

stock of different classes, then the foundation value level, the disqualified person value level, and the substituted combined value level, as defined in paragraph (d)(2) of this section, shall be adjusted to reflect such increase. An increase in the percentage of value held shall not be considered to have occurred solely as a result of changes in the relative values of the stock of different classes if:

(A) There has been any increase during the period in the percentage of any class of stock held by the private foundation, its disqualified persons, or both, or

(B) There has been any issuance, redemption, or purchase by the issuing corporation of any stock during the period.

See § 53.4943-6(d) for rules relating to increases caused by readjustments.

(ii) *Example.* The provisions of this paragraph (b)(10) may be illustrated by the following example:

Example. (i) At all times since May 26, 1969, F, a private foundation, has held 25% (500,000 shares) of the outstanding class of voting stock of X corporation. No disqualified person with respect to F holds any voting stock of X. In addition X has had outstanding since May 26, 1969, a class of non-voting preferred stock, none of which is held by F or a disqualified person. X is an active business corporation and third parties do not have effective control of X. On May 26, 1969, the voting stock (2 million shares outstanding) was trading for \$5 a share on the New York Stock Exchange. The non-voting preferred stock, not publicly traded, was valued at \$1 million. The total value of all outstanding stock was \$11 million (\$10 million voting stock plus \$1 million non-voting preferred). On May 26, 1969, F held 22.73% of the value of X's outstanding stock (\$2.5 million/\$11 million).

(ii) On October 31, 1982, X's voting stock is trading for \$20 a share and the nonvoting stock is valued at \$3 million. At all times during the period May 26, 1969, through October 31, 1982, F has held 25 percent of the voting stock and none of the nonvoting stock of X. No stock of X is owned by disqualified persons. No stock of X has been issued, redeemed or purchased by X during this period. On October 13, 1982, the total value of X's outstanding stock (is \$43 million (\$40 million voting stock and \$3 million nonvoting stock) and F holds 23.26 percent of the value of X's outstanding stock (\$10 million/\$43 million). F's foundation value level and the substituted combined value level are increased from 22.73 percent to 23.26 percent to reflect this change.

(iii) On November 1, 1982, X corporation distributes the stock of Y corporation, a wholly-owned subsidiary, to X's shareholders. Y is a business enterprise. Under this paragraph (d)(10), all of F's stock in X is permitted holdings under section 4943 (c)(4) even though the percentage of value held by F has increased from 22.73 percent on May 26, 1969, to 23.26 percent on November 1, 1982. F's permitted holdings in Y will be determined by reference to F's permitted holdings in X under § 53.4943-7. Therefore, assuming no prohibited transaction occurs, F's permitted holdings in Y stock equal 25 percent of Y's voting stock and, separately, 23.26 percent of the value of all of Y's outstanding stock.

[T.D. 7496, 42 FR 46285, Sept. 15, 1977, as amended by T.D. 7944, 49 FR 6478, Feb. 22, 1984]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

voting stock in a business enterprise was constructively held by a private foundation on May 26, 1969, and was distributed to such foundation on June 30, 1970, such interest is entitled to a 20-year holding period beginning on May 26, 1969.

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

(2) *Separate phases.* The phases for each interest to which section 4943(c)(5) applies start independently from those for any other interest of the foundation in the same enterprise to which section 4943(c) (4) or (5) applies. Therefore, until an interest enters its own second phase, the 25 percent limit described in paragraph (d)(5) of §53.4943-4 shall not

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

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

Example (1). On May 26, 1969, F, a private foundation, owns no stock in M Corporation, and A, a disqualified person owns 40 percent of the voting stock (voting power and value) in M. A dies on May 1, 1971, leaving 30 percent of the voting stock in M to F and leav-

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

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

Example (2). (i) On May 26, 1969, F, a private foundation, owns 30 percent of the voting stock of N Corporation (voting power and value) and disqualified persons own 20 percent of the voting stock of N Corporation. On May 1, 1971, B, a disqualified person, dies leaving 15 percent of the voting stock to F. Assume the distribution was made on June 1, 1972, and that section 4943(c)(5) applies. On May 26, 1969, the substituted combined vot-

ing level and the disqualified person voting levels are each 50 percent and the permitted holdings are 0 percent (50%–50%). On May 1, 1971, and June 1, 1972, these levels remain unchanged. On May 1, 1971, the 15 percent interest is treated as held by a disqualified person for a period extending through May 31, 1982.

(ii) On July 1, 1978, F sells 6 percent of the F stock to a nondisqualified person, thereby reducing the disqualified person voting level

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

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

level is 5 percent (20%–15%), and the permitted holdings are 23 percent (28%–5%).

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

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

Example. (3). (i) On May 26, 1969, F, a private foundation owns 5 percent of the voting stock of O Corporation (voting power and value), and disqualified persons own 45 percent of the voting stock. C, a disqualified person, dies on May 1, 1971, and leaves 41 percent of the voting stock of O to F. Assume that distribution is made on June 1, 1972, and that section 4943(c)(5) applies. On May 26, 1969, the substituted combined voting level and the disqualified person voting level are 50 percent and the permitted holdings are 0 percent (50%–50%). On May 1, 1971, and June 1, 1972, the various levels remain unchanged. On May 1, 1971, the 41 percent interest is treated as held by a disqualified person for a

period extending through May 31, 1982. On May 26, 1979, at the beginning of the second phase for F's 1969 holdings of 5 percent, the 5 percent is no longer treated as held by a disqualified person, the foundation voting level is 5 percent, the disqualified person voting level is reduced to 45 percent (50%–5%), and the substituted combined voting level remains at 50 percent. On such date F's permitted holdings are 5 percent (50%–45%). Since the 41 percent interest is treated as held by a disqualified person, the interest treated as held by F (5%) does not exceed the 25 percent limitation of section 4943(c)(4)(D)(i).

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

the foundation voting level is 24 percent, the disqualified person voting level is reduced to 4 percent (28% - 4%).

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

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

Example. (4). (i) On May 26, 1969, F, a private foundation, owns 30 percent of the voting stock in P Corporation (voting power and value), and disqualified persons own 20 percent. On May 1, 1971, D, a disqualified person, dies leaving 18 percent of the voting stock to F. Assume that distribution was made on June 1, 1972, and that section 4943 (c)(5) applies. On May 26, 1969, the substituted combined voting level and the disqualified person voting level are each 50 percent and the permitted holdings are 0 percent (50% - 50%). On May 1, 1971, and June 1, 1972, these levels remain unchanged. On May 1, 1971, the 18 percent interest is treated as held by a disqualified person for a period extending through May 31, 1982. On May 26, 1979, the foundation voting level increases to 30 percent, the disqualified person voting level decreases to 20 percent (50% - 30%), and the permitted holdings are 30 percent (50% - 20%). On June 1, 1982, the foundation voting level increases to 48 percent, the disqualified person voting level decreases to 2 percent and the permitted holdings are 48 percent (50% - 2%). Since at no time during

the second phase for F's 1969 holdings did all disqualified persons together have holdings in excess of 2 percent of the voting stock of P, the 25 percent limitation of section 4943(c)(4)(D)(i) did not apply to F's 1969 holdings.

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

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

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

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

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

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

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

(ii) On May 1, 1981, and June 1, 1982 (assuming F had disposed of the 6 percent holdings),

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

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

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

(ii) On August 1, 1990, F sells 22 percent of the voting stock of S to a nondisqualified person, reducing the 5 percent foundation

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

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

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

Date	F owns (per-cent)	F's interest 1969 (per-cent)	F's interest 1980 (per-cent)	Interest treated as held by disqualified person (per-cent)	Disqualified persons own (per-cent)	Foundation voting level (per-cent)	Substituted combined voting level (per-cent)	Disqualified person voting level (per-cent)	Permitted holdings (per-cent)	Comments
Aug. 1, 1990.	-22	-5	-17	-17	.....	-5	-22	-17	-5	F disposes of 22 pct.
Do	24	0	24	24	4	0	28	28	0	
June 1, 1991.	.....	.....	.....	-24	.....	+24	.....	-24	+24	2d phase for 24 pct.
Do	24	0	24	0	4	24	28	4	24	

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

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

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

(iii) Subparagraph (B) of section 4943(c)(6) applies where the foundation has excess business holdings in such enterprise (determined without regard to section 4943(c) (4), (5), or (6)) immediately prior to a change in holdings described in paragraph (a)(1)(i) of this section. In such a case, the interest of the foundation in such enterprise (immediately after such change) shall (while held by the foundation) be treated as held by a disqualified person (rather than the foundation) during the five-year period beginning on the date of such change, except that if and as

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

(2) *Acquisitions that are not purchases.* Section 4943(c)(6) does not apply if a change in holdings in a business enterprise is the result of a purchase by the private foundation or a disqualified person. For purposes of subparagraph