans Administration will, for the purposes of 5 U.S.C. 552a, consider that it maintains any agency record which it deposits with the Administrator of General Services for storage, processing, and servicing in accordance with section 3103 of title 44, United States Code. Any such record will be considered subject to the provisions of § 1.575 series implementing 5 U.S.C. 552a and any other applicable Veterans Administration regulations. The Administrator of General Services is not authorized to disclose such a record except to the Veterans Administration, or under regulations established by the Veterans Administration which are not inconsistent with 5 U.S.C. 552a.

(i) The Veterans Administration will, for the purposes of 5 U.S.C. 552a, consider that a record is maintained by the National Archives of the United States if it pertains to an identifiable individual and was transferred to the National Archives prior to September 27, 1975, as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government. Such records are not subject to the provisions of 5 U.S.C. 552a except that a statement generally describing such records (modeled after the requirements relating to records subject to subsections (e)(4)(A) through (G) of 5 U.S.C. 552a) will be published in the FEDERAL REGISTER.

(j) The Veterans Administration will also, for the purposes of 5 U.S.C. 552a, consider that a record is maintained by the National Archives of the United States if it pertains to an identifiable individual and is transferred to the National Archives on or after September 27, 1975, as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government. Such records are exempt from the requirements of 5 U.S.C. 552a except subsections (e)(4)(A) through (G) and (e)(9) thereof.

[FR Doc. 75-34169 Filed 12-17-75; 8:45 am]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

[FRL 468-5]

PART 55—ENERGY RELATED AUTHORITY

Miscellaneous Amendments

On April 28, 1975 (40 FR 18438), pursuant to section 119 of the Clean Air Act

(4) An annual report, or a semi-annual report if the Counsel determines this to be necessary, reviewing and evaluating the activities of internal inspection units or, where there are no such units, the discharge of comparable duties within the Department.

(g) Submit recommendations to the Attorney General and the Deputy Attorney General on the need for changes in policies or procedures that become evident during the course of his inquiries.

(h) Undertake any other responsibilities assigned by the Attorney General, including duties relating to the improvement of the performance of the Department.

§ 0.39b Relationship to other departmental units.

(a) Primary responsibility for assuring the maintenance of the highest standards of professional responsibility by Department employees shall continue to rest with the heads of the offices, divisions, bureaus, and boards of the Department.

(b) Primary responsibility for investigating an allegation of unprofessional conduct that is lodged against an employee of the Department normally shall continue to rest with the head of the office, division, bureau, or board to which the employee is assigned, or with the head of its internal inspection unit, or, if the conduct appears to constitute a violation of law, with the head of the investigative or prosecutive agency having jurisdiction over the subject matter involved.

(c) The heads of the offices, divisions, bureaus, and boards shall provide information and assistance requested by the Counsel in connection with reviews or investigations conducted by the Counsel or by any other person assigned to conduct reviews or investigations and shall keep the Counsel informed of major investigations that they are conducting.

(d) Employees of the Department may be assigned to the Office of Professional Responsibility on a case-by-case basis to conduct such inquiries as may be warranted. However, no investigative personnel shall be assigned except under the specific direction of the Attorney General or the Deputy Attorney General and, in normal course, with the agreement of the head of the unit to which the investigative personnel are regularly assigned. Personnel assigned to the Office shall work under the direction of the Counsel.

§ 0.39c Committee on Professional Responsibility.

The Committee on Professional Responsibility shall consist of Department officials designated by the Attorney General and shall serve as an advisory body to the Counsel.

Dated: December 8, 1975.

EDWARD H. LEVI,
Attorney General.

[FR Doc. 75-34124 Filed 12-17-75; 8:45 am]

(42 U.S.C. 1857, et seq., as amended by Pub. L. 91-604, 84 Stat. 1676, and Pub. L. 93-319, 88 Stat. 246), the Administrator promulgated subpart A of Part 55 setting forth requirements for fuel burning sources eligible for compliance date extensions, temporary suspensions, and one year postponements.

To be eligible for a compliance date extension under the Energy Supply and Environmental Coordination Act of 1974 (ESECA), a source must be prohibited from using petroleum products or natural gas by reason of an order which is issued by the Federal Energy Administration (FEA) under section 2(a) of ESECA or it must have begun conversion as defined in § 55.04(b) to the use of coal as its primary energy source during the period beginning on September 15, 1973, and ending on March 15, 1974, and the source must convert to the use of coal as its primary energy source after September 15, 1973. Section 55.01(b) is revised to include the latter requirement for eligibility.

The requirements published in the April 28, 1975, FEDERAL REGISTER as Subpart A of Part 55 did not set forth a definition for the phrase "converts to the use of coal as its primary energy source." Section 55.02(j) is added to define a source which "converts to the use of coal as its primary energy source" as a source which used petroleum products or natural gas to provide more than 50 percent of its heat input for the two year period ending on September 15, 1973, and which actually converts thereafter to the use of coal as its "primary energy source" (as defined at 10 CFR 303.2 of FEA's regulations).

Congress clearly intended that only sources which actually convert to coal should be eligible for compliance date extensions under section 119(c) of the Clean Air Act. For this reason, the Administrator rejected at (40 FR 18438), a proposal to consider as a converted source any historical coal burner which is subject to compliance schedule(s) to convert to natural gas or petroleum products to comply with air pollution requirements and which is ordered by the Administrator of the Federal Energy Administration to continue burning coal under section 2 of ESECA. In such a case there would be no actual conversion. The definition promulgated herein would provide that a source is eligible for a compliance date extension only if an actual conversion is required by an FEA order.

Section 55.04(q) is added to provide that the Administrator may, on his own motion, postpone the submittal of the information required under § 55.04 (a) or (b) if he finds that the State in which the source is located has submitted a plan revision to EPA for approval and such plan revision affects the source in question. This will relieve the source from having to commit itself to submitting a compliance schedule for an air pollution requirement which may not be in effect upon approval of the plan revision by EPA.

Section 55.04(a) (1) (i) is revised to delete the phrase "(before July 1, 1975)." This is simply an error since, in some cases, the source will not be able to convert to the burning of coal in compliance with all air pollution requirements until after July 1, 1975.

Section 55.04(e) is revised to provide specifically that the Administrator may set forth enforceable compliance schedules as part of any primary standard condition or regional limitation. This will allow EPA to effectively monitor the source's progress toward compliance with these requirements. Since a compliance date extension will be granted by definition in any case where the regional limitation applies, the compliance schedule for meeting regional limitation requirements should comply with the requirements set forth in § 55.04(a).

Section 55.04(a) (2) (i) (C) is revised to change "installation or process" to "installation of process." Section 55.04(n) is revised to change "(6)" to "(5)". These revisions are necessary to correct typographical or printing errors.

These rulemaking actions are effective on (date of promulgation) without proposal and the 30 day deferral of effectiveness of the promulgation. EPA believes that the changes being made to part 55 are either minor and non-controversial, or required by law, or both. In addition, the FEA coal conversion program is at a crucial stage of implementation, and to hold it up for a further round of public comment on the limited changes made by these regulations would be contrary to the Congressional intent to convert eligible plants rapidly from oil and gas use to coal use.

Accordingly, the Administrator finds that a pre-promulgation public comment period on these regulations would be "impracticable, unnecessary, or contrary to the public interest" within the meaning of 5 U.S.C. § 553(b) (3). Public comment is invited, however, for a period of 30 days following the promulgation of these rules. Interested persons may submit written comments (in duplicate) to the Division of Stationary Source Enforcement (EN-341), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, Attention: Mr. Richard D. Wilson, Director. Following the close of the comment period, EPA will publish a response to any substantive comments received, together with any amendments to these regulations which seem justified in the light of those comments.

These regulations are promulgated under the authority of sections 114, 119 and 301 of the Clean Air Act as amended (42 U.S.C. 1857 et seq.).

Dated: December 12, 1975.

JOHN QUARLES,
Acting Administrator.

Part 55 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

1. Section 55.01 is amended by revising paragraph (b) (1), deleting paragraph

(b) (2) and renumbering paragraphs (b) (3) through (b) (5) to (b) (2) through (b) (4). As revised paragraph (b) (1) reads as follows:

§ 55.01 Applicability.

(b) The Administrator shall issue a compliance date extension to any fuel burning stationary source: (1) Which is eligible to apply for a compliance date extension because:

(i) Such source is prohibited from using petroleum products or natural gas by reason of an order which is issued under section 2(a) of the Energy Supply and Environmental Coordination Act of 1974 or such source began conversion as defined in § 55.04(b) to the use of coal as its primary energy source during the period beginning on September 15, 1973, and ending on March 15, 1974; and

(ii) Such source, on or after September 15, 1973, converts to the use of coal as its primary energy source;

2. Section 55.02 is amended by adding paragraph (j) as follows:

§ 55.02 Definitions.

(j) "Converts to the use of coal as its primary energy source" means to convert from the use of more than 50 percent heat input from petroleum products or natural gas over the two year period ending on September 15, 1973, to the use of coal as a primary energy source as defined by 10 CFR 303.2.

3. Section 55.04 is amended by deleting the phrase "(before July 1, 1975)" from paragraph (a) (1) (i), changing the phrase "installation or process" to "installation of process" in paragraph (a) (2) (i) (C), changing "(6)" to "(5)" in paragraph (n), revising the first sentence of paragraph (e) and adding a new paragraph (q). The revised first sentence of paragraph (e) and new paragraph (q) read as follows:

§ 55.04 Compliance date extensions.

(e) The Administrator shall set forth any necessary primary standard condition, regional limitation and any interim requirements (including enforceable compliance schedules to meet such requirements) which the Administrator determines are reasonable and practicable as conditions of any plan for compliance.

(q) The Administrator may, on his own motion, postpone the date for submittal of the information required under paragraphs (a) or (b) of this section if the State in which a source required to make such submittal is located has submitted a plan revision under 40 CFR Part 51 to the Administrator for approval, such plan revision is presently being reviewed by the Administrator, and such plan revision would revise an air pollution requirement applicable to such source.

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