graph applies, and the basis of the share ($90), determined under subdivision (ii)(a) of this subparagraph, is reduced by $6 to $84. Furthermore, since the $7 that the estate is required to include in its gross income when the share is sold for $92 exceeds by $2 the basis of the option, subdivision (ii)(c) of this subparagraph applies, and the basis of the share ($84), determined under subdivision (ii)(a) and (ii)(b) of this subparagraph, is increased by $2. Accordingly, the basis is $86 and a capital gain of $6 is realized on the disposition of the share.

PAR. 6. Section 1.1014 is amended by striking out subsection (d) of section 1014 and by adding a historical note. This amended provision and historical note read as follows:

§ 1.1014 Statutory provisions; basis of property acquired from a decedent.

SEC. 1014. *Basis of property acquired from a decedent.* * * *

(d) [Deleted]

[Sec. 1014 as amended by sec. 2, Act of February 11, 1958 (Pub. Law 85-320, 72 Stat. 5)]

PAR. 7. Paragraph (c)(2) of § 1.1014 is amended to read as follows:

§ 1.1014-1 Basis of property acquired from a decedent.

* * * * *

(c) *Property to which section 1014 does not apply.* * * *

(2) Restricted stock options described in section 421 which the employee has not exercised at death if the employee died before January 1, 1957. In the case of employees dying after December 31, 1956, see paragraph (d)(4) of § 1.421-5.

[F.R. Doc. 61-441; Filed, Jan. 18, 1961; 8:49 a.m.]

[T.D. 6531]

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

Taxation of Regulated Investment Companies and Their Shareholders

On December 6, 1960, notice of proposed rule making with respect to the amendments of the Income Tax Regulations (26 CFR Part 1) under section 852 of the Internal Revenue Code of 1954 to reflect the amendment of section 852 made by section 39 of the Technical Amendments Act of 1958 (72 Stat. 1638), to provide rules for determining whether the buyer or seller of regulated investment company stock shall be considered the shareholder of such stock, and to make a clarifying change, was published in the FEDERAL REGISTER (25 F.R. 12464). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the amendments of the regulations as so published are hereby adopted, subject to the change set forth below.

Paragraph (b)(2)(iv) of § 1.852-4, as set forth in paragraph 2 of the notice of proposed rule making, is revised.

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

[SEAL] DANA LATHAM,
Commissioner of Internal Revenue.

Approved: January 16, 1961.

FRED C. SCRIBNER, Jr.,
Acting Secretary of the Treasury.

PARAGRAPH 1. Section 1.852 is amended (A) by adding a new paragraph (4) at the end of section 852 (b) and (B) by revising the historical note at the end thereof. These added and revised provisions read as follows:

§ 1.852 Statutory provisions; taxation of regulated investment companies and their shareholders.

SEC. 852. *Taxation of regulated investment companies and their shareholders.* * * *

(b) *Method of taxation of companies and shareholders.* * * *

(4) *Loss on sale or exchange of stock held less than 31 days.* If—

(A) Under subparagraph (B) or (D) of paragraph (3) a shareholder of a regulated investment company is required, with respect to any share, to treat any amount as a long-term capital gain, and

(B) Such share is held by the taxpayer for less than 31 days,

then any loss on the sale or exchange of such share shall, to the extent of the amount described in subparagraph (A) of this paragraph, be treated as loss from the sale or exchange of a capital asset held for more than 6 months. For purposes of this paragraph, the rules of section 246(c)(3) shall apply in determining whether any share of stock has been held for less than 31 days; except that "30 days" shall be substituted for the number of days specified in subparagraph (B) of section 246(c)(3).

* * * * *

[Sec. 852 as amended by sec. 2, Act of July 11, 1956 (Pub. Law 700, 84th Cong., 70 Stat. 530); secs. 39, 101, Technical Amendments Act 1958 (72 Stat. 1638, 1674)]

PAR. 2. Section 1.852-4 is amended (A) by adding a new subdivision (iv) at the end of paragraph (b)(2) and (B) by adding a new paragraph (d) at the end of such section. These added provisions read as follows:

§ 1.852-4 Method of taxation of shareholders of regulated investment companies.

* * * * *

(b) *Capital gains.* * * *

(2) *Undistributed capital gains.* * * *

(iv) For purposes of determining whether the purchaser or seller of a share or regulated investment company stock is the shareholder at the close of such company's taxable year who is required to include an amount of undistributed capital gains in gross income, the amount of the undistributed capital gains shall be treated in the same manner as a cash dividend payable to shareholders of record at the close of the company's taxable year. Thus, if a cash dividend paid to shareholders of record as of the close of the regulated investment company's taxable year would be considered income to the purchaser, then the purchaser is also considered to be the shareholder of such company at the close of its taxable year for purposes of including an amount of undistributed capital gains in gross income. If, in such a case, notice on Form 2439 is, pursuant to paragraph (a)(1) of § 1.852-9, mailed by the regulated investment company to the seller, then the seller shall be considered the nominee of the purchaser and, as such, shall be subject to the provisions in paragraph (b) of § 1.852-9. For rules for determining whether a dividend is income to the purchaser or seller of a share of stock, see paragraph (c) of § 1.61-9.

* * * * *

(d) *Special treatment of loss on the sale or exchange of regulated investment company stock held less than 31 days*—(1) *In general.* Under section 852(b)(4), if any person, with respect to a share of regulated investment company stock acquired by such person after December 31, 1957, and held for a period of less than 31 days, is required by section 852(b)(3)(B) or (D) to include in gross income as a gain from the sale or exchange of a capital asset held for more than six months—

(i) The amount of a capital gain dividend, or

(ii) An amount of undistributed capital gains,

then such person shall, to the extent of such amount, treat any loss on the sale or exchange of such share of stock as a loss from the sale or exchange of a capital asset held for more than 6 months. Such special treatment with respect to the sale of regulated investment company stock held for a period of less than 31 days is applicable to losses for taxable years ending after December 31, 1957.

(2) *Determination of holding period.* The rules contained in section 246(c)(3) (relating to the determination of holding periods for purposes of the deduction for dividends received) shall be applied in determining whether, for purposes of section 852(b)(4) and this paragraph, a share of regulated investment company stock has been held for a period of less than 31 days. In applying those rules, however, "30 days" shall be substituted for the number of days specified in subparagraph (B) of section 246(c)(3).

(3) *Example.* The application of section 852(b)(4) and this paragraph may be illustrated by the following example:

Example. On December 15, 1958, A purchased a share of stock in the X regulated investment company for $20. The X regulated investment company declared a capital gain dividend of $2 per share to shareholders of record on December 31, 1958. A, therefore, received a capital gain dividend of $2 which, pursuant to section 852(b)(3)(B), he must treat as a gain from the sale or exchange of a capital asset held for more than 6 months. On January 5, 1959, A sold his share of stock in the X regulated investment company for $17.50, which sale resulted in a loss of $2.50. Under section 852(b)(4) and this paragraph, A must treat $2 of such loss (an amount equal to the capital gain dividend received with respect to such share of stock) as a loss from the sale or exchange of a capital asset held for more than 6 months.

PAR. 3. Paragraph (a)(1) of § 1.852-9 is amended to read as follows:

§ 1.852-9 Special procedural requirements applicable to designation under section 852(b)(3)(D).

(a) *Regulated investment company*—(1) *Notice to shareholder.* A designation of undistributed capital gains under section 852(b)(3)(D) and paragraph (b)(2)(i) of § 1.852-2 shall be made by notice on Form 2439 mailed by the regulated investment company to each person who is a shareholder of record of the company at the close of the com-

pany's taxable year. The notice on Form 2439 shall show the name and address of the regulated investment company, the taxable year of the company for which the designation is made, the name and address of the shareholder, the amount designated by the company for inclusion by the shareholder in computing his long-term capital gains, and the tax paid with respect thereto by the company, which tax is deemed to have been paid by the shareholder. Form 2439 shall be prepared in triplicate, and copies B and C of the form shall be mailed to the shareholder on or before the 30th day following the close of the company's taxable year. Copy A of each Form 2439 must be associated with the undistributed capital gains tax return of the company (Form 2438), as provided in subparagraph (2) of this paragraph.

[F.R. Doc. 61-470; Filed, Jan. 18, 1961; 8:53 a.m.]

SUBCHAPTER B—ESTATE AND GIFT TAXES

[T.D. 6526]

PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

Miscellaneous Amendments

On November 24, 1960, a notice of proposed rule making was published in the FEDERAL REGISTER (25 F.R. 11169) to conform the Estate Tax Regulations (26 CFR Part 20) to sections 23(e), 30(d), 65(a), 66(a)(1), 66(b)(1), 67, 77, 102(a), and 102(c) of the Technical Amendments Act of 1958 (72 Stat. 1606); to section 22(a) of the Alaska Omnibus Act (73 Stat. 146); to section 18(b) of the Hawaii Omnibus Act (74 Stat. 411); and to sections 4(b) and 4(c) of Public Law 86-779. No objection to the rules proposed having been received during the 30-day period prescribed in the notice, the regulations as so proposed are hereby adopted.

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

[SEAL] DANA LATHAM,
Commissioner of Internal Revenue.

Approved: January 13, 1961.

FRED C. SCRIBNER, Jr.,
Acting Secretary of the Treasury.

In order to conform the Estate Tax Regulations (26 CFR Part 20) to sections 23(e), 30(d), 65(a), 66(a)(1), 66(b)(1), 67, 77, 102(a), and 102(c) of the Technical Amendments Act of 1958 (72 Stat. 1606); to section 22(a) of the Alaska Omnibus Act (73 Stat. 146); to section 18(b) of the Hawaii Omnibus Act (74 Stat. 411); and to sections 4(b) and 4(c) of Public Law 86-779, such regulations are amended as follows:

PARAGRAPH 1. Paragraphs (a) and (b) of § 20.0-1 are amended to read as follows:

§ 20.0-1 **Introduction.**

(a) *In general.* (1) The regulations in this part (Part 20, Subchapter B, Chapter I, Title 26, Code of Federal Regulations) are designated "Estate Tax Regulations". These regulations pertain to (i) the Federal estate tax imposed by chapter 11 of subtitle B of the Internal Revenue Code on the transfer of estates of decedents dying after August 16, 1954, and (ii) certain related administrative provisions of subtitle F of the Code. It should be noted that the application of many of the provisions of these regulations may be affected by the provisions of an applicable death tax convention with a foreign country. Unless otherwise indicated, references in the regulations to the "Internal Revenue Code" or the "Code" are references to the Internal Revenue Code of 1954, as amended, and references to a section or other provision of law are references to a section or other provision of the Internal Revenue Code of 1954, as amended. Unless otherwise provided, the Estate Tax Regulations are applicable to the estates of decedents dying after August 16, 1954, and supersede the regulations contained in Part 81, Subchapter B, Chapter I, Title 26, Code of Federal Regulations (1939) (Regulations 105, Estate Tax), as prescribed and made applicable to the Internal Revenue Code of 1954 by Treasury Decision 6091, signed August 16, 1954 (19 F.R. 5167, Aug. 17, 1954).

(2) Section 2208 makes the provisions of chapter 11 of the Code apply to the transfer of the estates of certain decedents dying after September 2, 1958, who were citizens of the United States and residents of a possession thereof at the time of death. Section 2209 makes the provisions of chapter 11 apply to the transfer of the estates of certain other decedents dying after September 14, 1960, who were citizens of the United States and residents of a possession thereof at the time of death. See §§ 20.2208-1 and 20.2209-1. Except as otherwise provided in §§ 20.2208-1 and 20.2209-1, the provisions of these regulations do not apply to the estates of such decedents.

(b) *Scope of regulations*—(1) *Estates of citizens or residents.* Subchapter A of chapter 11 of the Code pertains to the taxation of the estate of a person who was a citizen or a resident of the United States at the time of his death. The term "resident" means a decedent who, at the time of his death, had his domicile in the United States. The term "United States", as used in the Estate Tax Regulations, includes only the States and the District of Columbia. The term also includes the Territories of Alaska and Hawaii prior to their admission as States. See section 7701(a)(9). A person acquires a domicile in a place by living there, for even a brief period of time, with no definite present intention of later removing therefrom. Residence without the requisite intention to remain indefinitely will not suffice to constitute domicile, nor will intention to change domicile effect such a change unless accompanied by actual removal. For meaning of the term "citizen of the United States" as applied in a case where the decedent was a resident of a possession of the United States, see § 20.2208-1. The regulations pursuant to subchapter A are set forth in §§ 20.2001-1 to 20.2056(e)-3.

* * * * *

(3) *Miscellaneous substantive provisions.* Subchapter C of chapter 11 of the Code contains a number of miscellaneous substantive provisions. The regulations pursuant to subchapter C are set forth in §§ 20.2201-1 to 20.2209-1.

* * * * *

PAR. 2. Section 20.2011 is amended by revising section 2011 (a) and (c) and the historical note to read as follows:

§ 20.2011 **Statutory provisions; credit for State death taxes.**

SEC. 2011. *Credit for State death taxes*—(a) *In general.* The tax imposed by section 2001 shall be credited with the amount of any estate, inheritance, legacy, or succession taxes actually paid to any State or Territory or the District of Columbia, in respect of any property included in the gross estate (not including any such taxes paid with respect to the estate of a person other than the decedent).

* * * * *

(c) *Period of limitations on credit.* The credit allowed by this section shall include only such taxes as were actually paid and credit therefor claimed within 4 years after the filing of the return required by section 6018, except that—

(1) If a petition for redetermination of a deficiency has been filed with the Tax Court within the time prescribed in section 6213(a), then within such 4-year period or before the expiration of 60 days after the decision of the Tax Court becomes final.

(2) If, under section 6161, an extension of time has been granted for payment of the tax shown on the return, or of a deficiency, then within such 4-year period or before the date of the expiration of the period of the extension.

(3) If a claim for refund or credit of an overpayment of tax imposed by this chapter has been filed within the time prescribed in section 6511, then within such 4-year period or before the expiration of 60 days from the date of mailing by certified mail or registered mail by the Secretary or his delegate to the taxpayer of a notice of the disallowance of any part of such claim, or before the expiration of 60 days after a decision by any court of competent jurisdiction becomes final with respect to a timely suit instituted upon such claim, whichever is later.

Refund based on the credit may (despite the provisions of section 6511 and 6512) be made if claim therefor is filed within the period above provided. Any such refund shall be made without interest.

* * * * *

[Sec. 2011 as amended by sec. 3, Act of Feb. 20, 1956 (Pub. Law 414, 84th Cong., 70 Stat. 24); secs. 65(a) and 102(c)(1), Technical Amendments Act 1958 (72 Stat. 1657, 1674)]

PAR. 3. Paragraphs (a) and (c)(1) of § 20.2011-1 are amended to read as follows:

§ 20.2011-1 **Credit for State death taxes.**

(a) *In general.* A credit is allowed under section 2011 against the Federal estate tax for estate, inheritance, legacy or succession taxes actually paid to any State, Territory, or the District of Columbia, or, in the case of decedents dying before September 3, 1958, any possession of the United States (hereafter referred to as "State death taxes"). The credit, however, is allowed only for State death taxes paid (1) with respect to property included in the decedent's gross estate, and (2) with respect to the decedent's estate. The amount of the credit is subject to the limitation described in paragraph (b) of this section. It is subject

to further limitations described in § 20.2011–2 if a deduction is allowed under section 2053(d) for State death taxes paid with respect to a charitable gift. See paragraph (a) of § 20.2014–1 as to the allowance of a credit for death taxes paid to a possession of the United States in a case where the decedent died after September 2, 1958.

* * * * *

(c) *Miscellaneous limitations and conditions to credit*—(1) *Period of limitations.* The credit for State death taxes is limited under section 2011(c) to those taxes which were actually paid and for which a credit was claimed within four years after the filing of the estate tax return for the decedent's estate. If, however, a petition has been filed with the Tax Court of the United States for the redetermination of a deficiency within the time prescribed in section 6213(a), the credit is limited to those taxes which were actually paid and for which a credit was claimed within four years after the filing of the return or within 60 days after the decision of the Tax Court becomes final, whichever period is the last to expire. Similarly, if an extension of time has been granted under section 6161 for payment of the tax shown on the return, or of a deficiency, the credit is limited to those taxes which were actually paid and for which a credit was claimed within four years after the filing of the return, or before the date of the expiration of the period of the extension, whichever period is last to expire. If a claim for refund or credit of an overpayment of the Federal estate tax is filed within the time prescribed in section 6511, the credit for State death taxes is limited to such taxes as were actually paid and credit therefor claimed within four years after the filing of the return or before the expiration of 60 days from the date of mailing by certified or registered mail by the district director to the taxpayer of a notice of disallowance of any part of the claim, or before the expiration of 60 days after a decision by any court of competent jurisdiction becomes final with respect to a timely suit instituted upon the claim, whichever period is the last to expire. See section 2015 for the applicable period of limitations for credit for State death taxes on reversionary or remainder interests if an election is made under section 6163(a) to postpone payment of the estate tax attributable to reversionary or remainder interests. If a claim for refund based on the credit for State death taxes is filed within the applicable period described in this subparagraph, a refund may be made despite the general limitation provisions of sections 6511 and 6512. Any refund based on the credit described in this section shall be made without interest.

PAR. 4. Section 20.2014 is amended by adding at the end of section 2014 new subsection (f) and a historical note to read as follows:

§ 20.2014 Statutory provisions; credit for foreign death taxes.

SEC. 2014. *Credit for foreign death taxes* * * *

(f) *Possession of United States deemed a foreign country.* For purposes of the credits authorized by this section, each possession of the United States shall be deemed to be a foreign country.

[Sec. 2014 as amended by sec. 102(c)(2), Technical Amendments Act 1958 (72 Stat. 1674)]

PAR. 5. Paragraph (a)(1) of § 20.2014–1 is amended to read as follows:

§ 20.2014–1 Credit for foreign death taxes.

(a) *In general.* (1) A credit is allowed under section 2014 against the Federal estate tax for any estate, inheritance, legacy, or succession taxes actually paid to any foreign country (hereinafter referred to as "foreign death taxes"). The credit is allowed only for foreign death taxes paid (i) with respect to property situated within the country to which the tax is paid, (ii) with respect to property included in the decedent's gross estate, and (iii) with respect to the decedent's estate. The credit is allowable to the estate of a decedent who was a citizen of the United States at the time of his death. The credit is also allowable to the estate of a decedent who was a resident but not a citizen of the United States at the time of his death if the country of which the decedent was a national, in imposing death taxes, allows a similar credit to the estates of citizens of the United States resident in that country. See paragraph (b)(1) of § 20.0–1 for definition of the term "resident". The credit is not allowable to the estate of a decedent who was neither a citizen nor a resident of the United States at the time of his death. The credit is allowable not only for death taxes paid to foreign countries which are states in the international sense, but also for death taxes paid to possessions or political subdivisions of foreign states. With respect to the estate of a decedent dying after September 2, 1958, the term "foreign country", as used in this section and §§ 20.2014–2 to 20.2014–6, includes a possession of the United States. See §§ 20.2011–1 and 20.2011–2 for the allowance of a credit for death taxes paid to a possession of the United States in the case of a decedent dying before September 3, 1958. No credit is allowable for interest or penalties paid in connection with foreign death taxes.

PAR. 6. Section 20.2015 is amended and a historical note added to read as follows:

§ 20.2015 Statutory provisions; credit for death taxes on remainders.

SEC. 2015. *Credit for death taxes on remainders.* Where an election is made under section 6163(a) to postpone payment of the tax imposed by section 2001 or 2101, such part of any estate, inheritance, legacy, or succession taxes allowable as a credit under section 2011 or 2014, as is attributable to a reversionary or remainder interest may be allowed as a credit against the tax attributable to such interest, subject to the limitations on the amount of the credit contained in such sections, if such part is paid, and credit therefor claimed, at any time before the expiration of the time for payment of the tax imposed by section 2001 or 2101 as postponed and extended under section 6163.

[Sec. 2015 as amended by sec. 66(a)(1), Technical Amendments Act 1958 (72 Stat. 1657)]

PAR. 7. Paragraph (a) and examples (1) and (2) of paragraph (c) of § 20.2015–1 are amended to read as follows:

§ 20.2015–1 Credit for death taxes on remainders.

(a) * * *

(2) Within the time for payment of the tax imposed by section 2001 or 2101 as postponed under section 6163(a) and as extended under section 6163(b) (on account of undue hardship) or, if the precedent interest terminated before July 5, 1958, within 60 days after the termination of the preceding interest or interests in the property.

The allowance of credit, however, is subject to the other limitations contained in sections 2011 and 2014.

* * * * *

(c) * * *

Example (1). One-third of the Federal estate tax was attributable to a remainder interest in real property located in State Y, and two-thirds of the Federal estate tax was attributable to other property located in State X. The payment of the tax attributable to the remainder interest was postponed under the provisions of section 6163(a). The maximum credit allowable for State death taxes under the provisions of section 2011 is $12,000. Therefore, of the maximum credit allowable, $4,000 is attributable to the remainder interest and $8,000 is attributable to the other property. Within the 4-year period provided for in section 2011, inheritance tax in the amount of $9,000 was paid to State X in connection with the other property. With respect to this $9,000, $8,000 (the maximum amount allowable) is allowed as a credit against the Federal estate tax attributable to the other property, and $1,000 is allowed as a credit against the postponed tax. The life estate or other precedent interest expired after July 4, 1958. After the expiration of the 4-year period but before the expiration of the period of postponement elected under section 6163(a) and of the period of extension granted under section 6163(b) for payment of the tax, inheritance tax in the amount of $5,000 was paid to State Y in connection with the remainder interest. As the maximum credit allowable with respect to the remainder interest is $4,000 and $1,000 has already been allowed as a credit, an additional $3,000 will be credited against the Federal estate tax attributable to the remainder interest. It should be noted that if the life estate or other precedent interest had expired after the expiration of the 4-year period but before July 5, 1958, the same result would be reached only if the inheritance tax had been paid to State Y before the expiration of 60 days after the termination of the life estate or other precedent interest.

Example (2). The facts are the same as in example (1), except that within the 4-year period inheritance tax in the amount of $2,500 was paid to State Y with respect to the remainder interest and inheritance tax in the amount of $7,500 was paid to State X with respect to the other property. The amount of $8,000 is allowed as a credit against the Federal estate tax attributable to the other property and the amount of $2,000 is allowed as a credit against the postponed tax. The life estate or other precedent interest expired after July 4, 1958. After the expiration of the 4-year period but before the expiration of the period of postponement elected under section 6163(a) and of the period of extension granted under section 6163(b) for payment of the tax, inheritance tax in the amount of $5,000 was paid to State Y in connection with the remainder interest. As the maximum credit allowable with respect to the remainder interest is $4,000 and

$2,000 already has been allowed as a credit, an additional $2,000 will be credited against the Federal estate tax attributable to the remainder interest. It should be noted that if the life estate or other precedent interest had expired after the expiration of the 4-year period but before July 5, 1958, the same result would be reached only if the inheritance tax had been paid to State Y before the expiration of 60 days after the termination of the life estate or other precedent interest.

PAR. 8. Section 20.2039 is amended by revising section 2039(c) and adding a historical note to read as follows:

§ 20.2039 Statutory provisions; annuities.

SEC. 2039. *Annuities.* * * *

(c) *Exemption of annuities under certain trusts and plans.* Notwithstanding the provisions of this section or of any provision of law, there shall be excluded from the gross estate the value of an annuity or other payment receivable by any beneficiary (other than the executor) under—

(1) An employees' trust (or under a contract purchased by an employees' trust) forming part of a pension, stock bonus, or profit-sharing plan which, at the time of the decedent's separation from employment (whether by death or otherwise), or at the time of termination of the plan if earlier, met the requirements of section 401(a);

(2) A retirement annuity contract purchased by an employer (and not by an employees' trust) pursuant to a plan which, at the time of decedent's separation from employment (by death or otherwise), or at the time of termination of the plan if earlier, met the requirements of section 401(a) (3), (4), (5), and (6); or

(3) A retirement annuity contract purchased for an employee by an employer which is an organization referred to in section 503(b) (1), (2), or (3), and which is exempt from tax under section 501(a).

If such amounts payable after the death of the decedent under a plan described in paragraph (1) or (2) or under a contract described in paragraph (3) are attributable to any extent to payments or contributions made by the decedent, no exclusion shall be allowed for that part of the value of such amounts in the proportion that the total payments or contributions made by the decedent bears to the total payments or contributions made. For purposes of this subsection, contributions or payments made by the decedent's employer or former employer under a trust or plan described in paragraph (1) or (2) shall not be considered to be contributed by the decedent, and contributions or payments made by the decedent's employer or former employer toward the purchase of an annuity contract described in paragraph (3) shall, to the exent excludable from gross income under section 403(b), not be considered to be contributed by the decedent. This subsection shall apply to all decedents dying after December 31, 1953.

[Sec. 2039(c) as amended by secs. 23(e), 67(a), Technical Amendments Act 1958 (72 Stat. 1622, 1658)]

PAR. 9. Paragraphs (a), (b), and (c) of § 20.2039–2 are amended as follows:

§ 20.2039–2 Annuities under "qualified plans" and section 403(b) annuity contracts.

(a) *In general.* Section 2039(c) excludes from a decedent's gross estate the value of an annuity or other payment receivable under certain "qualified plans" and under certain annuity contracts to the extent provided in paragraph (c) of this section. Section 2039(c), other than paragraph (3) thereof, applies to estates of all persons dying after December 31, 1953.

(b) *Plans and annuity contracts to which section 2039(c) applies.* Section 2039(c) excludes from a decedent's gross estate, to the extent provided in paragraph (c) of this section, the value of an annuity or other payment receivable by any beneficiary (except the value of an annuity or other payment receivable by or for the benefit of the decedent's estate) under—

(1) An employees' trust (or under a contract purchased by an employees' trust) forming part of a pension, stock bonus, or profit-sharing plan which, at the time of the decedent's separation from employment (whether by death or otherwise), or at the time of the earlier termination of the plan, met the requirements of section 401(a);

(2) A retirement annuity contract purchased by an employer (and not by an employees' trust) pursuant to a plan which, at the time of decedent's separation from employment (by death or otherwise), or at the time of the earlier termination of the plan, met the requirements of section 401(a) (3) through (6); or

(3) In the case of a decedent dying after December 31, 1957, a retirement annuity contract purchased for an employee by an employer which, for its taxable year in which the purchase occurred, is an organization referred to in section 503(b) (1), (2), or (3), and is exempt from tax under section 501(a).

For the meaning of the term "annuity or other payment", see paragraph (b) of § 20.2039–1. For the meaning of the phrase "receivable by or for the benefit of the decedent's estate", see paragraph (b) of § 20.2042–1. The application of this paragraph may be illustrated by the following examples in each of which it is assumed that the amount stated to be excludable from the decedent's gross estate is determined in accordance with paragraph (c) of this section:

* * * * *

Example (5). An employer purchased a retirement annuity contract for an employee which was to provide the employee, upon his retirement at age 60, with an annuity for life and which was to provide his wife, upon the employee's death after retirement, with a similar annuity for life. The employer, for its taxable year in which the annuity contract was purchased, was an organization referred to in section 503(b) (1), (2), or (3), and was exempt from tax under section 501(a). The entire amount of the purchase price of the annuity contract was excluded from the employee's gross income under section 403(b). No part of the value of the survivor annuity payable after the employee's death is includible in the decedent's gross estate by reason of the provisions of section 2039(c).

(c) *Amount excludable from the gross estate.* (1) The amount to be excluded from a decedent's gross estate under section 2039(c) is an amount which bears the same ratio to the value at the decedent's death of the annuity or other payment receivable by the beneficiary as the employer's contribution (or a contribution made on his behalf) on the employee's account to the plan or towards the purchase of the annuity contract bears to the total contributions on the employee's account to the plan or towards the purchase of the annuity contract. In applying the ratio set forth in the preceding sentence, payments or contributions made by the employer (or on its behalf) toward the purchase of an annuity contract described in paragraph (b) (3) of this section shall be considered to include only such payments or contributions as are, or were, excludable from the employee's gross income under section 403(b). In applying this ratio, the value at the decedent's death of the annuity or other payment is determined in accordance with the rules set forth in §§ 20.2031–1, 20.2031–7, 20.2031–8, and 20.2031–9.

(2) In certain cases, the employer's contribution (or a contribution made on his behalf) to a plan on the employee's account and thus the total contributions to the plan on the employee's account cannot be readily ascertained. In order to apply the ratio stated in subparagraph (1) of this paragraph in such a case, the method outlined in the following two sentences must be used unless a more precise method is presented. In such a case, the total contributions to the plan on the employee's account is the value of any annuity or other payment payable to the decedent and his survivor computed as of the time the decedent's rights first mature (or as of the time the survivor's rights first mature if the decedent's rights never mature) and computed in accordance with the rules set forth in §§ 20.2031–1, 20.2031–7, 20.2031–8, and 20.2031–9. By subtracting from such value the amount of the employee's contribution to the plan, the amount of the employer's contribution to the plan on the employee's account may be obtained. The application of this paragraph may be illustrated by the following example:

Example. Pursuant to a pension plan, the employer and the employee contributed to a trust which was to provide the employee, upon his retirement at age 60, with an annuity for life, and which was to provide his wife, upon the employee's death after retirement, with a similar annuity for life. At the time of the employee's retirement, the pension trust formed part of a plan meeting the requirements of section 401(a). Assume the following: (i) That the employer's contributions to the fund were not credited to the accounts of individual employees; (ii) that the value of the employee's annuity and his wife's annuity, computed as of the time of the decedent's retirement, was $40,000; (iii) that the employee contributed $10,000 to the plan; and (iv) that the value at the decedent's death of the wife's annuity was $16,000. On the basis of these facts, the total contributions to the fund on the employee's account are presumed to be $40,000 and the employer's contribution to the plan on the employee's account is presumed to be $30,000 ($40,000 less $10,000). Since the wife's annuity was receivable under a qualified pension plan, that part of the value of such annuity which is attributable to the employer's contributions $\left(\frac{\$30,000}{\$40,000} \times \$16,000, \text{ or } \$12,000\right)$ is excludable from the decedent's gross estate by reason of the provisions of section 2039(c). Compare this result with the results reached in the examples set forth in paragraph (b) of this section in which all contributions to the plans were made by the employer.

PAR. 10. Section 20.2053 is amended by revising section 2053(d)(1) and the historical note to read as follows:

§ 20.2053 Statutory provisions; expenses, indebtedness, and taxes.

SEC. 2053. *Expenses, indebtedness, and taxes* * * *

(d) *Certain State death taxes*—(1) *General rule.* Notwithstanding the provisions of subsection (c)(1)(B) of this section, for purposes of the tax imposed by section 2001 the value of the taxable estate may be determined, if the executor so elects before the expiration of the period of limitation for assessment provided in section 6501, by deducting from the value of the gross estate the amount (as determined in accordance with regulations prescribed by the Secretary or his delegate) of any estate, succession, legacy or inheritance tax imposed by a State or Territory or the District of Columbia, upon a transfer by the decedent for public, charitable, or religious uses described in section 2055 or 2106(a)(2). The election shall be exercised in accordance with regulations prescribed by the Secretary or his delegate.

* * * * *

[Sec. 2053 as amended by sec. 2, Act of Feb. 20, 1956 (Pub. Law 414, 84th Cong., 70 Stat. 23); sec. 102(c)(3), Technical Amendments Act 1958 (72 Stat. 1674)]

PAR. 11. Paragraph (a) of § 20.2053–9 is amended to read as follows:

§ 20.2053–9 Deduction for certain State death taxes.

(a) *General rule.* A deduction is allowed a decedent's estate under section 2053(d) for the amount of any estate, succession, legacy, or inheritance tax imposed by a State, Territory, or the District of Columbia, or, in the case of a decedent dying before September 3, 1958, a possession of the United States upon a transfer by the decedent for charitable, etc., uses described in section 2055 or 2106(a)(2) (relating to the estates of nonresidents not citizens), but only if (1) the conditions stated in paragraph (b) of this section are met, and (2) an election is made in accordance with the provisions of paragraph (c) of this section. See section 2011(e) and § 20.2011–2 for the effect which the allowance of this deduction has upon the credit for State death taxes.

PAR. 12. Section 20.2055 is amended by revising section 2055(e) and the historical note to read as follows:

§ 20.2055 Statutory provisions; transfers for public, charitable, and religious uses.

SEC. 2055. *Transfers for public, charitable, and religious uses* * * *

(e) *Disallowance of deductions in certain cases.* For disallowance of certain charitable, etc., deductions otherwise allowable under this section, see sections 503 and 681.

* * * * *

[Sec. 2055 as amended by sec. 1, Act of Aug. 6, 1956 (Pub. Law 1011, 84th Cong., 70 Stat. 1075); sec. 30(d), Technical Amendments Act 1958 (72 Stat. 1631)]

PAR. 13. Section 20.2106 is amended by revising section 2106 (a)(2)(E) and (a)(3) and adding a historical note to read as follows:

§ 20.2106 Statutory provisions; taxable estate.

SEC. 2106. *Taxable estate*—(a) *Definition of taxable estate.* * * *

(2) *Transfers for public, charitable, and religious uses* * * *

(E) *Disallowance of deductions in certain cases.* For disallowance of certain charitable, etc., deductions otherwise allowable under this paragraph, see sections 503 and 681.

* * * * *

(3) *Exemption*—(A) *General rule.* An exemption of $2,000.

(B) *Residents of possessions of the United States.* In the case of a decedent who is considered to be a "nonresident not a citizen of the United States" under the provisions of section 2209, the exemption shall be the greater of (i) $2,000, or (ii) that proportion of the exemption authorized by section 2052 which the value of that part of the decedent's gross estate which at the time of his death is situated in the United States bears to the value of his entire gross estate wherever situated.

* * * * *

[Sec. 2106 as amended by sec. 30(d), Technical Amendments Act 1958 (72 Stat. 1631); sec. 4(c), Act of Sept. 14, 1960 (Pub. Law 86–779, 74 Stat. 1000)]

PAR. 14. Paragraphs (a)(3) and (c) of § 20.2106–1 are amended to read as follows:

§ 20.2106–1 Estates of nonresidents not citizens; taxable estate; deductions in general.

(a) * * *

(3)(i) In the case of a decedent who is considered to be a "nonresident not a citizen of the United States" under the provisions of section 2209, an exemption which is the greater of (*a*) $2,000 or (*b*) that proportion of $60,000 (the exemption authorized by section 2052) which the value of that part of the decedent's gross estate which is situated in the United States at the time of his death bears to the value of the decedent's entire gross estate wherever situated.

(ii) In the case of every other decedent who was a nonresident not a citizen of the United States at the time of his death, an exemption of $2,000, unless a death tax convention provides for another amount, such as a prorated exemption similar to that described in subdivision (i)(*b*) of this subparagraph.

* * * * *

(c)(i) The exemption described in paragraph (a)(3)(i) of this section may be illustrated by the following example:

Example. The decedent, who died on October 1, 1960, is considered to be a nonresident not a citizen of the United States by reason of the provisions of section 2209. He was a resident of the Virgin Islands and his entire gross estate wherever situated included bonds valued at $45,000, which were situated in the Virgin Islands, and shares of United States corporations valued at $30,000 (property situated in the United States under section 2104). The amount described in paragraph (a)(3)(i)(*b*) of this section is $24,000, computed as follows:

$$\frac{\$30{,}000 \text{ (value of property in United States)}}{\$75{,}000 \text{ (value of entire gross estate wherever situated)}} \times \$60{,}000 = \$24{,}000$$

Since the amount so computed exceeds $2,000, the exemption to be allowed the decedent's estate is $24,000.

(ii) In connection with the provisions of section 2106(c), see paragraph (a)(3) of § 20.2104–1 and paragraph (d) of § 20.2105–1.

PAR. 15. Section 20.2202 is amended and a historical note added to read as follows:

§ 20.2202 Statutory provisions; missionaries in foreign service.

SEC. 2202. *Missionaries in foreign service.* Missionaries duly commissioned and serving under boards of foreign missions of the various religious denominations in the United States, dying while in the foreign missionary service of such boards, shall not, by reason merely of their intention to permanently remain in such foreign service, be deemed nonresidents of the United States, but shall be presumed to be residents of the State or the District of Columbia wherein they respectively resided at the time of their commission and their departure for such foreign service.

[Sec. 2202 as amended by sec. 22(a), Alaska Omnibus Act (73 Stat. 146); sec. 18(b), Hawaii Omnibus Act (74 Stat 416)]

PAR. 16. Immediately after § 20.2207–1 insert the following new sections:

§ 20.2208 Statutory provisions; certain residents of possessions considered citizens of the United States.

SEC. 2208. *Certain residents of possessions considered citizens of the United States.* A decedent who was a citizen of the United States and a resident of a possession thereof at the time of his death shall, for purposes of the tax imposed by this chapter, be considered a "citizen" of the United States within the meaning of that term wherever used in this title unless he acquired his United States citizenship solely by reason of (1) his being a citizen of such possession of the United States, or (2) his birth or residence within such possession of the United States.

[Sec. 2208 as added by sec. 102(a), Technical Amendments Act 1958 (72 Stat 1674)]

§ 20.2208–1 Certain residents of possessions considered citizens of the United States.

As used in this part, the term "citizen of the United States" is considered to include a decedent dying after September 2, 1958, who, at the time of his death, was domiciled in a possession of the United States and was a United States citizen, and who did not acquire his United States citizenship solely by reason of his being a citizen of such possession or by reason of his birth or residence within such possession. The estate of such a decedent is, therefore, subject to the tax imposed by section 2001. See paragraph (a)(2) of § 20.0–1 and § 20.2209–1 for further information relating to the application of the Federal estate tax to the estates of decedents who were residents of possessions of the United States. The application of this section may be illustrated by the following example and the examples set forth in § 20.2209–1:

Example. A, a citizen of the United States by reason of his birth in the United States at San Francisco, established residence in Puerto Rico and acquired a Puerto Rican citizenship. A died on September 4, 1958, while a citizen and domiciliary of Puerto Rico. A's estate is, by reason of the provisions of section 2208, subject to the tax imposed by section 2001 inasmuch as his United States citizenship is based on birth in the United States and is not based solely on being a citizen of a possession or solely on birth or residence in a possession.

§ 20.2209 Statutory provisions; certain residents of possessions considered nonresidents not citizens of the United States.

SEC. 2209. *Certain residents of possessions considered nonresidents not citizens of the United States.* A decedent who was a citizen of the United States and a resident of a possession thereof at the time of his death shall, for purposes of the tax imposed by this chapter, be considered a "nonresident not a citizen of the United States" within the meaning of that term wherever used in this title, but only if such person acquired his United States citizenship solely by reason of (1) his being a citizen of such possession of the United States, or (2) his birth or residence within such possession of the United States.

[Sec. 2209 as added by sec. 4(b), Act of Sept. 14, 1960 (Pub. Law 86-779, 74 Stat. 999)]

§ 20.2209-1 Certain residents of possessions considered nonresidents not citizens of the United States.

As used in this part, the term "nonresident not a citizen of the United States" is considered to include a decedent dying after September 14, 1960, who, at the time of his death, was domiciled in a possession of the United States and was a United States citizen, and who acquired his United States citizenship solely by reason of his being a citizen of such possession or by reason of his birth or residence within such possession. The estate of such a decedent is, therefore, subject to the tax imposed by section 2101 which is the tax applicable in the case of a "nonresident not a citizen of the United States." See paragraph (a)(2) of § 20.0-1 and § 20.2208-1 for further information relating to the application of the Federal estate tax to the estates of decedents who were residents of possessions of the United States. The application of this section may be illustrated by the following examples and the example set forth in § 20.2208-1. In each of the following examples the decedent is deemed a "nonresident not a citizen of the United States" and his estate is subject to the tax imposed by section 2101 since the decedent died after September 14, 1960, but would not have been so deemed and subject to such tax if the decedent had died on or before September 14, 1960.

Example (1). C, who acquired his United States citizenship under section 5 of the Act of March 2, 1917 (39 Stat. 953), by reason of being a citizen of Puerto Rico, died in Puerto Rico on October 1, 1960, while domiciled therein. C is considered to have acquired his United States citizenship solely by reason of his being a citizen of Puerto Rico.

Example (2). E, whose parents were United States citizens by reason of their birth in Boston, was born in the Virgin Islands on March 1, 1927. On September 30, 1960, he died in the Virgin Islands while domiciled therein. E is considered to have acquired his United States citizenship solely by reason of his birth in the Virgin Islands (section 306 of the Immigration and Nationality Act (66 Stat. 237, 8 U.S.C. 1406)).

Example (3). N, who acquired United States citizenship by reason of being a native of the Virgin Islands and a resident thereof on June 28, 1932 (section 306 of the Immigration and Nationality Act (66 Stat. 237, 8 U.S.C. 1406)), died on October 1, 1960, while domiciled in the Virgin Islands. N is considered to have acquired his United States citizenship solely by reason of his birth or residence in the Virgin Islands.

Example (4). P, a former Danish citizen, who on January 17, 1917, resided in the Virgin Islands, made the declaration to preserve his Danish citizenship required by Article 6 of the treaty entered into on August 4, 1916, between the United States and Denmark. Subsequently P acquired United States citizenship when he renounced such declaration before a court of record (section 306 of the Immigration and Nationality Act (66 Stat. 237, 8 U.S.C. 1406)). P died on October 1, 1960, while domiciled in the Virgin Islands. P is considered to have acquired his United States citizenship solely by reason of his birth or residence in the Virgin Islands.

Example (5). R, a former French citizen, acquired his United States citizenship through naturalization proceedings in a court located in the Virgin Islands after having qualified for citizenship by residing in the Virgin Islands for 5 years. R died on October 1, 1960, while domiciled in the Virgin Islands. R is considered to have acquired his United States citizenship solely by reason of his birth or residence within the Virgin Islands.

PAR. 17. Section 20.6163 is amended and a historical note added to read as follows:

§ 20.6163 Statutory provisions; extension of time for payment of estate tax on value of reversionary or remainder interest in property.

SEC. 6163. *Extension of time for payment of estate tax on value of reversionary or remainder interest in property*—(a) *Extension permitted.* If the value of a reversionary or remainder interest in property is included under chapter 11 in the value of the gross estate, the payment of the part of the tax under chapter 11 attributable to such interest may, at the election of the executor, be postponed until 6 months after the termination of the precedent interest or interests in the property, under such regulations as the Secretary or his delegate may prescribe.

(b) *Extension to prevent undue hardship.* If the Secretary or his delegate finds that the payment of the tax at the expiration of the period of postponement provided for in subsection (a) would result in undue hardship to the estate, he may extend the time for payment for a reasonable period not in excess of 2 years from the expiration of such period of postponement.

(c) *Cross references*—(1) *Interest.* For provisions requiring the payment of interest for the period of such extension, see section 6601(b).

(2) *Security.* For authority of the Secretary or his delegate to require security in the case of such extension, see section 6165.

[Sec. 6163 as amended by sec. 66(b)(1), Technical Amendments Act 1958 (72 Stat. 1658)]

PAR. 18. Paragraph (a) of § 20.6163-1 is amended to read as follows:

§ 20.6163-1 Extension of time for payment of estate tax on value of reversionary or remainder interest in property.

(a) In case there is included in the gross estate a reversionary or remainder interest in property, the payment of the part of the tax attributable to that interest may, at the election of the executor, be postponed until six months after the termination of the precedent interest or interests in the property. In addition, if the precedent interest or interests terminated after March 2, 1958, and if the district director finds that the payment of the tax at the expiration of the period of postponement described in the preceding sentence would result in undue hardship to the estate, he may extend the time for payment for a reasonable period or periods not to exceed in all 2 years from the expiration of the period of postponement. See paragraph (b) of § 20.6161-1 for the meaning of the term "undue hardship". An example of undue hardship is a case where, by reason of the time required to settle the complex issues involved in a trust, the decedent's heirs or beneficiaries cannot reasonably expect to receive the decedent's remainder interest in the trust before the expiration of the period of postponement. The extension will be granted only in the manner provided in paragraph (c) of § 20.6161-1 (except that the application must be filed with the district director on or before the expiration of the period of postponement elected under section 6163(a)), and the amount of the tax for which the extension is granted, with the additions thereto, shall be paid on or before the expiration of the period of extension without the necessity of notice and demand from the district director. The provisions of this section are limited to cases in which the reversionary or remainder interest is included in the decedent's gross estate as such and does not extend to cases in which the decedent creates future interests by his own testamentary act.

PAR. 19. Paragraph (a) of § 20.6165-1 is amended to read as follows:

§ 20.6165-1 Bonds where time to pay tax or deficiency has been extended.

(a) *Extensions under sections 6161 and 6163(b) of time to pay tax or deficiency.* If an extension of time for payment of tax or deficiency is granted under section 6161 or 6163(b), the district director may, if he deems it necessary, require the executor to furnish a bond for the payment of the amount in respect of which the extension is granted in accordance with the terms of the extension. However, such bond shall not exceed double the amount with respect to which the extension is granted. For other provisions relating to bonds required where extensions of time to pay estate taxes or deficiencies are granted under sections 6161 and 6163(b), see the regulations under section 7101 contained in Part 301 of this chapter (Regulations on Procedure and Administration).

PAR. 20. Section 20.6325 is amended and a historical note added to read as follows:

§ 20.6325 Statutory provisions; release of lien or partial discharge of property.

SEC. 6325. *Release of lien or partial discharge of property*—(a) *Release of lien.*

* * *

(1) *Liability satisfied or unenforceable.* The Secretary or his delegate finds that the liability for the amount assessed, together with all interest in respect thereof, has been fully satisfied or has become legally unenforceable; or

* * * * *

(c) *Estate or gift tax.* Subject to such rules or regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of discharge of any or all of the property subject to any lien imposed by section 6324 if the Secretary or his delegate finds that the liability secured by such lien has been fully satisfied or provided for.

(d) *Effect of certificate of release or discharge.* A certificate of release or of discharge issued under this section shall be held conclusive that the lien upon the property covered by the certificate is extinguished.

(e) *Cross references.* (1) For single bond complying with the requirements of both subsection (a)(2) and section 6165, see section 7102.

(2) For other provisions relating to bonds, see generally chapter 73.

(3) For provisions relating to suits to enforce lien, see section 7403.

(4) For provisions relating to suits to clear title to realty, see section 7424.

[Sec. 6325 as amended by sec. 77, Technical Amendments Act 1958 (72 Stat. 1662)]

[F.R. Doc. 61-440; Filed, Jan. 18, 1961; 8:49 a.m.]

[T.D. 6530]

SUBCHAPTER D—MISCELLANEOUS EXCISE TAXES

PART 45—MISCELLANEOUS STAMP TAXES

On July 16, 1960, a notice of proposed rule making with respect to regulations under subchapters A, B, and C of chapter 36, subchapter F of chapter 38, subchapters B, C, D, and F of chapter 39, chapter 40, and certain related administrative provisions of subtitle F of the Internal Revenue Code of 1954 as in effect July 1, 1960, was published in the FEDERAL REGISTER (25 F.R. 6762). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the regulations as so published are hereby adopted, subject to the changes set forth below which include, among others, those changes required by sections 18(i) and 18(j) of the Hawaii Omnibus Act (74 Stat. 416):

PARAGRAPH 1. Paragraph (a) of § 45.4455-1 is revised.

PAR. 2. Paragraph (c) of § 45.4822-1 is revised.

PAR. 3. Paragraph (c) of § 45.4842-1 is revised.

PAR. 4. Paragraph (d) of § 45.4901-1 is revised.

PAR. 5. Sections 45.6011(a), 45.6011(a)-6, and 45.6011(a)-7 are stricken.

PAR. 6. Sections 45.6011(a)-1, 45.6011(a)-2, 45.6011(a)-3, 45.6011(a)-4, and 45.6011(a)-5 are redesignated §§ 45.6001-6, 45.6001-7, 45.6001-8, 45.6001-9, and 45.6001-10 respectively.

PAR. 7. Paragraph (a) of § 45.6001-9, as redesignated, is revised.

PAR. 8. Paragraph (a) of § 45.6001-10, as redesignated, is revised.

PAR. 9. Sections 45.6001-11 and 45.6001-12 are added immediately after § 45.6001-10.

PAR. 10. Paragraph (a) of § 45.6071-1 is revised.

PAR. 11. Section 45.6091 is revised by striking subsection (b) of section 6091.

PAR. 12. Section 45.6091-1 is revised.

PAR. 13. Section 45.7011-1 is revised.

PAR. 14. In § 45.7701, paragraphs (9) and (10) of section 7701(a), and the historical note following section 7701, are revised.

(Sec. 7805, I.R.C. 68A Stat. 917; 26 U.S.C. 7805)

[SEAL] CHARLES I. FOX,
Acting Commissioner of Internal Revenue.

Approved: January 13, 1961.

FRED C. SCRIBNER, Jr.,
Acting Secretary of the Treasury.

The regulations adopted under Subchapters A, B, and C of Chapter 36, Subchapter F of Chapter 38, Subchapters B, C, D, and F of Chapter 39, Chapter 40, and certain related administrative provisions of Subtitle F of the Internal Revenue Code of 1954 as in effect July 1, 1960 read as follows:

Subpart A—Introduction

Sec.
45.0-1 Introduction.
45.0-2 General definitions and use of terms.
45.0-3 Scope of regulations.
45.0-4 Extent to which the regulations in this part supersede prior regulations.

Subpart B—Playing Cards

45.4451 Statutory provisions; imposition of tax.
45.4451-1 Imposition, rate and application of tax.
45.4452 Statutory provisions; definition of manufacturer.
45.4452-1 Who is a manufacturer.
45.4453 Statutory provisions; exemption in case of exportation.
45.4453-1 Exemption in case of exportation.
45.4453-2 Removal to foreign-trade zones.
45.4454 Statutory provisions; liability for tax.
45.4454-1 Liability for tax.
45.4455 Statutory provisions; registration.
45.4455-1 Manufacturers to register.
45.4456 Statutory provisions; stamps.
45.4456-1 Stamps for payment of tax.
45.4456-2 Purchase of stamps.
45.4456-3 Affixing stamps.
45.4456-4 Abandoned or forfeited playing cards.
45.4456-5 Cancellation of stamps.
45.4456-6 Redemption of stamps.
45.4457 Statutory provisions; cross references.
45.4457-1 Cross references.

Subpart C—Occupational Tax on Coin-Operated Devices

45.4461 Statutory provisions; imposition of tax.
45.4461-1 Imposition of tax.
45.4461-2 Rates of tax.
45.4462 Statutory provisions; definition of coin-operated amusement or gaming device.
45.4462-1 Definition of coin-operated amusement or gaming devices.
45.4463 Statutory provisions; administrative provisions; trade or business.
45.4463-1 Cross references.

Subpart D—Occupational Tax on Bowling Alleys, Billiard and Pool Tables

45.4471 Statutory provisions; imposition of tax.
45.4471-1 Imposition and rate of tax.
45.4472 Statutory provisions; definition.
45.4472-1 Definition of bowling alley, billiard room, and pool room.
45.4473 Statutory provisions; exemptions.
45.4473-1 Exemptions.
45.4474 Statutory provisions; cross references.
45.4474-1 Cross references.

Subpart E—Oleomargarine

45.4591 Statutory provisions; imposition of tax.
45.4591-1 Imposition, rate and payment of and liability for tax.
Sec.
45.4592(a) Statutory provisions; definitions.
45.4592(a)-1 Definition of the term "oleomargarine".
45.4593(a) Statutory provisions; exemptions.
45.4593(a)-1 Exemptions.

Subpart F—White Phosphorus Matches

45.4801 Statutory provisions; imposition of tax.
45.4801-1 Imposition and rate of tax.
45.4802 Statutory provisions; definition of white phosphorus.
45.4802-1 Definition of white phosphorus.
45.4803 Statutory provisions; stamps.
45.4803-1 Sale of stamps to qualified manufacturer.
45.4804 Statutory provisions; requirements on manufacturers.
45.4804-1 Packing and stamping of white phosphorus matches.
45.4804-2 Factory number.
45.4804-3 Manufacturer's sign.
45.4804-4 Separate factories for taxable and nontaxable matches.
45.4804-5 Factory number required on each package.
45.4804-6 Caution label.
45.4804-7 Manufacturer's bond.
45.4804-8 Registry by manufacturer.
45.4804-9 Inventory to be made at commencement of business, on July 1 of each year, and at the time of closing.
45.4804-10 Daily records.
45.4804-11 Quarterly return.
45.4805 Statutory provisions; importation and exportation.
45.4805-1 Importation and exportation of matches.
45.4806 Statutory provisions; cross references.
45.4806-1 Cross references.

Subpart G—Adulterated and Process or Renovated Butter

TAX ON PRODUCTS

45.4811 Statutory provisions; imposition of tax.
45.4811-1 Imposition and rate of tax.
45.4812 Statutory provisions; importation of adulterated butter.
45.4812-1 Imposition and rate of tax.
45.4812-2 Requisition for, affixing and canceling stamps.
45.4812-3 Packing and branding.
45.4813 Statutory provisions; stamps.
45.4813-1 Method of payment.
45.4814 Statutory provisions; requirements applicable to manufacturers.
45.4814-1 Packing and branding adulterated butter.
45.4814-2 Marking process or renovated butter.
45.4814-3 Caution notice; placement upon packages.
45.4814-4 Factories.
45.4814-5 Bonding.
45.4815(a) Statutory provisions; requirements applicable to dealers; selling requirements.
45.4815(a)-1 Selling and buying requirements applicable to adulterated butter.
45.4815(b) Statutory provisions; requirements applicable to dealers; books of wholesale dealers.
45.4816 Statutory provisions; exportation of adulterated butter.
45.4816-1 Exemption in case of exportation of adulterated butter.
45.4817 Statutory provisions; inspection of process or renovated butter.
45.4817-1 Inspection of process or renovated butter.
45.4818 Statutory provisions; administrative decisions relating to adulterated butter.
45.4818-1 Administrative decisions relating to adulterated butter.
45.4819 Statutory provisions; cross references.
45.4819-1 Cross references.

OCCUPATIONAL TAX

Sec.
45.4821 Statutory provisions; imposition of tax.
45.4821–1 Imposition and rate of tax.
45.4821–2 Requirements with respect to manufacturers of adulterated butter or process or renovated butter.
45.4821–3 Requirement with respect to wholesale dealers in adulterated butter.
45.4821–4 Exemptions as wholesale dealer.
45.4821–5 Requirements with respect to retail dealers in adulterated butter.
45.4821–6 Liability in particular situations.
45.4822 Statutory provisions; cross references.
45.4822–1 Cross references.
45.4826 Statutory provisions; definitions.
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Subpart A—Introduction

§ 45.0–1 Introduction.

(a) *In general.* The regulations in this part (Part 45, Subchapter D, Chapter 1, Title 26 (1954), Code of Federal Regulations) are designated "Miscellaneous Stamp Tax Regulations". The regulations relate to the taxes imposed by Subchapters A, B, and C of Chapter 36, Subchapter F of Chapter 38, Subchapters B, C, D, and F of Chapter 39 of the Internal Revenue Code of 1954, as amended, and to certain general provisions relating to occupational taxes contained in Chapter 40 of such Code and to certain related administrative provisions of Subtitle F of the Code. For a reference to the various taxes to which the regulations in this part relate, see paragraph (b) of this section and § 45.0–3. References in these regulations to the "Internal Revenue Code" or the "Code" are references to the Internal Revenue Code of 1954, as amended, unless otherwise indicated. References to a section or other provision of law are references to a section or other provision of the Internal Revenue Code, as amended, unless otherwise indicated.

(b) *Division of regulations.* The regulations in this part are divided into 12 subparts. Subpart A contains provisions relating to the arrangement and numbering of the sections of the regulations in this part, general definitions and use of terms, scope of regulations, and extent to which the regulations in this part supersede prior regulations relating to the taxes imposed by Subchapters A, B, and C of Chapter 36, Subchapter F of Chapter 38, and Subchapters B, C, D, and F of Chapter 39 of the Internal Revenue Code. The other subparts of the regulations in this part and the subject matter to which they relate are as follows:

Subpart B—Playing cards.
Subpart C—Occupational tax on coin-operated devices.
Subpart D—Occupational tax on bowling alleys, billiard and pool tables.
Subpart E—Oleomargarine.
Subpart F—White phosphorus matches.
Subpart G—Adulterated and process or renovated butter.
Subpart H—Filled cheese.
Subpart I—Cotton futures.
Subpart J—Silver bullion.
Subpart K—General provisions relating to occupational taxes.
Subpart L—Administrative provisions.

(c) *Arrangement and numbering.* In general each section of the regulations in Subparts B through L is preceded by the section, subsection, or paragraph of the Internal Revenue Code which it interprets. The sections of the regulations can readily be distinguished from sections of the Code since—

(1) The sections of the regulations are printed in larger type;

(2) The sections of the regulations are preceded by a section symbol and the part number, arabic numeral 45 followed by a decimal point (§ 45.); and

(3) The sections of the Code are preceded by "Sec.".

Each section of the regulations setting forth law or regulations is designated by a number composed of the part number followed by a decimal point (45.) and the number of the corresponding provision of the Internal Revenue Code. In the case of a section setting forth regulations, this designation is followed by a hyphen (-) and a number identifying such section.

§ 45.0–2 General definitions and use of terms.

As used in the regulations in this part, unless otherwise expressly indicated—

(a) The terms defined in the provisions of law contained in the regulations in this part shall have the meanings so assigned to them.

(b) The Internal Revenue Code of 1954 means the Act approved August 16, 1954 (68A Stat.), entitled "An Act to revise the internal revenue laws of the United States", as amended.

(c) District director means district director of internal revenue.

(d) Calendar quarter means a period of 3 calendar months ending on March 31, June 30, September 30, or December 31.

§ 45.0–3 Scope of regulations. cards.

The regulations in this part relate to the taxes imposed by Subchapters A, B, and C of Chapter 36, Subchapter F of Chapter 38, and Subchapter B, C, D, and F of Chapter 39 of the Code and, except where otherwise specifically provided, have application as provided in the following paragraphs:

(a) *Subpart B.* The regulations in Subpart B of this part relate to playing cards manufactured or imported, and sold, or removed for consumption or sale, by a manufacturer on or after July 1, 1960.

(b) *Subpart C.* The regulations in Subpart C of this part relate to coin-operated devices maintained for use by any person on or after July 1, 1960.

(c) *Subpart D.* The regulations in Subpart D of this part relate to the operation by any person of a bowling alley, billiard room, or pool room on or after July 1, 1960.

(d) *Subpart E.* The regulations in Subpart E of this part relate to oleomargarine imported from foreign countries on or after July 1, 1960.

(e) *Subpart F.* The regulations in Subpart F of this part relate to white phosphorous matches manufactured, sold, or removed by the manufacturer on or after July 1, 1960.

(f) *Subpart G.* The regulations in Subpart G of this part relate to (1) adulterated and process or renovated butter manufactured or sold or removed for consumption or use by the manufacturer on or after July 1, 1960, and (2) to the occupational tax imposed on (i) manufacturers, wholesalers, and retailers who deal in adulterated butter on or after July 1, 1960, and (ii) manufacturers of process or renovated butter on or after July 1, 1960.

(g) *Subpart H.* The regulations in Subpart H of this part relate to filled cheese manufactured or imported on or after July 1, 1960, and to the occupational tax imposed on manufacturers, wholesalers, and retailers who deal in filled cheese on or after July 1, 1960.

(h) *Subpart I.* The regulations of Subpart I of this part relate to contracts of sale of cotton for the future delivery entered into on or after July 1, 1960.

(i) *Subpart J.* The regulations in Subpart J of this part relate to transfers of any interest in silver bullion made on or after July 1, 1960.

(j) *Subpart K.* The regulations in Subpart K of this part deal with the general provisions relating to occupational taxes contained in Chapter 40 of the Code and are applicable on or after July 1, 1960.

(k) *Subpart L.* The regulations in Subpart L of this part, which are prescribed under selected provision of subtitle F of the Code, relate to refunds and other administrative provisions of special application to the various taxes covered by the regulations in this part and have application in respect of any transaction within the scope of any other subpart of the regulations in this part.

§ 45.0–4 Extent to which the regulations in this part supersede prior regulations.

The regulations in this part, with respect to the subject matter within the scope thereof, supersede the following regulations and such regulations as prescribed and made applicable to the Internal Revenue Code by Treasury Decision 6091, signed August 16, 1954 (19 F.R. 5167, August 17, 1954):

Tax on playing cards	Regulations 66, 26 CFR (1939), Part 305.
Special taxes with respect to coin-operated amusement and gaming devices, bowling alleys, billiard tables, and pool tables.	Regulations 59 (1941 edition), 26 CFR (1939), Part 323.
Tax on white phosphorus matches	Regulations 32, 26 CFR (1939), Part 300.
Taxes on oleomargarine, adulterated butter, and process or renovated butter.	Regulations 9, (Revised April 1936), 26 CFR (1939), Part 310.
Tax on filled cheese	Regulations 22 (Revised August 1926), 26 CFR (1939), Part 301.
Tax on contracts of sale of cotton for future delivery	Regulations 36 (1916 edition), 26 CFR (1939), Part 110.
Tax on transfers of interests in silver bullion	Regulations 85, 26 CFR (1939), Part 112.
Withdrawal of filled cheese and playing cards, from factories, free of tax, for use of the United States.	Regulations 34, 26 CFR (1939), Part 450.
Exportation without payment of tax on tobacco manufacturers, oleomargarine, adulterated butter, mixed flour, and playing cards; shipments to possessions of the United States, and drawback on tobacco manufactures and stills exported, or shipped to Puerto Rico or Philippine Islands.	Regulations 73, 26 CFR (1939), Part 451.
Removals of alcoholic liquors, tobacco products, and other articles of domestic manufacture to foreign-trade zones.	Regulations 31, 26 CFR (1939), Part 199, §§ 199.425 to 199.436, incl.

Subpart B—Playing Cards

§ 45.4451 Statutory provisions; imposition of tax.

SEC. 4451. *Imposition of tax.* There shall be imposed a tax of 13 cents per pack upon every pack of playing cards containing not more than 54 cards, manufactured or imported, and sold, or removed for consumption or sale, by a manufacturer. This tax shall be in addition to any import duties imposed on such articles of foreign manufacture.

[Sec. 4451 as originally enacted and in effect July 1, 1960]

§ 45.4451–1 Imposition, rate and application of tax.

(a) *Imposition of tax.* Section 4451 imposes a tax, applicable as set forth in paragraph (c) of this section and at the rates shown in paragraph (b) of this section, on playing cards manufactured or imported, and sold, or removed for consumption or sale, by a manufacturer. The tax on playing cards accrues upon removal of the cards from the factory or place where made, or upon the sale thereof prior to such removal. For definition of the term "manufacturer", see section 4452 and § 45.4452–1. For rules relating to duties, liabilities and responsibilities in respect of the tax imposed by section 4451, see sections 4454 to 4456, inclusive, and the regulations thereunder in this subpart.

(b) *Rate of tax.* The tax is imposed at the rate of 13 cents per pack upon each pack of playing cards containing not less than 2 nor more than 54 cards. Each additional 54 cards or fraction thereof in a pack constitutes a new pack on which tax must be paid at the rate of 13 cents each. For example, if a pack contains 120 cards it must be considered as constituting three packs, two packs of 54 cards each and one pack of 12 cards, and each such pack is subject to tax at the rate of 13 cents per pack or a total of 39 cents.

(c) *Application of tax—(1) In general.* The tax applies to ordinary playing cards which are used in playing games of skill or chance such as "poker", "bridge", "pinochle", "canasta", and the like, and to cards that may be used in lieu of ordinary playing cards. Cards for the games of "old-maid", "rook", "authors", and the like, differing wholly from ordinary playing cards, are not subject to tax. Miniature playing cards, playing cards with advertising matter printed thereon, and so-called "fortune-telling", "magic", or "trick", decks composed wholly or in part of playing cards or cards that may be used in lieu of playing cards are all subject to the tax.

(2) *Imported playing cards—(i) Foreign manufacture.* Except as set forth in the Customs Regulations (19 CFR 8.3 and 9.6, as amended), relating to certain importations on and after September 7, 1953, playing cards imported from foreign countries, must be tax-paid at the rate of 13 cents per pack of not more than 54 cards. Such tax is in addition to any import duty and must be paid by affixing the required stamps prior to release of the cards from customs custody.

(ii) *American goods returned.* When playing cards produced in the United States which have been duly exported without payment of tax are reimported, they are liable to customs duty equal to the tax imposed by section 4451. Containers of reimported domestic playing cards shall be marked as required by Customs Regulations (19 CFR 11.4). Such packages are not required to have internal-revenue stamps affixed.

§ 45.4452 Statutory provisions; definition of manufacturer.

SEC. 4452. *Definition of manufacturer.* Every person who offers or exposes for sale playing cards, whether the articles so offered or exposed are of foreign manufacture and imported or are of domestic manufacture, shall be deemed the manufacturer thereof, and subject to all the duties, liabilities, and penalties imposed by law in regard to the sale of domestic articles without the use of the proper stamps denoting the tax paid thereon.

[Sec. 4452 as originally enacted and in effect July 1, 1960]

§ 45.4452–1 Who is a manufacturer.

The term "manufacturer", when used in any provision of the regulations in this part having application to the tax on playing cards, shall include the following persons:

(a) Any person who manufactures playing cards for sale or consumption;

(b) Any person who packs or repacks playing cards for sale;

(c) Any person who offers or exposes for sale packs of playing cards, either domestic or imported, without the use of the proper stamps denoting payment of the tax thereon;

(d) Any person who cuts playing cards from large lithographed sheets and finishes them;

(e) Any person who cleans, gilds, reassembles, or repacks playing cards previously tax paid; and

(f) Any person who resells packs of playing cards on which the stamps have been broken. In such case each pack so sold must be restamped.

For requirement relating to registration of a manufacturer of playing cards, see section 4455 and § 45.4455–1.

§ 45.4453 Statutory provisions; exemption in case of exportation.

SEC. 4453. *Exemption in case of exportation.* Playing cards may be removed from the place of manufacture for export to a foreign country or for shipment to a possession of the United States without payment of tax, or affixing stamps thereto, under such rules and regulations and the filing of such bonds as the Secretary or his delegate may prescribe.

[Sec. 4453 as originally enacted and in effect July 1, 1960]

§ 45.4453–1 Exemption in case of exportation.

(a) *Cards removed for exportation—(1) In general.* The tax imposed by section 4451 shall not apply in the case of the removal of playing cards from the place of manufacture for the purpose of exportation to a foreign country or shipment to a possession of the United States and in due course so exported or shipped. Such removal in every instance must be made by shipment direct from the place of manufacture without any stoppage in transit. Packs of playing cards sent to a foreign country or a possession of the United States as sam-

ples must comply with the provisions of this section in order to be exempt.

(2) *Definition of exportation.* Exportation means the severance of an article from the mass of things belonging within the United States with the intention of uniting it with the mass of things belonging within some foreign country or within a possession of the United States. The character of a shipment will be determined by the intention with which it is made and it assumes the character of an export to a foreign country or shipment to a possession of the United States only where destined for, and intended for use in, a foreign country or possession of the United States, as the case may be.

(3) *Responsibility for exportation of playing cards.* Responsibility for compliance with the provisions of this section with respect to the removal of playing cards, without payment of tax, for export, and for the proper exportation of such playing cards shall rest upon the manufacturer thereof.

(4) *Liability for tax on playing cards.* The manufacturer of the playing cards (see § 45.4452–1 for definition of a manufacturer) shall be liable for the tax imposed thereon by section 4451 if the provisions of this section are not complied with.

(5) *Removal for export.* (i) To exempt from tax a removal of playing cards from the place of manufacture for export both of the following conditions must be met: (*a*) The playing cards so removed must be identified as having been removed from the place of manufacture by the manufacturer for export, and (*b*) the playing cards so removed must be exported in due course.

(ii) Playing cards will be regarded as having been removed from the place of manufacture by the manufacturer for export if the manufacturer has in his possession at the time of removal from the place of manufacture a written order or contract of sale showing that the manufacturer is to ship the playing cards to a foreign destination or to a possession of the United States.

(iii) The written order or contract of sale referred to in subdivision (ii) of this subparagraph suspends liability for payment of the tax by the manufacturer for such removal from the place of manufacture for export for a period of 6 months from the date of removal of such playing cards.

(6) *Proof of exportation*—(i) *Other than by parcel post.* Exportation may be evidenced by (*a*) a copy of the export bill of lading issued by the delivering carrier, or (*b*) a certificate by the agent or representative of the export carrier showing actual exportation of the playing cards, or (*c*) a certificate of landing signed by a customs officer of a foreign country or possession of the United States to which the playing cards are exported, or (*d*) where such foreign country or possession of the United States has no customs administration, a statement of the foreign consignee showing receipt of the playing cards. If, within a period of six months from the date of removal of such playing cards, the manufacturer has not received and attached to the order or contract proper "proof of exportation", then the temporary suspension of the liability for the payment of the tax ceases and such liability shall become immediately due and payable. Such tax shall be paid to the district director for the district in which is located the place of manufacture from which the shipment is made, with sufficient information to identify the taxpayer and the nature and purpose of the payment. However, if proof of exportation later becomes available, a claim for refund of any tax paid may be filed on Form 843, but such action must be taken within the three-year period prescribed by section 6511.

(ii) *Exportation by parcel post.* If playing cards are exported by parcel post, the manufacturer thereof shall have a statement prepared for use with each package so exported on which shall be shown such information as the destination, order or invoice number, the contents of the package, the name of the vendee, etc. Upon mailing the package described in the statement, the manufacturer shall have the statement stamped by the local postmaster as evidence of said package having been received by him for exportation by parcel post. A waiver of the manufacturer's right to withdraw such package from the mails shall be stamped or written on each package and such waiver shall be signed by the manufacturer making the shipment.

(b) *Bond.* If the district director deems it necessary in order to protect the revenue, a bond may be required of any manufacturer removing playing cards from the place of manufacture for export to a foreign country or for shipment to a possession of the United States. The penal sum of such bond shall be in an amount specified by the district director in a notice mailed to the manufacturer. For other provisions relating to bonds, see §§ 301.7101 and 301.7101–1 of this chapter (Regulations on Procedure and Admininstration).

(c) *Miscellaneous*—(1) *Diversion of shipment to another export consignee.* After removal of a shipment of playing cards from the place of manufacture for export in accordance with the provisions of paragraph (a)(5)(ii) of this section, the manufacturer of such playing cards may divert the shipment to another consignee for export provided he has in his possession a written order or contract of sale as provided in paragraph (a)(5)(ii) of this section from such other consignee.

(2) *Return of shipment to factory.* In case a consignee, for whom a manufacturer removes playing cards from his place of manufacture in accordance with a written order or contract of sale for export, modifies or cancels his written order or contract of sale for export, the manufacturer may return the shipment of such playing cards to his place of manufacture provided he maintains adequate records relating to such return.

§ 45.4453–2 Removal to foreign-trade zones.

(a) *In general.* Playing cards may be removed from the place of manufacture without having stamps affixed thereto for delivery to a foreign-trade zone for exportation. Such removal and delivery thereof to a foreign-trade zone is considered an exportation.

(b) *Definition of foreign-trade zone.* "Foreign-trade zone" or "zone," as used in this section, means a foreign-trade zone established and operated pursuant to the Act of June 18, 1934 (48 Stat. 998), as amended by Pub. Law 566, 81st Cong. (64 Stat. 246).

(c) *Proof of delivery to a foreign-trade zone.* A manufacturer of playing cards who removes such playing cards from the place of manufacture for delivery to a foreign-trade zone without affixing stamps thereto shall maintain adequate records of all such removals and shall keep sufficient written proof of such removals and deliveries as may be necessary to substantiate actual delivery of the playing cards to the foreign-trade zone. The records referred to in the preceding sentence shall be retained by the manufacturer and made available for inspection by any revenue officer upon his request.

§ 45.4454 Statutory provisions; liability for tax.

SEC. 4454. *Liability for tax.* The tax imposed by this subchapter shall be paid by any person who makes, sells, removes, consigns, or ships any playing cards, or for whose use or benefit the same are made, removed, consigned, or shipped.

[Sec. 4454 as originally enacted and in effect July 1, 1960]

§ 45.4454–1 Liability for tax.

The tax imposed under section 4451 is payable by the person who makes, sells, removes, consigns, or ships any playing cards, or for whose use or benefit such playing cards are made, removed, consigned, or shipped. In the case of playing cards of foreign manufacture the tax imposed by section 4451 is payable by the importer or consignee of such playing cards.

§ 45.4455 Statutory provisions; registration.

SEC. 4455. *Registration.* Every manufacturer of playing cards shall register with the official in charge of the collection district his name or style, place of residence, trade, or business, and the place where such business is to be carried on.

[Sec. 4455 as originally enacted and in effect July 1, 1960]

§ 45.4455–1 Manufacturers to register.

(a) *In general.* Every manufacturer of playing cards, as defined in section 4452, shall register with the district director for the district in which his factory is located his name or style, place of residence, trade or business, the location of his factory, and the place where such business is carried on. Application for registry should be made on Form 277. The application for registry shall be prepared in accordance with the form, instructions, and regulations applicable thereto. Upon approval of the application, the district director will furnish the applicant a certificate of registry on Form 382 which shall be conspicuously posted in his place of business.

(b) *Prior registrations or applications.* In any case in which a manufacturer of playing cards has made application for registry under corresponding provisions of prior regulations, or holds a Certificate of Registry in effect under such prior regulations, such manufacturer is not required to make application for registry under this section, unless the district director furnishes him with written notification that such application is required. In such event, the application for registry shall be made at the time, in the form, and in the manner prescribed in such written notification.

§ 45.4456 Statutory provisions; stamps.

SEC. 4456. *Stamps*—(a) *Sale.* The Secretary shall cause the stamps on playing cards to be sold only to those manufacturers as have registered as required by law, and to importers of playing cards, who are required to affix the stamps to imported playing cards.

(b) *Accounts.* The Secretary shall cause to be kept accounts of the number and denominate values of the stamps sold to each manufacturer and importer.

[Sec. 4456 as originally enacted and in effect July 1, 1960]

§ 45.4456–1 Stamps for payment of tax.

Stamps have been prepared pursuant to law for payment of the tax on playing cards, and have been furnished to district directors for sale only to such manufacturers as have registered as required by law and to importers of playing cards.

§ 45.4456–2 Purchase of stamps.

(a) *Domestic manufacturer.* Manufacturers must use Form 218 in ordering playing card stamps. This form is printed by the Government only and furnished to district directors for distribution. Each such order form must be accompanied by the proper remittance for the full amount of the order. Unless otherwise directed, stamps will be sent by ordinary mail at the risk of the purchaser. If ordered to be sent by certified or registered mail, the order must be accompanied by the requisite additional amount to pay the fee for such service. Stamps will also be forwarded by express at the expense of the taxpayer.

(b) *Owner or consignee of imported playing cards.* The owner or consignee of imported playing cards shall purchase stamps for use in the payment of the tax on such cards from the district director for the district in which is located the office of the collector of customs where the customs entry is filed. Except as provided in paragraph (b) of § 45.4456–3 (relating to the purchase of stamps for affixing to packages in foreign countries), Form 923, certified by the customs officer having custody of such cards, shall be used in ordering such stamps. A copy of each such order form which has been marked paid by the district director shall be retained by the owner or consignee for three years following the close of the year in which the stamps were purchased, and made available for inspection by any revenue officer upon his request. See paragraph (a) of this section for details other than the form to be used in making the order.

§ 45.4456–3 Affixing stamps.

(a) *Domestic manufacturer.* (1) Each pack of playing cards, except as otherwise provided in this section, shall, prior to sale, or before removal from the place where manufactured, packed, reassembled, or repacked, have securely affixed thereto proper internal-revenue stamp or stamps of such denomination as will cover fully the tax thereon. Such stamp or stamps shall be affixed in such manner as to seal the pack and to necessitate the stamp or stamps being torn in two pieces when the pack is opened.

(2) Where playing cards are packed in leather, plush, plastic, ornamental, or metal cases, the stamps denoting payment of the tax thereon may be affixed to inside wrappers instead of to the cases proper, provided one of the following methods of packing and stamping is used:

(i) Paper bands not less than one-half inch wide must be extended around the entire pack of cards, both the long and short way, and securely fastened together with paste or mucilage at the intersection on the back of the pack so that the pack cannot be separated without breaking the bands. The internal-revenue stamp must be affixed to the pack in such manner that it will adhere partly to one of the bands and partly to the back of the top card so that removal of the bands will necessitate tearing the stamp in two. If desired, an extra blank card may be placed on top of the pack for the purpose of attaching a part of the stamp thereto.

(ii) The package of cards must be completely wrapped with paper, cellophane, or other acceptable wrapper, securely sealed with paste or mucilage, and the internal-revenue stamp affixed across the place where the wrapper is sealed in such manner as to necessitate tearing the stamp in two when the cards are removed from the wrapper.

(3) Where packages of playing cards are sent out from the factory duly stamped and are thereafter opened and the stamp broken, the cards cannot be returned to the package and sold under a broken stamp. In such case a new stamp must be affixed to each package and duly canceled. If cards are reassembled from packs on which tax has been paid, each deck must show the requisite stamp.

(b) *Imported playing cards*—(1) *Stamps affixed in foreign countries.* Stamps for use in payment of the tax on imported playing cards may be affixed to such cards in the foreign country in which manufactured, provided the laws of such foreign country grant a like privilege in respect of playing cards manufactured in the United States and exported to such country. An importer desiring to have the stamps for use in payment of the tax on imported playing cards affixed to these cards in such foreign country shall file with any district director an order for the necessary stamps. No particular form for such order is prescribed, but the order shall show (i) the name and address of the person by whom such playing cards are to be imported, (ii) the name of the foreign country, (iii) the quantity of playing cards to be imported, and (iv) the number and value of the stamps, and the total value of all of the stamps. A copy of such order which has been marked paid by the district director shall be retained by the owner or consignee for three years following the close of the year in which the stamps were purchased, and made available for inspection by any revenue officer upon his request. The details with respect to the purchase of stamps set forth in paragraph (a) of § 45.4456–2, other than the form to be used, are applicable to the orders described in this paragraph. The method of affixing stamps prescribed in paragraph (a) of this section is hereby made applicable to stamps affixed in foreign countries.

(2) *Stamps not affixed before importation.* In the case of imported playing cards to which internal-revenue stamps have not been affixed before importation, such stamp shall be affixed by the owner or consignee while the playing cards are in the hands of the proper customs officer, and such cards shall not pass out of the custody of such officer until the requisite stamps are affixed and canceled. The method of affixing stamps to domestic playing cards prescribed in paragraph (a) of this section is hereby made applicable to stamps affixed in accordance with the provisions of this subparagraph.

§ 45.4456–4 Abandoned or forfeited playing cards.

All playing cards which have been abandoned, forfeited, or seized under warrant of distraint, and which are sold by order of court or of any Government officer for the benefit of the United States, or by a sheriff, constable, or other municipal officer under any writ, execution, or process or order of any court, shall, before delivery by such officer, be properly packed and have the requisite stamps affixed and canceled. With reference to the procurement and cancellation of stamps in cases of sales referred to in this section, instructions will be given as to the procedure according to the facts in the individual case.

§ 45.4456–5 Cancellation of stamps.

(a) *Domestic manufacturer.* Each stamp affixed to a package of playing cards must be canceled by writing or printing in ink across the face of the stamp the initials of the manufacturer.

(b) *Imported playing cards.* Each stamp affixed to imported playing cards must be canceled by writing or printing in ink across the face of the stamp the initials of the owner or consignee and the date on which the stamp was affixed.

§ 45.4456–6 Redemption of stamps.

Playing card stamps, properly affixed to packs when removed from the place of manufacture, may not be redeemed once the cards have been removed from the premises of the manufacturer.

§ 45.4457 Statutory provisions; cross references.

SEC. 4457. *Cross references.* For penalties and other administrative provisions applicable to this subchapter, see subtitle F.

[Sec. 4457 as originally enacted and in effect July 1, 1960]

§ 45.4457–1 Cross references.

(a) For penalties for offenses relating to stamps, see § 45.7208.

(b) For penalty for unauthorized use or sale of stamps, see § 45.7209.

(c) For penalties for other offenses relating to stamps, see § 45.7271.

(d) For penalty for failure to register as required by section 4455, see § 45.7272.

(e) For other administrative provisions relating to the tax imposed on playing cards, see Subpart L.

(f) For regulations relating to exemption from tax in case of sale for use by the United States, see §§ 45.7510–1 to 45.7510–3, inclusive.

Subpart C—Occupational Tax on Coin-Operated Devices

§ 45.4461 Statutory provisions; imposition of tax.

SEC. 4461. *Imposition of tax*—(a) *In general.* There shall be imposed a special tax to be paid by every person who maintains for use or permits the use of, on any place or premises occupied by him, a coin-operated amusement or gaming device at the following rates:

(1) $10 a year, in the case of a device defined in paragraph (1) of section 4462 (a);

(2) $250 a year, in the case of a device defined in paragraph (2) of section 4462 (a); and

(3) $10 or $250 a year, as the case may be, for each additional device so maintained or the use of which is so permitted. If one such device is replaced by another, such other device shall not be considered an additional device.

(b) *Reduced rate.* In the case of a device which is defined in paragraph (2) of section 4462 (a) and which is commonly known as a claw, crane, or digger machine, the tax imposed by subsection (a) shall be at the rate of $10 a year (in lieu of $250 a year) if—

(1) The charge for each operation of such device is not more than 10 cents,

(2) Such device never dispenses a prize other than merchandise of a maximum retail value of $1, and with respect to such device there is never a display or offer of any prize or merchandise other than merchandise dispensed by such machine,

(3) Such device is actuated by a crank and operates solely by means of a nonelectrical mechanism, and

(4) Such device is not operated other than in connection with and as part of carnivals or county or State fairs.

[Sec. 4461 as amended and in effect July 1, 1960]

§ 45.4461–1 Imposition of tax.

(a) *In general.* Section 4461 imposes a special tax to be paid by every person who maintains for use or permits the use of, on any place or premises occupied by him, a coin-operated amusement or gaming device described in section 4462 and § 45.4462–1. Any agency or instrumentality of the United States such as an Army exchange, Navy exchange, etc., is liable to such special tax unless granted by statute a specific exemption therefrom. Except as otherwise provided in paragraph (b) of this section, liability is incurred in respect of each coin-operated amusement or gaming device maintained for use, or permitted to be used, by a person on his premises during a particular year or portion thereof. Tax liability applies with respect to a device installed on the taxpayer's premises even though previously used on the premises of another person, and even though special tax for the same year or period or part thereof was paid by such other person with respect thereto.

(b) *Replacements.* If a taxpayer replaces a device with respect to which he has paid special tax with a like device, no additional tax is payable. For example, a cigar store proprietor who maintains on the premises two coin-operated amusement devices with respect to which he has paid special tax has these two machines removed and replaces them with two coin-operated amusement devices of a more modern design. In this case no additional special tax is payable. However, if the replacing article is placed in operation before operation of the replaced article is discontinued, additional tax liability is incurred. If coin-operated amusement devices are replaced by coin-operated gaming devices, or gaming devices are replaced by amusement devices, liability to special tax at the rate applicable to the replacing machines or devices is incurred, and no credit is allowable for the special tax paid with respect to the replaced machines or devices.

§ 45.4461–2 Rates of tax.

(a) *In general.* Except as otherwise provided in paragraph (b) of this section, the special taxes under section 4461 are imposed at the following rates:

(1) With respect to each "coin-operated amusement or gaming device" defined in section 4462(a)(1)—$10 per year per device.

(2) With respect to each "coin-operated amusement or gaming device" defined in section 4462(a)(2)—$250 per year per device.

(b) *Reduced rate.* In the case of a device which is defined in paragraph (2) of section 4462(a) and which is commonly known as a claw, crane, or digger machine, the rate of tax shall be $10 per year per device (in lieu of $250 a year) if—

(1) The charge for each operation of such device is not more than 10 cents,

(2) Such device never dispenses a prize other than merchandise of a maximum retail value of $1, and with respect to such device there is never a display or offer of any prize or merchandise other than merchandise dispensed by such machine,

(3) Such device is actuated by a crank and operates solely by means of a nonelectrical mechanism, and

(4) Such device is not operated other than in connection with and as part of carnivals or county or State fairs.

§ 45.4462 Statutory provisions; definition of coin-operated amusement or gaming device.

SEC. 4462. *Definition of coin-operated amusement or gaming device*—(a) *In general.* For purposes of this subchapter, the term "coin-operated amusement or gaming device" means—

(1) Any machine which is—

(A) A music machine operated by means of the insertion of a coin, token, or similar object,

(B) A vending machine operated by means of the insertion of a one cent coin, which, when it dispenses a prize never dispenses a prize of a retail value of, or entitles a person to receive a prize of a retail value of, more than 5 cents, and if the only prize dispensed is merchandise and not cash or tokens,

(C) An amusement machine operated by means of the insertion of a coin, token, or similar object, but not including any device defined in paragraph (2) of this subsection, or

(D) A machine which is similar to machines described in subparagraph (A), (B), or (C), and is operated without the insertion of a coin, token, or similar object; and

(2) Any machine which is—

(A) A so-called "slot" machine which operates by means of the insertion of a coin, token, or similar object and which, by application of the element of chance, may deliver, or entitle the person playing or operating the machine to receive, cash, premiums, merchandise, or tokens, or

(B) A machine which is similar to machines described in subparagraph (A) and is operated without the insertion of a coin, token, or similar object.

(b) *Exclusion.* The term "coin-operated amusement or gaming device" does not include bona fide vending machines in which are not incorporated gaming or amusement features.

[Sec. 4462 as amended and in effect July 1, 1960]

§ 45.4462–1 Definition of coin-operated amusement or gaming devices.

(a) *Devices within scope of section 4462(a)(1)—(1) In general.* Section 4462(a)(1) includes within its scope any machine which is—

(i) A music machine operated by means of the insertion of a coin, token, or similar object,

(ii) A vending machine operated by means of the insertion of a one cent coin, which, when it dispenses a prize, never dispenses a prize of a retail value of, or entitles a person to receive a prize of a retail value of, more than 5 cents, and if the only prize dispensed is merchandise and not cash or tokens,

(iii) An amusement machine operated by means of the insertion of a coin, token, or similar object, but not including any device defined in paragraph (b) of this section, or

(iv) A machine which is similar to machines described in subdivisions (i), (ii), and (iii) of this subparagraph, and is operated without the insertion of a coin, token, or similar object.

(2) *Examples of machines or devices within scope of section 4462(a)(1).* The following devices and machines illustrate the type of machines or devices within the scope of section 4462(a)(1):

(i) Coin-operated athletic-type machines such as punching bags, hitting machines, lifters, shockers and grip machines.

(ii) A mechanical horse or other similar device which is activated by the insertion of a coin.

(iii) Coin-operated still or moving picture machines.

(iv) A coin-operated device which resembles a billiard or pool table but which has posts or holes in its playing surfaces precluding its use as a billiard or pool table.

(v) A coin-operated vending machine, which, in addition to delivering chewing gum balls, has incorporated therein an amusement feature, such as a pistol and a target.

(b) *Devices within scope of section 4462(a)(2)—(1) In general.* Section

4462(a)(2) includes within its scope any machine which is—

(i) A so-called "slot" machine which operates by means of the insertion of a coin, token, or similar object and which, by application of the element of chance, may deliver, or entitle the person playing or operating the machine to receive cash, premiums, merchandise, or tokens, or

(ii) A machine which is similar to machines described in subdivision (i) of this subparagraph and is operated without the insertion of a coin, token, or similar object.

(2) *Examples of machines or devices within scope of section 4462(a)(2).* The following devices and machines illustrate the type of machines or devices within the scope of section 4462(a)(2):

(i) A machine which is operated by means of the insertion of a coin, token, or similar object and which, even though it does not dispense cash or tokens, has the features and characteristics of a gaming device whether or not evidence exists as to actual payoffs.

(ii) A so-called crane machine, claw, digger or rotary merchandising type device which is operated by the insertion of a coin and adjustment of a control lever for the purpose of removing from the machine, by gripping, pushing or other manipulation articles such as figurines, lighters, etc., in the machine.

(iii) A pinball machine equipped with a push button for releasing free play and a meter for recording the plays so released, or equipped with provisions for multiple coin insertion for increasing the odds.

(iv) Pinball machines in connection with which free plays are redeemed in cash, tokens, or merchandise, or prizes are offered to any person for the attainment of designated scores.

(v) A coin-operated machine that delivers a ticket that entitles the player to a prize if the poker hand symbolized on the ticket constitutes a winning hand.

(c) *Exclusion.* (1) Section 4462(b) specifically excludes from the term "coin-operated amusement or gaming device" a bona fide vending machine in which are not incorporated gaming or amusement features.

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

(i) A vending machine, operated by the insertion of a one cent coin, which occasionally dispenses along with gum sold by means of the machine, toy charms of negligible value.

(ii) A recording machine which, upon insertion of a coin, records a person's voice, plays the record back, and then delivers the record to the purchaser.

§ 45.4463 Statutory provisions; administrative provisions; trade or business.

SEC. 4463. *Administrative provisions*—(a) *Trade or business.* An operator of a place or premises who maintains for use or permits the use of any coin-operated device shall be considered, for purposes of chapter 40, to be engaged in a trade or business in respect of each such device.

(b) *Cross reference.* For penalties and other administrative provisions applicable to this subchapter, see chapter 40 and subtitle F.

[Sec. 4463 as originally enacted and in effect July 1, 1960]

§ 45.4463–1 Cross references.

(a) For provisions relating to registration in case of a trade or business on which a special tax is imposed, see §§ 45.7011 and 45.7011–1.

(b) For requirements relating to posting occupational tax stamps, see §§ 45.6806 and 45.6806–1.

(c) For provisions relating to penalties and other administrative provisions applicable in respect of the special tax imposed with respect to coin-operated amusement and gaming devices, see Subpart K and the applicable provisions of Subpart L of this part.

Subpart D—Occupational Tax on Bowling Alleys, Billiard and Pool Tables

§ 45.4471 Statutory provisions; imposition of tax.

SEC. 4471. *Imposition of tax.* There shall be imposed a special tax to be paid by every person who operates a bowling alley, billiard room, or pool room at the rate of $20 a year for each bowling alley, billiard table, or pool table.

[Sec. 4471 as originally enacted and in effect July 1, 1960]

§ 45.4471–1 Imposition and rate of tax.

(a) *Imposition of tax.* Section 4471 imposes a special tax to be paid by every person who operates a bowling alley, billiard room, or pool room. If a taxpayer replaces an alley bed, billiard table, or pool table with respect to which he has paid special tax with another article of the same or different kind subject to this tax, for example, replaces an alley bed either with another alley bed or a billiard or pool table, no additional tax is payable. However, if the replacing article is placed in operation before operation of the replaced article is discontinued additional tax liability is incurred.

(b) *Rate of tax.* The rate of special tax imposed by section 4471 is $20 per year for each bowling alley, billiard table, or pool table. Liability is incurred in respect of each alley bed, billiard table, or pool table maintained for use on the operator's premises during a particular year or portion thereof.

§ 45.4472 Statutory provisions; definition.

SEC. 4472. *Definition.* For the purpose of section 4471 every building or place where bowls are thrown or where games of billiards or pool are played, except in private homes, shall be regarded as a bowling alley, billiard room, or pool room, respectively.

[Sec. 4472 as originally enacted and in effect July 1, 1960]

§ 45.4472–1 Definition of bowling alley, billiard room, and pool room.

For the purpose of section 4471 every building or place where bowls are thrown or where games of billiards or pool are played, except a private home, shall be regarded as a bowling alley, billiard room, or pool room, respectively.

§ 45.4473 Statutory provisions; exemptions.

SEC. 4473. *Exemptions.* The tax imposed by section 4471 shall not apply with respect to—

(1) *Hospitals.* Any billiard table or pool table in a hospital if no charge is made for the use of such table; or

(2) *Armed Forces.* Any bowling alley, billiard table, or pool table maintained exclusively for the use of members of the Armed Forces on any property owned, reserved, or used by, or otherwise acquired for the use of, the United States if no charge is made for their use; or

(3) *Certain organizations.* Any bowling alley, billiard table, or pool table operated—

(A) By, and located on the premises of, an organization not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual, or

(B) By any agency or instrumentality of the United States,

if no charge is made for the use of such alley or table.

[Sec. 4473 as amended and in effect July 1, 1960]

§ 45.4473–1 Exemptions.

(a) *Hospitals.* The special tax imposed under section 4471 shall not apply in the case of a billiard or pool table operated in a hospital if no charge is made for the use of such table. The term "hospital", as used in this section, does not include a home for the aged even though the home has facilities to care for residents who become ill.

(b) *Armed Forces.* The special tax imposed under section 4471 shall not apply with respect to any bowling alley, billiard table, or pool table maintained exclusively for the use of members of the Armed Forces on any property owned, reserved, or used by, or otherwise acquired for the use of, the United States if no charge is made for their use. The term "Armed Forces" includes all regular and reserve components of the uniformed services which are subject to the jurisdiction of the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force. The term also includes the Coast Guard.

(c) *Certain organizations.* The special tax imposed under section 4471 shall not apply with respect to any bowling alley, billiard table, or pool table—

(1) Operated by, and located on the premises of, an organization not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual provided no charge is made for the use of such alley or table.

(2) Operated by any agency or instrumentality of the United States provided no charge is made for the use of such alley or table.

(d) *Charge for use.* The exemption provided by section 4473 in respect of the tax imposed by section 4471 does not apply if any charge is made for the use of the bowling alley, billiard table or pool table, even though the other conditions are met. Thus, an exemption does not exist where, as a condition precedent to using an alley or table, a

charge is collected from the player or players as, for example, where an amount is collected from a player using a bowling alley for payment, directly or indirectly, to a pin-setter.

§ 45.4474 Statutory provisions; cross references.

SEC. 4474. *Cross references.* For penalties and administrative provisions applicable to this subchapter, see chapter 40 and subtitle F.

[Sec. 4474 as originally enacted and in effect July 1, 1960]

§ 45.4474–1 Cross references.

(a) For provisions relating to registration in case of a trade or business on which a special tax is imposed, see §§ 45.7011 and 45.7011–1.

(b) For requirements relating to posting occupational tax stamps, see §§ 45.6806 and 45.6806(a)–1.

(c) For provisions relating to penalties and other administrative provisions applicable in respect of the special tax imposed with respect to bowling alleys, billiard and pool tables, see Subpart K and the applicable provisions of Subpart L of this part.

Subpart E—Oleomargarine

§ 45.4591 Statutory provisions; imposition of tax.

SEC. 4591. *Imposition of tax*—(a) *Rate.* There is hereby imposed on all oleomargarine imported from foreign countries, in addition to any import duty imposed on the same, an internal revenue tax of 15 cents per pound, such tax to be represented by coupon stamps. The Secretary or his delegate is authorized to decide what substances, extracts, mixtures, or compounds which may be submitted for his inspection in contested cases are to be taxed under this subchapter; and his decision in matters of taxation under this subchapter shall be final.

(b) *Affixing of stamps.* The stamps shall be affixed and canceled by the owner or importer of the oleomargarine while it is in the custody of the proper custom house officers; and the oleomargarine shall not pass out of the custody of said officers until the stamps have been so affixed and canceled, but shall be put up in wooden packages, each containing not less than 10 pounds, before the stamps are affixed. Whenever it is necessary to take any oleomargarine so imported to any place other than the public stores of the United States for the purpose of affixing and canceling such stamps, the collector of customs of the port where such oleomargine is entered shall designate a bonded warehouse to which it shall be taken, under the control of such customs officer as such collector may direct.

[Sec. 4591 as originally enacted and in effect July 1, 1960]

§ 45.4591–1 Imposition, rate and payment of and liability for tax.

(a) *Imposition and rate of tax.* Section 4591 imposes, in addition to any import duty, a tax of 15 cents per pound on all oleomargarine imported into the United States from any foreign country.

(b) *Payment and liability for tax.* The tax imposed under section 4591 shall be paid by the importer or owner of the imported oleomargarine by the affixing of stamps to the packages and the cancelling thereof while the oleomargarine is in the custody of the Bureau of Customs. Each stamp affixed to a package must be cancelled by writing or printing in ink across the face of the stamp the initials of the owner or consignee and the date on which the stamp was affixed.

§ 45.4592(a) Statutory provisions; definitions.

SEC. 4592. *Definitions*—(a) *Oleomargarine.* For the purposes of section 4591, certain manufactured substances, certain extracts, and certain mixtures and compounds, including such mixtures and compounds with butter, shall be known and designated as "oleomargarine", namely: All substances known prior to August 2, 1886, as oleomargarine, oleo, oleomargarine oil, butterine, lardine, suine, and neutral; all mixtures and compounds of oleomargarine, oleo, oleomargarine oil, butterine, lardine, suine, and neutral; all lard extracts and tallow extracts; and all mixtures and compounds of tallow, beef fat, suet, lard, lard oil, fish oil or fish fat, vegetable oil, annatto, and other coloring matter, intestinal fat, and offal fat;—if (1) made in imitation or semblance of butter, or (2) calculated or intended to be sold as butter or for butter, or (3) churned, emulsified, or mixed in cream, milk, water, of [or] other liquid, and containing moisture in excess of 1 per centum or common salt.

[Sec. 4592(a) as originally enacted and in effect July 1, 1960]

§ 45.4592(a)–1 Definition of the term "oleomargarine".

For the purposes of the regulations in this part, certain manufactured substances, certain extracts, and certain mixtures and compounds, including such mixtures and compounds with butter shall be known and designated as "oleomargarine", namely,

(a) All substances known prior to August 2, 1886, as oleomargarine, oleo, oleomargarine oil, butterine, lardine, suine, and neutral;

(b) All mixtures and compounds of oleomargarine, oleo, oleomargarine oil, butterine, lardine, suine, and neutral;

(c) All lard extracts and tallow extracts; and

(d) All mixtures and compounds of tallow, beef fat, suet, lard, lard oil, fish oil or fish fat, vegetable oil, annatto, and other coloring matter, intestinal fat, and offal fat; if

(1) Made in imitation or semblance of butter, or

(2) Calculated or intended to be sold as butter or for butter, or

(3) Churned, emulsified, or mixed in cream, milk, water, or other liquid, and containing moisture in excess of 1 per centum or common salt.

§ 45.4593(a) Statutory provisions; exemptions.

SEC. 4593. *Exemption*—(a) *Shortening or condiments.* Section 4591 shall not apply to puff-pastry shortening not churned or emulsified in milk or cream, and having a melting point of 118 degrees Fahrenheit or more, nor to any of the following containing condiments and spices: salad dressings, mayonnaise dressings, or mayonnaise products, nor to liquid emulsion, pharmaceutical preparations, oil meals, liquid preservatives, illuminating oils, cleansing compounds, or flavoring compounds.

[Sec. 4593(a) as originally enacted and in effect July 1, 1960]

§ 45.4593(a)–1 Exemptions.

(a) *Shortening or condiments.* Section 4591 shall not apply to puff-pastry shortening not churned or emulsified in milk or cream, and having a melting point of 118 degrees Fahrenheit or more, nor to any of the following containing condiments and spices: salad dressing, mayonnaise dressing, or mayonnaise products, nor to liquid emulsion, pharmaceutical preparations, oil meals, liquid preservatives, illuminating oils, cleansing compounds, or flavoring compounds.

Subpart F—White Phosphorus Matches

§ 45.4801 Statutory provisions; imposition of tax.

SEC. 4801. *Imposition of tax*—(a) *Rate.* There shall be imposed upon white phosphorus matches manufactured, sold, or removed a tax at the rate of 2 cents per one hundred matches.

(b) *By whom paid.* The tax imposed by subsection (a) shall be paid by the manufacturer.

[Sec. 4801 as originally enacted and in effect July 1, 1960]

§ 45.4801–1 Imposition and rate of tax.

Section 4801 imposes a tax upon white phosphorus matches manufactured, sold, or removed at the rate of 2 cents per 100 matches. The tax is payable by the manufacturer of the white phosphorus matches. For a definition of the term "white phosphorus", see section 4802 and § 45.4802–1.

§ 45.4802 Statutory provisions; definition of white phosphorus.

SEC. 4802. *Definition of white phosphorus.* For the purpose of this subchapter, the words "white phosphorus" shall be understood to mean the common poisonous white or yellow phosphorus used in the manufacture of matches and not to include the nonpoisonous forms or the nonpoisonous compounds of white or yellow phosphorus.

[Sec. 4802 as originally enacted and in effect July 1, 1960]

§ 45.4802–1 Definition of white phosphorus.

For the purpose of the regulations in this part, the term "white phosphorus" shall be understood to mean the common poisonous white or yellow phosphorous used in the manufacture of matches. The term does not include the nonpoisonous forms or the nonpoisonous compounds of white or yellow phosphorus.

§ 45.4803 Statutory provisions; stamps.

SEC. 4803. *Stamps*—(a) *Method of payment*—(1) *Stamps.* The tax imposed by section 4801 shall be represented by adhesive stamps.

(2) *Assessment.* For assessment in case of omitted taxes, see subtitle F.

(b) *Sale.* The Secretary or his delegate shall require that stamps be sold only to duly qualified manufacturers.

(c) *Accounts.* The Secretary or his delegate shall cause to be kept accounts of the number and denominate values of the stamps sold to each manufacturer.

(d) *Other stamp provisions.* All the provisions and penalties of law governing the engraving, issuing, sale, affixing, cancellation, accountability, effacement, destruction, and forgery of stamps provided for internal revenues shall apply to stamps provided for by this subchapter.

[Sec. 4803 as originally enacted and in effect July 1, 1960]

§ 45.4803–1 Sale of stamps to qualified manufacturer.

Documentary stamps will be used in the payment of the tax imposed by section 4801. Such stamps are obtainable from any district director upon requisition and payment therefor by a manufacturer who has incurred liability for the tax imposed by section 4801 and who has registered and filed a satisfactory bond in accordance with the regulations in this part.

§ 45.4804 Statutory provisions; requirements on manufacturers.

SEC. 4804. *Requirements on manufacturers*—(a) *Packing*—(1) *Number in packages.* All white phosphorus matches shall be packed by the manufacturer thereof in packages containing 100, 200, 500, 1,000, or 1,500 matches each, which shall then be packed by the manufacturer in packages containing not less than 14,400 matches.

(2) *Stamping.* The manufacturer shall affix to every package containing 100, 200, 500, 1,000, or 1,500 matches an adhesive stamp of the required value and shall place thereon the initials of his name and the date on which such stamp is affixed, so that the same may not again be used.

(3) *Factory number.* Every manufacturer of matches shall mark, brand, affix, stamp, or print, in such manner as the Secretary or his delegate shall prescribe, on every package of white phosphorus matches manufactured, sold, or removed by him, the factory number required under subsection (b).

(4) *Label.* Every manufacturer of white phosphorus matches shall securely affix by pasting on each original package containing stamped packages of white phosphorus matches manufactured by him a label, on which shall be printed, besides the number of the manufactory and the district in which it is situated, these words: "*Notice.*—The manufacturer of the white phosphorus matches herein contained has complied with all the requirements of law. Every person is cautioned not to use again the stamps on the packages herein contained under the penalty provided by law in such cases."

(b) *Factory number and signs.* Every manufacturer of white phosphorus matches shall put up such signs and affix such number to his factory as the Secretary or his delegate may by regulation require.

(c) *Bonds.* Every manufacturer of white phosphorus matches shall file with the official in charge of the internal revenue district in which his manufactory is located such bonds as the Secretary or his delegate may by regulation require. The bond required of such manufacturer shall be in the penal sum of not less than $1,000; and the sum of said bond may be increased from time to time and additional sureties required at the discretion of the Secretary or his delegate.

(d) *Registration.* Every manufacturer of white phosphorus matches shall register with the official in charge of the internal revenue district his name or style, place of manufactory, and the place where such business is to be carried on.

[Sec. 4804 as originally enacted and in effect July 1, 1960]

§ 45.4804–1 Packing and stamping of white phosphorus matches.

Section 4804(a) requires that all white phosphorus matches shall be packed in packages of 100, 200, 500, 1,000, and 1,500 matches each, and these shall then be packed in packages containing not less than 14,400 matches. The stamp or stamps required to be used in payment of the tax must be securely affixed by the manufacturer so as to seal the packages of 100, 200, 500, 1,000, and 1,500 matches and the initials of the manufacturer and the date when such stamp or stamps are affixed placed thereon either by stencil or perforation. The stenciling or perforating of stamps may be done before affixing to the packages where machines are employed for this purpose and where the stenciling or perforating of stamps after affixing would injure the packages. Packages for packing 100, 200, 500, 1,000, and 1,500 matches may be of any durable material which will permit the affixing and adhesion of the stamps.

§ 45.4804–2 Factory number.

Upon receipt of the notice of intention to manufacture white phosphorus matches, as provided by § 45.4804–8, the district director will assign to the manufacturer a factory number, which applies to the factory, and shall not thereafter be changed. In case there is more than one manufacturer, or a single manufacturer having more than one factory in the same district, a separate and consecutive number shall be given each factory.

§ 45.4804–3 Manufacturer's sign.

The manufacturer shall, after assignment of a factory number, place over the principal entrance to the building in which the business is carried on a sign with letters not less than 4 inches in length and of sufficient width, gilded or painted in oil in colors so as to be easily discernible, giving the name and business and number of factory in the following form:

John Doe,
Manufacturer of White Phosphorus Matches,
Factory No. 1

§ 45.4804–4 Separate factories for taxable and nontaxable matches.

If the manufacturer is also engaged in the production of matches not taxable under section 4801, the factory premises where the taxable and nontaxable matches are produced shall be entirely separate, or if in the same building, separated by solid walls or partitions, which shall extend from floor to ceiling. The manufacture of taxable and nontaxable matches on the same premises and with the same machinery is not permissible.

§ 45.4804–5 Factory number required on each package.

The factory number required under section 4804 must be printed, branded, or lithographed on every package of white phosphorus matches removed by the manufacturer.

§ 45.4804–6 Caution label.

In addition to the factory number required on the stamped packages of white phosphorus matches a caution label, as required by section 4804(a)(4), must be affixed to the original package containing these stamped packages. This label should be printed in black ink on white paper, or, if other colors are used, the printing should be in strongest contrast to the background, so as to be distinct and legible.

§ 45.4804–7 Manufacturer's bond.

Every manufacturer of white phosphorus matches shall file such bonds as the district director may require before commencement of business. The penal sum of such bond shall be not less than $1,000; and the sum of said bonds may be increased from time to time at the discretion of the district director. This bond is a continuing one until replaced by a new instrument. Where there is a discontinuance of operation for a period, a new bond will be required upon resumption of business. For other provisions relating to bonds, see §§ 301.7101 and 301.7101–1 of this chapter (Regulations on Procedure and Administration).

§ 45.4804–8 Registry by manufacturer.

Every person proposing to manufacture white phosphorus matches shall, before commencing such manufacture, register by giving written notice of intention to manufacture white phosphorus matches to the district director for the district in which is located the factory, and on July 1 of each year the manufacturer shall give written notice of intent to continue the manufacture of white phosphorus matches. Such manufacturer will also be required to file bond and to comply with all other provisions of the regulations in this part.

§ 45.4804–9 Inventory to be made at commencement of business, on July 1 of each year, and at the time of closing.

After registration, filing of notices and bonds, every manufacturer of white phosphorus matches, before commencing business, shall file with the district director for the district in which his factory is located an inventory in letter form appropriately marked "Opening inventory", stating the quantity of each of the different kinds of materials used in the manufacture of white phosphorus matches, the number of packages and quantity of white phosphorus matches, stamped and unstamped, and the value of attached and unattached stamps held or owned in respect of such factory by such manufacturer, on the date of the inventory. An inventory shall thereafter be filed as of the first day of July during continuance of operations, and a similar inventory must be filed upon discontinuance or suspension of the business for a limited period, which should be marked "closing inventory." Such letter must contain a written declaration that the statements made therein are made under the penalties of perjury.

§ 45.4804–10 Daily records.

(a) *In general.* Every manufacturer is required to keep a daily record showing the total of each material used each day and the total number of matches produced and the number of stamped packages and original packages in which packed; also the total number of stamped packages and original packages, together with the total number of matches, disposed of each day.

(b) *Names of customers.* The names of customers to whom matches are consigned and the quantities so sold will not be entered in the manufacturers'

daily record and quarterly returns, but the manufacturer shall, upon request of any internal revenue officer, furnish a record of all sales for such period as may be desired.

§ 45.4804–11 Quarterly return.

Each manufacturer shall render in duplicate to the district director a return in letter form for each calendar quarter, which shall be a summary of the daily record required under provisions of paragraph (a) of § 45.4804–10.

§ 45.4805 Statutory provisions; importation and exportation.

SEC. 4805. *Importation and exportation*—(a) *Importation.* White phosphorus matches, manufactured wholly or in part in any foreign country, shall not be entitled to entry at any of the ports of the United States, and the importation thereof is prohibited. All matches imported into the United States shall be accompanied by such certificate of official inspection by the government of the country in which such matches were manufactured as shall satisfy the Secretary or his delegate that they are not white phosphorus matches.

(b) *Exportation.* It shall be unlawful to export from the United States any white phosphorus matches.

[Sec. 4805 as originally enacted and in effect July 1, 1960]

§ 45.4805–1 Importation and exportation of matches.

(a) *White phosphorus matches*—(1) *Importation.* The importation into the United States of white phosphorus matches is prohibited.

(2) *Exportation.* The exportation from the United States of white phosphorus matches is unlawful.

(b) *Matches in general.* For regulations relating to the importation of matches into, or the exportation of matches out of, the United States, see the regulations of the Bureau of Customs, 19 CFR 12.34 and 12.35.

§ 45.4806 Statutory provisions; cross references.

SEC. 4806. *Cross references.* For penalties and other general and administrative provisions applicable to this subchapter, see subtitle F.

[Sec. 4806 as originally enacted and in effect July 1, 1960]

§ 45.4806–1 Cross references.

(a) For penalties, see §§ 45.7208, 45.7209, 45.7239, 45.7267, 45.7274, 45.7303, and 45.7328.

(b) For penalties for failure to register as required by § 45.4804–8, see § 45.7272.

(c) For other administrative provisions, see Subpart L.

Subpart G—Adulterated and Process or Renovated Butter Tax on Products

§ 45.4811 Statutory provisions; imposition of tax.

SEC. 4811. *Imposition of tax*—(a) *Rate*—(1) *Adulterated butter.* There shall be imposed upon adulterated butter, when manufactured or sold or removed for consumption or use, a tax of 10 cents per pound, and any fractional part of a pound shall be taxed as a pound.

(2) *Process or renovated butter.* There shall be imposed upon process or renovated butter, when manufactured or sold or removed for consumption or use, a tax of one-fourth of 1 cent per pound, and any fractional part of a pound shall be taxed as a pound.

(b) *By whom paid.* The tax imposed by subsection (a) shall be paid by the manufacturer.

[Sec. 4811 as originally enacted and in effect July 1, 1960]

§ 45.4811–1 Imposition and rate of tax.

(a) *Adulterated butter.* Section 4811 (a) (1) imposes a tax upon adulterated butter, when manufactured or sold or removed for consumption or use from the place of manufacture, at the rate of 10 cents per pound. A fractional part of a pound is taxed as a pound. (For definition of adulterated butter, see § 45.4826–2.)

(b) *Process or renovated butter.* Section 4811(a) (2) imposes a tax upon process or renovated butter, when manufactured or sold or removed for consumption or use from the place of manufacture, at the rate of one-fourth of 1 cent per pound. A fractional part of a pound is taxed as a pound. (For definition of process or renovated butter, see § 45.4826–5.)

(c) *Liability for tax.* The taxes imposed under section 4811 shall be paid by the manufacturer of the adulterated butter or the process or renovated butter, as the case may be. For provisions relating to the method of payment of the tax and to bonding requirements, see §§ 45.4813–1 and 45.4814–5, respectively.

§ 45.4812 Statutory provisions; importation of adulterated butter.

SEC. 4812. *Importation of adulterated butter.* There shall be imposed upon adulterated butter imported from a foreign country, in addition to any import duty imposed on the same, an internal revenue tax of 15 cents per pound, such tax to be represented by coupon stamps as in the case of adulterated butter manufactured in the United States. The stamps shall be affixed and canceled by the owner or importer of the adulterated butter while it is in the custody of the officers or employees designated by the Secretary or his delegate; and the adulterated butter shall not pass out of the custody of said officers or employees until the stamps have been so affixed and canceled, but shall be put up in wooden packages, each containing not less than 10 pounds, as prescribed in this subpart for adulterated butter manufactured in the United States, before the stamps are affixed; and the owner or importer of such adulterated butter shall be liable to all the penal provisions of this subpart prescribed for manufacturers of adulterated butter manufactured in the United States. Whenever it is necessary to take any adulterated butter so imported to any place other than the public stores of the United States for the purpose of affixing and canceling such stamps, the Secretary or his delegate shall designate a bonded warehouse to which it shall be taken, under the control of such officer or employee as the Secretary or his delegate may direct.

[Sec. 4812 as originally enacted and in effect July 1, 1960]

§ 45.4812–1 Imposition and rate of tax.

(a) *In general.* Section 4812 imposes a tax upon adulterated butter imported from a foreign country at the rate of 15 cents per pound. The tax imposed by section 4812 is in addition to any import duty imposed upon adulterated butter.

(b) *Liability for tax.* The tax imposed under section 4812 upon imported adulterated butter is payable by the owner or importer of the imported adulterated butter by the affixing of coupon stamps while the adulterated butter is in the custody of the Bureau of Customs.

§ 45.4812–2 Requisition for, affixing and canceling stamps.

(a) *Requisition for stamps.* Stamps for tax payment of imported adulterated butter will be sold to the owner or importer only upon requisition on Form 923 executed by an authorized customs officer. The requisition shall be presented to the district director for the district in which is located the customhouse where the entry is filed.

(b) *Affixing and canceling stamps.* Before release from customs custody stamps shall be affixed and canceled by the owner or importer in the manner prescribed in paragraphs (c) and (d) of § 45.4813–1, except that the cancellation shall distinctly show the name of the owner or importer, port of entry, customs entry number, and date.

§ 45.4812–3 Packing and branding.

Imported adulterated butter shall be packed in wooden packages of not less than 10 pounds each, as prescribed in paragraph (a) of § 45.4814–1. Before removal from customs custody imported packages shall be branded in accordance with paragraph (b) of § 45.4814–1, so far as applicable, the name of the country of origin, and the name and address of the importer to be substituted for the factory number, and internal revenue district and State. The caution notice prescribed in § 45.4814–3 for packages of adulterated butter of domestic manufacture is not required in the case of imported adulterated butter.

§ 45.4813 Statutory provisions; stamps.

SEC. 4813. *Stamps*—(a) *Method of payment*—(1) *Stamps.* The tax imposed by section 4811 shall be represented by coupon stamps.

(2) *Assessment.* For assessment in case of omitted taxes, see subtitle F.

(b) *Emptied packages.* Whenever any stamped package containing adulterated butter is emptied, it shall be the duty of the person in whose hands the same is to destroy utterly the stamps thereon. The Secretary or his delegate may destroy any emptied package of adulterated butter upon which the tax-paid stamp is found.

(c) *Other stamp provisions.* The provisions of law governing the engraving, issuing, sale, accountability, effacement, and destruction of stamps relating to tobacco and snuff, as far as applicable, shall apply to the stamps provided in paragraph (1) of subsection (a).

[Sec. 4813 as originally enacted and in effect July 1, 1960]

§ 45.4813–1 Method of payment.

(a) *Stamps*—(1) *In general.* The taxes imposed under section 4811 shall be paid by the manufacturer by affixing stamps to the packages of adulterated butter or process or renovated butter, as the case may be, before the packages are removed from the bonded premises. If, however, the district di-

rector deems it necessary, he may require the attachment of stamps at any time after manufacture.

(2) *Denomination of stamps.* Stamps for the payment of the tax on adulterated butter, or process or renovated butter are designated "Process or Renovated Butter" and are issued in sheets of 20 stamps each, in denominations of 10, 20, 30, 40, 50, 60, and 100 pounds. One-pound coupon stamps for use in connection with stamps of the foregoing denominations are issued in sheets of 200 stamps each.

(b) *Ordering stamps.* Except as otherwise provided in § 45.4812–2, stamps for packages of adulterated butter or process or renovated butter will be sold only to registered manufacturers. They shall be purchased from the district director for the district in which the factory is located. Orders for stamps shall be prepared on Form 218. A remittance for the total value of the stamps shall accompany the order.

(c) *Affixing stamps.* An internal-revenue stamp of a denomination that will fully cover the tax on the net weight of the contents shall be affixed to each package before removal from the factory, except packages for export and for use of the United States. A single stamp of a denomination denoting the quantity in the package shall be used if stamps of such denomination are issued. If a single stamp will not fully cover the tax due, the least sufficient number of additional stamps shall be used.

(d) *Canceling stamps.* Each stamp affixed to a package shall be canceled before removal from the factory. The concellation shall be legibly written or printed in ink, or perforated, and shall show the factory number, internal revenue district, State, and date. The cancellation marks may be abbreviated in the following manner, indicating, for example, cancellation by factory No. 10, Chicago district, Illinois, on January 15, 1958: 10–Chicago, Ill., 1–15–58.

§ 45.4814 Statutory provisions; requirements applicable to manufacturers.

SEC. 4814. *Requirements applicable to manufacturers*—(a) *Packing, stamping, and selling requirements*—(1) *Adulterated butter.* All adulterated butter shall be packed by the manufacturer thereof in firkins, tubs, or other wooden, tin-plate, or paper packages not before used for that purpose, containing, or encased in a manufacturer's package made from any of such materials of, not less than ten pounds, and marked, stamped, and branded as the Secretary or his delegate shall prescribe, and all sales made by manufacturers of adulterated butter shall be in original, stamped packages. Every manufacturer of adulterated butter shall securely affix, by pasting, on each package containing adulterated butter manufactured by him a label on which shall be printed, besides the number of the manufactory and the district and State in which it is situated, these words: "Notice.—The manufacturer of the adulterated butter herein contained has complied with all the requirements of law. Every person is cautioned not to use either this package again or the stamp thereon, nor to remove the contents of this package without destroying said stamp, under the penalty provided by law in such cases."

(2) *Process or renovated butter.* For marking process or renovated butter, see section 4817.

(b) *Factory number and signs.* Every manufacturer of process or renovated butter or adulterated butter shall put up such signs and affix such number to his factory as the Secretary or his delegate may by regulation require.

(c) *Bonds.* Every manufacturer of process or renovated butter or adulterated butter shall file with the official in charge of the internal revenue district in which his manufactory is located such bonds as the Secretary or his delegate may by regulation require. The bond required of such manufacturer shall be in a penal sum of not less than $500; and the sum of said bond may be increased from time to time and additional sureties required at the discretion of the Secretary or his delegate.

[Sec. 4814 as originally enacted and in effect July 1, 1960]

§ 45.4814–1 Packing and branding adulterated butter.

(a) *Packages*—(1) *General.* (i) Adulterated butter shall be packed by the manufacturer thereof in statutory packages of not less than 10 pounds. A statutory package is one designed to contain only that quantity of adulterated butter as indicated by the stamp or stamps to be affixed thereto.

(ii) Containers of adulterated butter must be of a durable and substantial character and must completely cover the contents. As to penalty for refilling containers from which adulterated butter has been removed, see section 7234(d)(2)(B).

(2) *Additional coverings.* Properly stamped and branded packages of adulterated butter may be incased in additional coverings or wrappers provided such coverings are branded as prescribed in paragraph (b) of this section and contain the following inscription legibly printed or stenciled in letters not less than half an inch high: "Tax has been paid and proper stamp placed on the original package contained herein."

(3) *Prints and rolls.* Manufacturers may subdivide a statutory package of adulterated butter into prints or rolls, provided such subdivisions do not constitute original or statutory packages within the meaning of the law, or weigh less than one-quarter of a pound. Prints and rolls shall be placed in cartons or wrappers branded as prescribed in paragraph (b) of this section.

(b) *Branding*—(1) *Statutory packages.* (i) Before removal from the factory the words "Adulterated Butter," the factory number, the internal revenue district, State, and the gross, tare, and net weights shall be legibly printed or stenciled on one of the sides or top of each package of adulterated butter in the manner shown in the following example:

ADULTERATED BUTTER
Factory No. 2, Manhattan Dist. N.Y.
64–4–60.

(ii) The words "Adulterated Butter" shall be in boldface gothic letters not less than three-quarters of an inch high, and the other letters and figures not less than one-half inch high. The color of the brand shall be in strong contrast to that of the package.

(2) *Cartons.* The words "Adulterated Butter", the net weight of contents, and the manufacturer's name and address, or the internal-revenue factory number, internal revenue district, and State shall be branded on cartons. The words "Adulterated Butter" shall be in plain gothic letters of not less than 20-point type, shall measure not less than 3⅛ inches in length, and be of a color in strong contrast to that of the carton. Hair-line, shaded or ornate letters, or letters in outline may not be used.

(4) *Wrappers*—(i) *Inside wrappers.* The manufacturer's name and address and the factory number, internal revenue district, and State may be omitted from cartons if printed on wrappers used with cartons. When a manufacturer operates more than one factory he may brand cartons with the name and address of his general office, or the address of each factory, provided an inside wrapper is used showing either the name and address of the factory where the adulterated butter was produced, or the factory number, the internal revenue district, and State.

(ii) *Blank wrappers.* Blank wrappers may be used with properly branded cartons.

(iii) *Wrappers without cartons.* When used without cartons, wrappers shall be branded in the same manner as cartons. The words "Adulterated Butter" shall be so placed on the wrapper that they will appear at the top and bottom of the print or roll when wrapped.

(5) *Dealer's name on containers.* When a dealer's name is printed on containers a phrase such as "prepared for," "distributed by," etc., shall be placed before his name to show that the dealer is not the manufacturer.

§ 45.4814–2 Marking process or renovated butter.

For provisions with respect to the inspection and marking of process or renovated butter, see § 45.4817–1.

§ 45.4814–3 Caution notice; placement upon packages.

(a) *Adulterated butter.* Before removal from the factory each statutory package of adulterated butter must have conspicuously printed or labeled on it the following notice, which must measure not less than 3 inches long by 1½ inches wide:

Factory No. ------, ---------- District, State of ----------.

NOTICE: The manufacturer of the adulterated butter herein contained has complied with all the requirements of law. Every person is cautioned not to use either this package again (for adulterated butter) or the stamp thereon again, nor to remove the contents of this package without destroying said stamp, under the penalty provided by law in such cases.

(b) *Process or renovated butter.* A similar caution notice with appropriate changes in wording is required in the case of process or renovated butter.

§ 45.4814–4 Factories.

(a) *Premises.* Unless otherwise approved by the district director, another factory may not be operated at the same time within the premises described in a manufacturer's notice. (See paragraph (d) of this section.)

(b) *Signs.* Over the principal entrance to each building in which process or renovated butter, or adulterated butter is produced the manufacturer shall conspicuously display a sign showing the name in which the business is conducted, the kind of business, and the internal-revenue factory number, in durable characters not less than 3 inches high.

(c) *Numbers.* Each factory producing process or renovated butter or adulterated butter shall be numbered by the district director of the district in which the plant is located. The number assigned to one factory shall not be used by another factory in the same district, or changed without the approval of the district director. If the factory is moved to another part of the district the number shall be retained. If moved to another district a new number will be assigned to the factory by the district director of the district to which the factory is moved. If the business is discontinued the number will not be assigned to another factory during the balance of the fiscal year.

(d) *Manufacturer's notice*—(1) *Execution of form.* Before commencing business, and immediately on the first day of July thereafter as long as he continues in the business, a manufacturer of adulterated butter or process or renovated butter shall file with the district director a notice of intention to manufacture. This notice shall be prepared on Form 213 which may be obtained from the district director. The premises described in the notice shall conform with the requirements of this section.

(2) *Notice of change.* A new notice shall be filed with the district director before or immediately upon making any change either in location or in the premises or ownership of the business as described in the original notice.

§ 45.4814–5 Bonding.

(a) *Requirement.* Every manufacturer of process or renovated butter or adulterated butter before incurring any liability for the tax imposed by section 4811, shall file a bond with the district director in accordance with the provisions of paragraph (b) of this section.

(b) *Bond*—(1) *In general.* The bond required under paragraph (a) of this section shall be executed in accordance with the form, instructions, and regulations applicable thereto. Such bond shall be conditioned that the principal shall not engage in any attempt, by himself or by collusion with others, to defraud the United States of any tax under section 4811; that he shall render truly and completely all the returns and inventories required by law or regulations in respect of such tax and shall pay all such taxes for which he is liable; and that he shall comply with all requirements of law and regulations with respect to such taxes. The penal sum of such bond shall be not less than $500; and the sum of said bond may be increased from time to time at the discretion of the district director. Copies of the form to be used in filing the bond may be obtained from any district director.

(2) *Cancellation clause.* The bond required under paragraph (a) of this section may be accepted with a cancellation clause incorporated therein. Such cancellation clause shall provide that:

(i) Any surety on the bond may at any time give notice to the principal and the district director that he desires to be relieved of liability under said bond after a date named, which shall be at least 60 days after the receipt of notice by the district director.

(ii) If the notice is not withdrawn in writing prior to the date named in the notice, the rights of the principal as supported by said bond shall be terminated on such date (unless supported by another bond or bonds), and the surety shall be relieved from liability under said bond for any acts done wholly subsequent to said date. The surety shall, however, remain liable for any unpaid tax liability incurred by the principal before cancellation, in addition to penalties and interest, unless the principal pays such tax and penalties and interest.

(iii) Said notice may not be given by an agent of the surety, unless it is accompanied by power of attorney duly executed by the surety authorizing the agent to give such notice or by a verified statement that such power of attorney is on file with the Treasury Department.

(3) *New or additional bond.* The district director may require a new or additional bond under this section in any case where he deems it necessary or desirable in order to protect the interest of the United States.

(4) *Other provisions relating to bonds.* For general provisions relating to bonds, including such matters as the surety or sureties required, see §§ 301.7101 and 301.7101–1 of this chapter (Regulations on Procedure and Administration).

§ 45.4815(a) Statutory provisions; requirements applicable to dealers; selling requirements.

SEC. 4815. *Requirements applicable to dealers*—(a) *Selling requirements.* Dealers in adulterated butter must sell only original or from original stamped packages, and when such original stamped packages are broken the adulterated butter sold from same shall be placed in suitable wooden, tin-plate, or paper packages, which shall be marked and branded as the Secretary or his delegates shall prescribe.

[Sec. 4815(a) as originally enacted and in effect July 1, 1960]

§ 45.4815(a)–1 Selling and buying requirements applicable to adulterated butter.

(a) *Factory-branded packages.* Except as may otherwise be required by State law or local regulation, adulterated butter packed by the manufacturer in cartons or wrappers, branded as prescribed in § 45.4814–1(b), may be sold by a retail dealer from the original stamped container without further branding.

(b) *Branding upon sale.* (1) If the manufacturer's package is not subdivided into prints or rolls the retail dealer shall wrap the adulterated butter at the time of sale in a new covering, which shall be branded with his name and address, the words "Adulterated Butter", and the net weight of the contents. Example:

RICHARD ROE
100 Doe Street, Boston
1 pound adulterated butter

(2) The letters shall be not less than one-quarter of an inch square and printed in an ink which forms a strong contrast with the color of the covering. Other marks which would obscure the brand shall not be made. The covering shall be so placed around the adulterated butter that the brand will be plainly visible.

(c) *Misbranded packages.* A retail dealer shall see that cartons and wrappers are branded as prescribed in § 45.4814–1(b), as penalty provided in section 7235(a) is incurred if he sells an improperly branded package of adulterated butter. It will be no defense for a retail dealer to show, in an action for failure to properly brand, that the product was sold in cartons or wrappers as packed by the manufacturer. Penalty for buying improperly branded packages is provided by section 7265(b).

(d) *Removal from package.* A retail dealer may not lawfully remove adulterated butter from the original stamped packages either for repacking, cutting into prints or rolls, or other purposes, nor remove the sides or ends of such packages, before disposal of the contents.

(e) *Displaying packages.* The top of a manufacturer's package may be removed or folded back to display the contents, provided the package is so placed that the words "Adulterated Butter" will be plainly visible and not obscured or rendered inconspicuous. (See § 45.4814–1(b).)

(f) *Ordering.* (1) When ordering or purchasing adulterated butter a dealer shall state his name and address as they appear on his special-tax stamp. If a trade name, as well as the proprietor's real name, appears on the special-tax stamp, both shall be stated on the order. Adulterated butter shall not be ordered in a trade name that is not registered with the district director and stated on the dealer's special-tax stamp.

(2) If the premises have two addresses, because fronting on two streets or for other reasons, the address registered with the district director shall always be used. If adulterated butter is ordered for shipment to a point other than the dealer's registered address, the registered address, as well as the shipping point, shall be named in the order.

§ 45.4815(b) Statutory provisions; requirements applicable to dealers; books of wholesale dealers.

SEC. 4815. *Requirements applicable to dealers.* * * *

(b) *Books of wholesale dealers.* Books required by section 6001 to be kept by wholesale dealers in process, renovated, or adulterated butter shall be open at all times to the inspection of any officer or employee designated by the Secretary or his delegate.

[Sec. 4815(b) as originally enacted and in effect July 1, 1960]

§ 45.4816 Statutory provisions; exportation of adulterated butter.

SEC. 4816. *Exportation of adulterated butter.* Adulterated butter may be removed

from the place of manufacture for export to a foreign country without payment of tax or affixing stamps thereto, under such regulations and the filing of such bonds and other security as the Secretary or his delegate may prescribe. Every person who shall export adulterated butter shall brand upon every tub, firkin, or other package containing such article the words "Adulterated Butter", in plain Roman letters not less than one-half inch square.

[Sec. 4816 as originally enacted and in effect July 1, 1960]

§ 45.4816–1 Exemption in case of exportation of adulterated butter.

(a) *In general.* The tax imposed by section 4811(a) shall not apply in the case of the removal from the place of manufacture of adulterated butter for the purpose of exportation to a foreign country.

(b) *Requirements*—(1) *Packing and marking.* Every firkin, tub, or other package containing adulterated butter to be exported without payment of tax, must, before removal from the factory, be branded with the words "Adulterated Butter" in plain Roman letters not less than one-half inch square.

(2) *Exception.* When manufactured expressly for export in accordance with specifications of foreign customers, a product coming within the classification of adulterated butter, as defined in section 4826(b), may be branded "Preserved Butter" in lieu of "Adulterated Butter", provided such labeling does not violate the laws of the country to which the product is exported, or the Federal Food, Drug, and Cosmetic Act (52 Stat. 1040; 21 U.S.C. chapter 9), or any other act, or regulations issued under authority thereof.

(c) *Consumption aboard vessel.* Adulterated butter for consumption aboard a vessel while in a port of the United States or en route to a foreign country shall be tax-paid.

(d) *Cross reference.* For all other requirements with respect to the exportation of adulterated butter without the payment of tax see §§ 45.4453–1 and 45.4453–2 with respect to the exportation of playing cards which so far as applicable, are hereby extended and made to apply to the exportation of adulterated butter.

(e) *No exemption in case of process or renovated butter.* Part I of subchapter C, chapter 39, makes no provision for the exportation of process or renovated butter free of tax.

§ 45.4817 Statutory provisions; inspection of process or renovated butter.

SEC. 4817. *Inspection of process or renovated butter.* For the purpose of protecting interstate and foreign commerce from process or renovated butter which is unclean, unwholesome, unhealthful, or otherwise unfit for human food—

(1) *Ingredients.* The Secretary of Agriculture shall, through inspectors appointed by him, cause inspections to be made of all milk, butter, butter oil, and other ingredients intended for use in the manufacture of process or renovated butter. All ingredients which are found to be putrid or decomposed or which contain organic or inorganic substances which are foreign to such ingredients when properly made, manufactured, produced, collected, stored, transported, or handled, and which organic or inorganic substances cannot be removed by processing, shall be deemed unfit for use in the manufacture of process or renovated butter, shall be marked "U.S. Inspected and Condemned", and shall be denatured or destroyed under the supervision of the inspector. All other ingredients shall be marked "U.S. Inspected and Passed", and shall be deemed fit for use in the manufacture of process or renovated butter.

(2) *Finished product.* The Secretary of Agriculture shall cause inspections to be made of all process or renovated butter. If such butter is found to be clean, wholesome, healthful, and otherwise fit for human food, it shall be marked "U.S. Inspected and Passed". Process or renovated butter that is found to be unclean, unwholesome, unhealthful, or otherwise unfit for human food shall be denatured or destroyed under the supervision of the inspector.

(3) *Factories.* The Secretary of Agriculture shall cause inspections to be made of all factories wherein process or renovated butter is manufactured to determine the sanitary conditions thereof, and if it is found that the conditions existing in any such factory do not meet the standards prescribed by the Secretary in his regulations, he shall cause inspection to be withdrawn therefrom.

(4) *Compliance by manufacturer.* The Secretary of Agriculture is authorized to withdraw inspection from any factory wherein process or renovated butter is made, if the manufacturer shall fail to comply with any of the provisions of this section or with any of the rules and regulations prescribed hereunder.

(5) *Rules and regulations.* The Secretary of Agriculture is authorized to make such rules and regulations as he deems necessary for the efficient administration of the provisions of this section, and all inspections hereunder shall be made in such manner as may be prescribed in such regulations. The Secretary of Agriculture may, from time to time, by regulations define the foreign substances and the extent thereof that render the ingredients unfit for use in manufacturing process or renovated butter.

(6) *Statistics.* The Secretary of Agriculture shall cause to be ascertained, and he shall report, from time to time, the quantity and quality of all process or renovated butter manufactured and the character and condition of the materials from which it is made.

(7) *Forgery, etc., of stamps, etc.* No person, firm, or corporation shall forge, counterfeit, simulate, falsely represent, detach, or, knowingly alter, deface, or destroy, or use without proper authority any of the marks, stamps, labels, or tabs provided for in this section or in any regulations prescribed hereunder by the Secretary of Agriculture for use on process or renovated butter or on wrappers, packages, containers, or cases in which the product is contained, or any certificate in relation thereto.

(8) *Labels on containers.* All process or renovated butter and the packages or containers thereof shall be marked with the words "Process Butter" and by such other marks, labels, or brands, and in such manner, as may be prescribed by the Secretary of Agriculture.

(9) *False or misleading labels.* No statement that is false or misleading in any particular shall be placed on or affixed to any wrapper, label, carton, or container of process or renovated butter.

(10) *Unapproved product in interstate or foreign commerce.* No person, firm or corporation shall transport, or offer for transportation, or sell or offer for sale, in interstate or foreign commerce, or in commerce affecting commerce among the States, any process or renovated butter that has not been inspected and passed and marked, labeled, and branded in accordance with this section and the regulations issued hereunder.

(11) *Administration.* The administration and enforcement of the provisions of this section, other than its provisions relating to revenue, but including the seizure and denaturing or destruction of ingredients intended to be used in the manufacture of process or renovated butter and the denaturing or destruction of process or renovated butter, are committed exclusively to the Secretary of Agriculture: *Provided*, That any powers and duties of the Food and Drug Administration of the Department of Health, Education, and Welfare under the Federal Food, Drug, and Cosmetic Act, as amended (52 Stat. 1040; 21 U.S.C., chapter 9), as regards such ingredients before they come into the possession of the manufacturers of process or renovated butter, or as regards such powers and duties in connection with process or renovated butter after it leaves such manufacturers and comes into the hands of wholesale or retail dealers, or others, shall not be affected by this section.

[Sec. 4817 as originally enacted and in effect July 1, 1960]

§ 45.4817–1 Inspection of process or renovated butter.

For regulations issued under section 4817 by the Secretary of Agriculture relating to process or renovated butter, see 9 CFR Part 171.

§ 45.4818 Statutory provisions; administrative decisions relating to adulterated butter.

SEC. 4818. *Administrative decisions relating to adulterated butter.* The Secretary or his delegate is authorized to decide what substances, extracts, mixtures, or compounds which may be submitted for his inspection in contested cases are to be taxed as adulterated butter under this subpart; and his decision in such matters of taxation under this subpart shall be final.

[Sec. 4818 as amended and in effect July 1, 1960]

§ 45.4818–1 Administrative decisions relating to adulterated butter.

The Commissioner is authorized to decide what substances, extracts, mixtures, or compounds which may be submitted for his inspection in contested cases are to be taxed as adulterated butter; and his decision in such matters of taxation shall be final.

§ 45.4819 Statutory provisions; cross references.

SEC. 4819. *Cross references*—(a) *Definitions.* For definitions applicable to this subpart, see section 4826.

(b) *Other provisions.* For penalties and other general and administrative provisions applicable to this subpart see subtitle F.

[Sec. 4819 as originally enacted and in effect July 1, 1960]

§ 45.4819–1 Cross references.

(a) For definitions relating to adulterated butter and process or renovated butter, see section 4826 and the regulations thereunder.

(b) For penalties for offenses relating to stamps, see § 45.7209.

(c) For penalty for unauthorized use or sale of stamps, see § 45.7208.

(d) For penalties for other offenses relating to stamps, see § 45.7271.

(e) For penalty for failure to register, see § 45.7272.

(f) For other administrative provisions relating to the tax imposed on adulterated butter, see subpart L.

OCCUPATIONAL TAX

§ 45.4821 Statutory provisions; imposition of tax.

SEC. 4821. *Imposition of tax*—(a) *Manufacturers*—(1) *Process or renovated butter.* Manufacturers of process or renovated butter shall pay a special tax of $50 a year.

(2) *Adulterated butter.* Manufacturers of adulterated butter shall pay a special tax of $600 a year.

(b) *Wholesale dealers in adulterated butter.* Wholesale dealers in adulterated butter shall pay a special tax of $480 a year.

(c) *Retail dealers in adulterated butter.* Retail dealers in adulterated butter shall pay a special tax of $48 a year.

[Sec. 4821 as originally enacted and in effect July 1, 1960]

§ 45.4821–1 Imposition and rate of tax.

(a) *Manufacturers*—(1) *Process or renovated butter.* Section 4821(a)(1) imposes a special tax in the case of manufacturers of process or renovated butter of $50 per year.

(2) *Adulterated butter.* Section 4821 (a)(2) imposes a special tax in the case of manufacturers of adulterated butter of $600 per year.

(b) *Wholesale dealers.* Section 4821 (b) imposes a special tax in the case of wholesale dealers in adulterated butter of $480 per year.

(c) *Retail dealers.* Section 4821(c) imposes a special tax in the case of retail dealers in adulterated butter of $48 per year.

(d) *Computation of the tax.* For regulations relating to computation of the tax, see paragraph (b) of § 45.4901–1.

§ 45.4821–2 Requirements with respect to manufacturers of adulterated butter or process or renovated butter.

(a) *Payment of special tax.* A manufacturer of adulterated butter or process or renovated butter must make a return on Form 11 to the district director, pay the special tax, and comply with the provisions contained in subpart K, relating to special taxes.

(b) *Liability as a wholesale dealer.* If a manufacturer of adulterated butter sells statutory packages of his own production elsewhere than at the place of manufacture, liability as a wholesale dealer is incurred. (See paragraph (c)(1) of § 45.4821–3.) As to exemption from liability as a wholesale dealer, see §§ 45.4821–4 and 45.4903–1.

(c) *Liability as a retail dealer.* A manufacturer shall sell adulterated butter in statutory packages only. (See paragraph (b)(1) of § 45.4814–2.) A manufacturer who sells adulterated butter otherwise than in statutory packages incurs liability to the $1,000 penalty imposed by section 7265(c). If the quantity sold is less than 10 pounds, liability as a retail dealer is also incurred.

(d) *Cross reference.* For the general requirements with respect to manufacturers of adulterated butter or process or renovated butter, see §§ 45.4814–1 to 45.4814–5.

§ 45.4821–3 Requirements with respect to wholesale dealers in adulterated butter.

(a) *Payment of special tax.* A wholesale dealer in adulterated butter shall make a return on Form 11 to the district director, pay the special tax, and comply with the provisions contained in Subpart K, relating to special taxes.

(b) *Liability for breaking package.* A wholesale dealer in adulterated butter shall sell original stamped packages only. A wholesale dealer who removes and sells adulterated butter from original stamped packages incurs liability to the $1,000 penalty imposed by section 7265(c). If the quantity sold is less than 10 pounds, liability as a retail dealer is also incurred.

(c) *Liability in particular situations*—(1) *Place of sale.* Liability to special tax as either a wholesale dealer or a retail dealer is incurred at each place other than the registered premises where adulterated butter is sold or offered for sale. The place of actual or constructive delivery transferring the ownership of the adulterated butter from the vendor to the vendee is regarded as the place of sale for which special tax is required to be paid. (See paragraph (b) of § 45.4821–6 as to itinerant vendors.)

(2) *Delivery orders.* Sales to persons ordering adulterated butter, including c.o.d. orders, shall be absolutely completed at the registered place of business of the vendor or liability is incurred at each place where deliveries are made. Orders must be received at the vendor's registered premises, where the adulterated butter must be addressed and billed to, and the sales recorded in the names of the persons ordering. The identical package sold at the vendor's registered place of business to the person ordering is the only package the vendor or his agent may deliver at another place without incurring liability for the special tax at the place of delivery.

(3) *Sight draft orders.* Where a bona fide order is received at the registered place of business of the vendor and the adulterated butter is there addressed and billed to the persons ordering, it may be shipped with a draft for the purchase money attached to the bill of lading. The bill of lading shall be endorsed specifically, and not in blank, to the person ordering, and the draft drawn on such person, otherwise the sale is completed and special-tax liability is incurred at the place of delivery.

(4) *Standing orders.* Deliveries of adulterated butter may be made as specified in a standing order accepted at the registered place of business of a manufacturer or dealer without incurring special tax liability at the place of delivery. However, delivery of any other quantity than that specified in the standing order, whether more or less, constitutes a separate transaction not covered by the standing order, and is subject to subparagraph (2) of this paragraph.

(5) *Agents or brokers.* A broker or agent may solicit orders for adulterated butter, receive a commission for his services, and make collections for the principal without becoming liable to special tax as a dealer, provided title to the adulterated butter does not vest in the agent or broker at any time. If the manufacturer or dealer bills the adulterated butter to the broker or agent, who in turn bills it to others, with or without profit, a second sale takes place and the broker or agent incurs special-tax liability as a dealer at each place where he makes deliveries.

(6) *Resales.* Before resale of original stamped packages of adulterated butter they shall be actually or constructively returned to the vendor's registered place of business and the second sale there consummated before delivery. If the goods are picked up at the address of one customer and delivered to that of another before the resale is completed at the vendor's registered place of business, the resale occurs at the place of delivery and additional special tax liability is incurred.

(7) *Delivery from warehouse.* Tax-paid packages of adulterated butter may be stored in warehouses and delivered therefrom without incurring special-tax liability at the warehouse: *Provided,* The sales are completed at the vendor's registered place of business. The mere transmittal to, and the filling of the order at, the warehouse do not constitute a sale at the registered place of business. The adulterated butter must be billed to, and the sale recorded in the name of, the customer at the registered place of business before the removal from the warehouse.

(8) *Chain store warehouses.* An operator of chain stores may store adulterated butter in warehouses operated by him, without incurring special-tax liability at the warehouses, provided no sales are made there and that the adulterated butter is distributed exclusively to stores operated by him, and not to stores of other operators.

(9) *Exporters.* A person otherwise liable as a wholesale dealer for the special tax is not exempt because transactions are for export only.

§ 45.4821–4 Exemptions as wholesale dealer.

Liability for the special tax as a wholesale dealer is not incurred in the following situations:

(a) *Sales at factory.* Where a manufacturer sells adulterated butter of his own production in statutory packages at the place of manufacture. As to manufacturer's liability as a retail dealer, see paragraph (c) of § 45.4821–2.

(b) *Sales of left-over stock.* Where a manufacturer who, having discontinued the business, directs a wholesale dealer holding adulterated butter of his production to consign it to another wholesale dealer for sale on commission for the manufacturer's account.

(c) *Sales to secure charges.* Where a warehouse sells adulterated butter to cover storage charges, or a transportation company to secure freight charges or salvage damaged merchandise. The quantity so sold and the name and address of the buyer shall be reported to the district director.

(d) *Sales to assignee.* Where a retail dealer sells his stock of merchandise, including adulterated butter, to his successor.

§ 45.4821–5 Requirements with respect to retail dealers in adulterated butter.

(a) *Payment of special tax.* A retail dealer shall make return on Form 11 to the district director, pay special tax, and comply with the provisions contained in subpart K, relating to special taxes.

(b) *Quantity limitation.* A retail dealer may sell adulterated butter in quantities of less than 10 pounds at one time taken from an original package or packages, but if he sells an original package of 10 pounds, he will incur liability for the special tax as a wholesale dealer, and for the penalty imposed by section 7265(c) for failure to pay the special tax imposed by section 4821(b).

§ 45.4821–6 Liability in particular situations.

(a) *Dealers in other products.* Dealers in butter and other persons who, knowingly or unknowingly, sell adulterated butter render themselves liable to tax as dealers in adulterated butter.

(b) *Itinerant vendors.* A special-tax stamp can be issued only for a specific address or a fixed place of business. Peddlers, operators of so-called rolling stores, and other vendors who, traveling from place to place, sell adulterated butter incur liability to special tax as either a wholesale or retail dealer at each place where sales are made. (See paragraph (c)(1) of § 45.4821–3 as to incurring liability at place of sale.)

(c) *Nontaxable situations.* Special-tax liability as a dealer is not incurred in the following situations:

(1) *Eating places.* Where proprietors of public eating places serve adulterated butter with meals, with or without special charge for it.

(2) *Pooling funds.* Where a member of a pool formed for the purpose of purchasing adulterated butter remits the purchase money and individual orders to the vendor and distributes the goods to other members of the pool. (See paragraph (c)(5) of § 45.4821–3 as to agents or brokers.)

§ 45.4822 Statutory provisions; cross references.

SEC. 4822. *Cross references*—(a) *Definitions.* For definitions applicable to this subpart, see section 4826.

(b) *Other provisions.* For penalties and other general and administrative provisions applicable to this subpart, see chapter 40 and subtitle F.

[Sec. 4822 as originally enacted and in effect July 1, 1960]

§ 45.4822–1 Cross references.

(a) For provisions relating to registration in case of a trade or business on which a special tax is imposed, see §§ 45.7011 and 45.7011–1.

(b) For requirements relating to posting occupational tax stamps, see §§ 45.6806 and 45.6806(a)–1.

(c) For other administrative requirements relating to occupational taxes, see Subparts K and L of this part.

(d) For penalties, see sections 7264, 7265, 7272, and 7273.

§ 45.4826 Statutory provisions; definitions.

SEC. 4826. *Definitions*—(a) *Butter.* For the purpose of this part, the word "butter" shall be understood to mean the food product unusually known as butter, and made exclusively from milk or cream, or both, with or without common salt, and with or without additional coloring matter.

(b) *Adulterated butter.* "Adulterated butter" is defined to mean a grade of butter produced by mixing, reworking, rechurning in milk or cream, refining, or in any way producing a uniform, purified, or improved product from different lots or parcels of melted or unmelted butter or butter fat, in which any acid, alkali, chemical, or any substance whatever is introduced or used for the purpose or with the effect of deodorizing or removing therefrom rancidity, or any butter or butter fat with which there is mixed any substance foreign to butter as defined in subsection (a), with intent or effect of cheapening in cost the product, or any butter in the manufacture or manipulation of which any process or material is used with intent or effect of causing the absorption of abnormal quantities of water, milk or cream.

(c) *Process or renovated butter.* "Process butter" or "renovated butter" is defined to mean butter which has been subjected to any process by which it is melted, clarified, or refined and made to resemble genuine butter, always excepting "adulterated butter" as defined by subsection (b).

(d) *Manufacturer.* Every person who engages in the production of process or renovated butter or adulterated butter as a business shall be considered to be a manufacturer thereof.

(e) *Dealer.* Every person who sells adulterated butter shall be regarded as a dealer in adulterated butter.

(f) *Retail dealer.* Every person who sells adulterated butter in less quantities than 10 pounds at one time shall be regarded as a retail dealer in adulterated butter.

[Sec. 4826 as originally enacted and in effect July 1, 1960]

§ 45.4826–1 Butter defined.

Butter churned and worked in accordance with approved standards, and with quality as a prime object, contains not more than 16 percent moisture. As defined by the Federal Food, Drug, and Cosmetic Act of June 25, 1938 (52 Stat. 1040; 21 U.S.C. ch. 9), butter contains not less than 80 percent, by weight, of milk fat, allowance being made for all tolerances. When butter contains a smaller quantity of milk fat or more than 16 percent moisture, a strong presumption is raised that the product is adulterated butter within the meaning of the statute.

§ 45.4826–2 Adulterated butter classified.

Adulterated butter may be divided into three classes, namely:

(a) Butter in any way produced from different lots of melted or unmelted butter, or butter fat, to which a substance has been added for the purpose of removing rancidity or deodorizing it, except butter made from sour cream the acid of which has been reduced with lime water before churning.

(b) Butter or butter fat with which is mixed any substance foreign to butter as defined by law, for the purpose of reducing the cost of the product. This does not include mixtures properly classifiable as oleomargarine.

(c) Butter manufactured or manipulated by any process or with any material resulting in the absorption of abnormal quantities of water, milk, or cream. Emulsified or milk-blended butter comes within this class.

§ 45.4826–3 Preservatives.

Butter to which a harmless preservative has been added solely for the purpose of preservation is not subject to tax as adulterated butter, provided the quantity is not larger than is absolutely necessary to preserve it. If the preservative is used as a bath or wash in working or renovating it, the product will be subject to tax as adulterated butter.

§ 45.4826–4 Ladled butter.

The product commonly known as "ladled butter" is taxable as adulterated butter if a process within the definition of adulterated butter (see § 45.4826–2) is used.

§ 45.4826–5 Process or renovated butter.

The terms "process butter" and "renovated butter" are used synonymously in the regulations in this part and it is immaterial, for purposes of this part, whether a manufacturer designates the product "process butter" or "renovated butter". Butter which falls within the definition of adulterated butter (see § 45.4826–2) is subject to tax as adulterated butter rather than as process or renovated butter. The principal difference between adulterated butter and process or renovated butter is with respect to the use of chemicals or other substances. Butter reworked with the use of chemicals or other substances is adulterated. Butter which is melted, clarified, or refined without the use of chemicals or other substances is process or renovated butter.

Subpart H—Filled Cheese Tax on Products

§ 45.4831 Statutory provisions; imposition of tax.

SEC. 4831. *Imposition of tax*—(a) *Domestic.* There shall be imposed upon all filled cheese which shall be manufactured a tax of 1 cent per pound payable by the manufacturer thereof; and any fractional part of a pound in a package shall be taxed as a pound.

(b) *Imported.* There shall be imposed upon all filled cheese imported from a foreign country, in addition to any import duty imposed on the same, an internal revenue tax of 8 cents per pound; and such imported filled cheese and the packages containing the same shall be stamped, marked, and branded, as in the case of filled cheese manufactured in the United States.

[Sec. 4831 as originally enacted and in effect July 1, 1960]

§ 45.4831–1 Imposition and rate of tax.

(a) *Domestic filled cheese.* Section 4831(a) imposes a tax on domestically manufactured filled cheese at the rate of 1 cent per pound. Any fractional part of a pound in a package shall be taxed as a pound.

(b) *Liability for tax on domestic filled cheese.* The manufacturer of the filled cheese is liable for the payment of the

tax imposed under section 4831(a). The tax accrues when the filled cheese is manufactured and is to be paid in the manner set forth in § 45.4832–1.

(c) *Imported filled cheese.* Section 4831(b) imposes a tax on filled cheese imported from a foreign country at the rate of 8 cents per pound. Any fractional part of a pound in a package shall be taxed as a pound. The tax imposed under section 4831(b) on imported filled cheese is in addition to any import duty imposed on such filled cheese.

(d) *Liability for tax on imported filled cheese*—(1) *Release of product.* The person importing the filled cheese shall be liable for the tax imposed under section 4831(b) and the tax must be paid by affixing the required stamps prior to release of the product from customs custody.

(2) *Purchase of stamps.* Stamps for the tax payment of imported filled cheese will be sold to the owner or consignee of such merchandise by the district director of internal revenue for the district in which is located the office of the collector of customs where the customs entry is filed, upon requisition therefor duly executed by an authorized customs officer.

(3) *Affixing and cancellation of stamps.* Filled cheese imported from foreign countries is not required to have the internal-revenue stamps affixed to the packages thereof and canceled unless and until such product is to be released from customs custody for consumption or sale in the United States. Such stamps shall be affixed and canceled by the owner or consignee while the product is in the custody of the proper customs officer, and such product shall not pass out of the custody of said officer until the stamps have been affixed and canceled. The mode of affixing the stamps to packages of domestic manufacturers prescribed in paragraph (b) of § 45.4832–1 is hereby made applicable to imported filled cheese. Each stamp so affixed shall be canceled by the owner or consignee writing or imprinting on the face thereof in distinct and legible letters and figures his name and date of cancellation, name of port, and customs entry number.

(e) *Exported filled cheese.* There is no provision for the omission of the tax on filled cheese exported from the United States and all filled cheese exported must be tax paid at the rate of 1 cent per pound.

§ 45.4832 Statutory provisions; stamps.

SEC. 4832. *Stamps*—(a) *Method of payment*—(1) *Stamps.* The taxes imposed by section 4831 shall be represented by coupon stamps.

(2) *Assessment.* For assessment in case of omitted taxes, see subtitle F.

(b) *Emptied packages.* Whenever any stamped package containing filled cheese is emptied, it shall be the duty of the person in whose hand the same is to destroy the stamps thereon.

(c) *Other stamp provisions.* The provisions of law governing the engraving, issue, sale, accountability, effacement, and destruction of stamps relating to tobacco and snuff, as far as applicable, shall apply to stamps provided for by paragraph (1) of subsection (a).

[Sec. 4832 as originally enacted and in effect July 1, 1960]

§ 45.4832–1 Affixing and canceling of stamps.

(a) *Domestic filled cheese.* The tax imposed under section 4831(a) on filled cheese of domestic manufacture shall be paid by the manufacturer thereof by the affixing of stamps to the packages before removal from the place where made.

(b) *Affixing and cancellation of stamps.* Filled-cheese stamps have been prepared in denominations of 1, 10, 20, and 40 cents with 10 stamps to a sheet. Such stamps are obtainable upon application on Form 218 to the district director for the district in which the factory is located. On the withdrawal of a package of filled cheese the proper tax-paid stamp must be securely affixed to the side thereof and immediately canceled by stamping or perforating the factory number, internal revenue district, State, and date thereon. Illustration: "Fac. No. 12, Chicago District, Ill.", over "April 15, 1960." For provisions relating to affixing and cancellation of stamps in respect of imported filled cheese, see paragraph (d)(3) of § 45.4831–1.

§ 45.4832–2 Emptied packages.

Whenever any stamped package containing filled cheese is emptied, the person in whose hands such package is shall destroy the stamps affixed thereon.

§ 45.4832–3 Other stamp provisions.

For regulations with respect to the engraving, issuing, sale, accountability, effacement, and destruction of stamps, see Subpart L of this part.

§ 45.4833 Statutory provisions; requirements applicable to manufacturers.

SEC. 4833. *Requirements applicable to manufacturers*—(a) *Packing requirements*—(1) *Marks, stamps, and packages.* Filled cheese shall be packed by the manufacturers in wooden packages only, not before used for that purpose, and marked, stamped, and branded with the words "filled cheese" in black-faced letters not less than two inches in length, in a circle in the center of the top and bottom of the cheese; and in black-faced letters not less than two inches in length in line from the top to the bottom of the cheese, on the side in four places equidistant from each other; and the package containing such cheese shall be marked in the same manner, and in the same number of places, and in the same description of letters as above provided for the marking of the cheese; and all sales or consignments made by manufacturers of filled cheese to wholesale dealers in filled cheese or to exporters of filled cheese shall be in original stamped packages.

(2) *Label.* Every manufacturer of filled cheese shall securely affix, by pasting on each package containing filled cheese manufactured by him, a label on which shall be printed, besides the number of the manufactory and the district and State in which it is situated, these words: "*Notice.* The manufacturer of the filled cheese herein contained has complied with all the requirements of the law. Every person is cautioned not to use either this package again or the stamp thereon again, nor to remove the contents of this package without destroying said stamp, under the penalty provided by law in such cases."

(b) *Factory number and signs.* Every manufacturer of filled cheese shall put up such signs and affix such number to his factory as the Secretary or his delegate may by regulation require.

(c) *Bonds.* Every manufacturer of filled cheese shall file with the official in charge of the internal revenue district in which his manufactory is located such bonds as the Secretary or his delegate may by regulation require. The bond required of such manufacturer shall be in a penal sum of not less than $5,000; and the amount of said bond may be increased from time to time, and additional sureties required, at the discretion of the Secretary or his delegate.

[Sec. 4833 as originally enacted and in effect July 1, 1960]

§ 45.4833–1 Requirements applicable to manufacturers.

(a) *Packing requirements.* (1) All filled cheese shall be packed by the manufacturer thereof in wooden packages only, not before used for that purpose. The law does not fix the size of the manufacturers' packages. The contents of all packages must be completely covered. Crates with openings between slats may not be used as original packages. A package which has once been used for packing filled cheese may be taken apart and the material, from which all stamps, marks, and brands have been effectually removed, may be used in construction of new containers. All filled cheese sold by manufacturers of filled cheese shall be in original stamped packages.

(2) A package of filled cheese, to meet all the requirements of the law and regulations must be branded (paragraph (b) of this section), have caution notice label affixed (paragraph (c) of this section), and have proper stamp or stamps affixed and canceled (paragraph (b) of § 45.4832–1).

(3) Manufacturers and dealers may incase properly stamped and branded original packages of filled cheese in additional coverings or wrappers, provided such additional coverings or wrappers have duly impressed or stenciled thereon the brand as prescribed in paragraph (b) of this section, and also the following additional inscription: "The original package herein contained has been duly tax paid and proper stamp is affixed."

(b) *Branding requirements.* (1) Each cheese shall be marked, stamped, and branded with the words "filled cheese" in black-faced letters, not less than 2 inches in length, in a circle in the center of the top and bottom of the cheese; and in like letters, in four different places, equidistant from each other, on the side of the cheese, in line from the top to the bottom thereof. Like brands are required upon the wooden packages containing such cheese. Where the consistency of the filled cheese will not permit of the brand being applied directly thereto it will be sufficient if the package is duly branded as herein required.

(2) The width of the letters in the above brands shall not be less than 1 inch over all, with quarter-inch stem. Section 4833(a)(1) prescribes that the brands for the side of the cheese shall be put on in line from top to bottom. Where the cheese is not sufficiently thick to accommodate these words in a perpendicular or vertical line, they may be branded in a line running diagonally from top to bottom.

(3) Each cheese, likewise the wooden package therefor, shall, in addition to the above brands required upon the top and bottom surfaces, be branded with words and figures indicating the factory number, the internal revenue district, State, and the weight of the cheese, in the order observed in the following example:

Factory No. 1, Chicago District, Ill.
30 Pounds
Filled Cheese

(4) All letters and figures in the above brand must be in black-faced block type, not less than 1 inch in width over all, with quarter-inch stems in the words "filled cheese" and not less than 1 inch square in the remaining words.

(5) If a manufacturer desires to place his name upon the filled cheese, or upon the wooden package therefor, he may do so, provided such brand in nowise overshadows, subordinates, or conceals the Government brand above prescribed by the law and the regulations in this part.

(c) *Labeling requirements.* Every manufacturer's package of filled cheese must, before removal from the bonded premises where made, have printed thereon or securely affixed on the side or end thereof by pasting, in such a way as to be exposed to public view and to be easily read, a label on which is printed the number of the manufactory and the internal revenue district and State in which it is situated, and the words of the caution notice as provided by section 4833(a)(2).

(2) The prescribed wording must be in plain, open, and legible letters in black ink, and shall occupy a space not less than 3 inches long and not less than 1½ inches in width, and when in label form, it shall be printed on plain white paper and shall be substantially in the following form:

Factory No. ------, ---------- District.
State of ----------.
NOTICE: The manufacturer of the filled cheese herein contained has complied with all the requirements of the law. Every person is cautioned not to use either this package again or the stamp thereon again, nor to remove the contents of this package without destroying said stamp, under the penalty provided by law in such cases.

§ 45.4833–2 Factories.

(a) *Premises.* Unless otherwise approved by the district director, another factory may not be operated at the same time within the premises described in a manufacturer's notice. (See paragraph (d) of this section.)

(b) *Manufacturer's sign.* Every manufacturer of filled cheese shall place and keep over the principal entrance to the building wherein his business is carried on, so that it can be distinctly seen, a sign with letters thereon not less than 3 inches in height, painted in oil colors or gilded, giving his full name and business and the number of his manufactory.

(c) *Factory number.* Each filled-cheese factory shall be assigned a number by the district director, which number shall not be held at the same time by any other manufacturer of filled cheese in his district, nor thereafter changed except for reasons approved by the district director. If the manufacturer removes to a new location in the same district, he will retain his old number. Upon removal from one internal revenue district to another a new number will be assigned by the district director for the district to which removed. When a factory is closed, the number which is released will not be reassigned during the balance of the fiscal year.

(d) *Manufacturer's notice—(1) Execution of form.* Before commencing business, and immediately on the first day of July thereafter as long as he continues in the business, a manufacturer of filled cheese shall file with the district director a notice of intention to manufacture. This notice shall be prepared on Form 213 which may be obtained from the district director. The premises described in the notice shall conform with the requirements of this section.

(2) *Notice of change.* A new notice shall be filed with the district director before or immediately upon making any change either in location or in the premises or ownership of the business as described in the original notice.

§ 45.4833–3 Bonding.

(a) *Requirement.* Every manufacturer of filled cheese, before incurring any liability for the tax imposed by section 4831, shall file a bond with the district director in accordance with the provisions of paragraph (b) of this section.

(b) *Bond—(1) In general.* The bond required under paragraph (a) of this section shall be executed in accordance with the form, instructions, and regulations applicable thereto. Such bond shall be conditioned that the principal shall not engage in any attempt, by himself or by collusion with others, to defraud the United States of any tax under section 4831; that he shall render truly and completely all the returns and inventories required by law or regulations in respect of such tax and shall pay all such taxes for which he is liable; and that he shall comply with all requirements of law and regulations with respect to such taxes. The penal sum of such bond shall be not less than $5,000; and the sum of said bond may be increased from time to time at the discretion of the district director. Copies of the form to be used in filing the bond may be obtained from any district director.

(2) *Cancellation clause.* The bond required under paragraph (a) of this section may be accepted with a cancellation clause incorporated therein. Such cancellation clause shall provide that:

(i) Any surety on the bond may at any time give notice to the principal and the district director that he desires to be relieved of liability under said bond after a date named, which shall be at least 60 days after the receipt of notice by the district director.

(ii) If the notice is not withdrawn in writing prior to the date named in the notice, the rights of the principal as supported by said bond shall be terminated on such date (unless supported by another bond or bonds), and the surety shall be relieved from liability under said bond for any acts done wholly subsequent to said date. The surety shall, however, remain liable for any unpaid tax liability incurred by the principal before cancellation, in addition to penalties and interest, unless the principal pays such tax and penalties and interest.

(iii) Said notice may not be given by an agent of the surety, unless it is accompanied by a power of attorney duly executed by the surety authorizing the agent to give such notice or by a verified statement that such power of attorney is on file with the Treasury Department.

(3) *New or additional bond.* The district director may require a new or additional bond under this section in any case where he deems it necessary or desirable in order to protect the interest of the United States.

(4) *Other provisions relating to bonds.* For general provisions relating to bonds, including such matters as the surety or sureties required, see §§ 301.7101 and 301.7101–1 of this chapter (Regulations on Procedure and Administration).

§ 45.4834 Statutory provisions; requirements applicable to wholesale and retail dealers.

SEC. 4834. *Requirements applicable to wholesale and retail dealers*—(a) *Signs.* Every wholesale dealer and every retail dealer in filled cheese shall display in a conspicuous place in his salesroom a sign bearing the words "Filled cheese sold here" in black-faced letters not less than six inches in length, upon a white ground, with the name and number of the revenue district in which his business is conducted.

(b) *Selling requirements.* Retail dealers in filled cheese shall sell only from original stamped packages, and shall pack the filled cheese when sold in suitable wooden or paper packages, which shall be marked and branded in accordance with rules and regulations to be prescribed by the Secretary or his delegate.

[Sec. 4834 as originally enacted and in effect July 1, 1960]

§ 45.4834–1 Signs to be displayed by wholesale and retail dealers.

Each retail and each wholesale dealer in filled cheese shall display in a conspicuous place in his salesroom a sign bearing the words "Filled cheese sold here" in black-faced letters not less than six inches in length, upon a white ground, with the name of the revenue district in which the business is conducted. Concealment of the sign from full view of the public will not be deemed a compliance with the law. If a dealer has more than one salesroom, he must post the requisite sign in each such room.

§ 45.4834–2 Packaging requirements.

Retail dealers in filled cheese must sell only from original stamped packages, and shall pack the filled cheese sold by them in suitable wooden or paper packages which shall be marked and branded

as provided in § 45.4834–3. Wooden or paper packages similar to those usually employed in selling butter and lard at retail may be used by the retail dealer in filled cheese. There is no restriction as to the quantity of filled cheese that a retailer may sell at one sale, but he must remove the product from the original manufacturer's package and repack in another package, made of either wood or paper, and place on such package the required marks and brands. A retail dealer who sells filled cheese in original packages for resale or to another retailer incurs additional liability to special tax as a wholesale dealer. (See section 4841(b).)

§ 45.4834–3 Branding requirements.

Each retailer's wooden or paper package must have the name and address of the dealer marked or branded thereon, likewise the words "Pound" and "Filled Cheese," in letters not less than one-quarter inch square, and the quantity written, marked, or branded thereon in figures of the same size (one-quarter of an inch square), substantially as follows.

Richard Roe
100 Doe Street
Boston
1 pound Filled Cheese

The words "Filled Cheese" and "Pound" which are required to be marked or branded on retailers' wooden or paper packages, in letters not less than one-quarter inch square, and the quantity which is required to be written, marked or branded thereon in figures of like size, must be so placed so as to be plainly visible to the purchaser at the time of delivery to him. Illegible or concealed marks and brands are not those contemplated and required by the law and regulations. It will not be deemed a compliance with the regulations in this part if the words "Filled Cheese" and the other required words and figures shall be illegibly branded or marked or so placed as to be concealed from view, by being on the inside of the package or by folding in the stamped portion of the paper sheet used for wrapping, or otherwise. The required words and figures must be legibly printed or branded and conspicuously placed, and no other word or business card should be placed in such juxtaposition thereto as to divert attention from the fact that the contents of the package are filled cheese. The color of the ink with which the words are marked or branded must be black.

§ 45.4836 Statutory provisions; cross references.

SEC. 4836. *Cross references.* For definitions, penalties, and other general and administrative provisions, see section 4846 and subtitle F.

[Sec. 4836 as originally enacted and in effect July 1, 1960]

§ 45.4836–1 Cross references.

(a) For definitions relating to filled cheese see § 45.4846 and the regulations thereunder.

(b) For penalties for offenses relating to stamps, see § 45.7208.

(c) For penalties for unauthorized use or sale of stamps, see § 45.7209.

(d) For penalties for other offenses relating to stamps, see § 45.7271.

(e) For penalty for failure to register, see § 45.7272.

(f) For other administrative provisions relating to the tax imposed on filled cheese, see Subpart L.

Occupational Tax

§ 45.4841 Statutory provisions; imposition of tax.

SEC. 4841. *Imposition of tax*—(a) *Manufacturers.* Manufacturers of filled cheese shall pay a special tax of $400 a year for each and every factory.

(b) *Wholesale dealers*—(1) *In general.* Wholesale dealers in filled cheese shall pay a special tax of $250 a year.

(2) *Manufacturers selling at wholesale.* Any manufacturer of filled cheese who has given the required bond and paid the required special tax, and who sells only filled cheese of his own production, at the place of manufacture, in the original packages, to which the tax-paid stamps are affixed, shall not be required to pay the special tax of a wholesale dealer in filled cheese on account of such sales.

(c) *Retail dealers.* Retail dealers in filled cheese shall pay a special tax of $12 a year.

[Sec. 4841 as originally enacted and in effect July 1, 1960]

§ 45.4841–1 Imposition and rate of tax.

Section 4841 imposes a special tax in the case of manufacturers, wholesale dealers, and retail dealers of filled cheese at the following rates:

(a) Manufacturers	$400 per year for each factory.
(b) Wholesale dealers	$250 per year.
(c) Retail dealers	$12 per year.

§ 45.4841–2 Applicability of tax.

(a) *Manufacturers.* Every person, firm, or corporation who manufactures filled cheese for sale shall be deemed a manufacturer of filled cheese.

(b) *Wholesale dealers.* Every person, firm, or corporation who sells or offers for sale filled cheese in the original manufacturer's package for resale, or to retail dealers as defined in paragraph (c) of this section, shall be deemed a wholesale dealer in filled cheese. A qualified manufacturer who sells only tax-paid filled cheese of his own production at the place of manufacture is not liable as a wholesale dealer.

(c) *Retail dealers.* Every person who sells filled cheese at retail, not for resale but for actual consumption, shall be regarded as a retail dealer in filled cheese.

(d) *Payment of special tax.* Every person liable for the special tax imposed by section 4841 must make a return on Form 11 to the district director, pay the special tax, and comply with the provisions contained in Subpart K, relating to special taxes.

(e) *Computation of tax.* For regulations relating to computation of the tax, see § 45.4901–1(b).

§ 45.4841–3 Liability of wholesale dealers and retail dealers for special tax.

(a) *In general.* (1) Except in the case of a manufacturer selling filled cheese of his own producion at the place of manufacture, a person is liable to special tax as a dealer in filled cheese, either wholesale or retail as the case may be, at each and every place where he sells, or offers for sale, filled cheese. The place where the delivery, either actual or constructive, which transfers ownership from vendor to vendee, is made is the place of sale and for which special tax is required to be paid. A special tax stamp can be issued to a dealer in filled cheese only for a fixed place of business. One who travels from place to place and makes sales of filled cheese incurs liability to special tax at each place where such sales and deliveries are made.

(2) Dealers in cheese should ascertain the true character of the article which they sell or offer for sale. If they are found to have sold filled cheese, though they believed it to be genuine cheese, they nevertheless are liable to special tax as dealers in filled cheese.

(3) Special tax stamps are not transferrable from one person to another. When a new member is added to a firm a new stamp is required.

(4) Any number of persons doing business in copartnership at any one place are required to pay but one special tax.

(b) *Situations where special tax liability is not incurred.* Special tax liability is not incurred in respect to sales by:

(1) A receiver appointed by the court to sell filled cheese under order of the court.

(2) A trustee when he carries on the business at the principal's store and under the special tax stamp issued to the principal.

(3) A member of a firm acquiring the interests of the other members and carrying on the business under the stamp issued to the firm.

(4) A qualified dealer moving from one location to another provided he registers the change with the district director during the calendar month in which it occurred.

(5) The legal representative of a deceased special taxpayer carrying on the business until the expiration of the stamp but the change must be registered with the district director within the month in which it was made.

(6) An army post exchange under the complete control of the Department of Defense.

(7) A keeper of a restaurant who furnishes filled cheese merely to patrons as a part of their meals even though a separate charge is made for the filled cheese served.

(8) A transportation company selling filled cheese to secure freight charges.

§ 45.4841–4 Storing filled cheese.

Manufacturers of, and wholesale dealers in, filled cheese may store tax-paid packages of such product at places other than those named in their special-tax stamps and may make deliveries from such places of storage without incurring additional special tax liability, provided that sales of filled cheese so stored are absolutely completed by the manufacturers or wholesale dealers at their registered places of business by

constructive delivery there prior to actual removal of the goods from the place of storage for delivery to purchasers. Receipt of an order at the place of business of a manufacturer or dealer and the sending of such order to the storage house for delivery is not a sale of goods at said place of business. A manufacturer or dealer must not merely receive the order at his place of business, but he must make out there and deliver to the customer ordering, or send to him direct a bill of sale in each instance transferring to him the ownership of the goods before there is an actual delivery from the place of storage.

§ 45.4842 Statutory provisions; cross references.

SEC. 4842. *Cross references*—(a) *Definitions.* For definitions applicable to this subpart, see section 4846.

(b) *Other provisions.* For penalties and other general and administrative provisions applicable to this subpart, see chapter 40 and subtitle F.

[Sec. 4842 as originally enacted and in effect July 1, 1960]

§ 45.4842–1 Cross references.

(a) For provisions relating to registration in case of a trade or business on which a special tax is imposed, see §§ 45.7011 and 45.7011–1.

(b) For requirements relating to posting occupational tax stamps, see §§ 45.6806 and 45.6806(a)–1.

(c) For other administrative requirements relating to occupational taxes, see Subparts K and L of this part.

(d) For penalties, see sections 7266, 7272, and 7273.

§ 45.4846 Statutory provisions; definitions.

SEC. 4846. *Definitions.* For the purposes of this part—(1) *Cheese.* The word "cheese" shall be understood to mean the food product known as cheese, and made from milk or cream and without the addition of butter, or any animal, vegetable, or other oils or fats foreign to such milk or cream, with or without additional coloring matter.

(2) *Filled cheese.* Certain substances and compounds shall be known and designated as "filled cheese," namely: All substances made of milk or skimmed milk, with the admixture of butter, animal oils or fats, vegetable or any other oils, or compounds foreign to such milk, and made in imitation or semblance of cheese. Substances and compounds, consisting principally of cheese with added edible oils, which are not sold as cheese or as substitutes for cheese but are primarily useful for imparting a natural cheese flavor to other foods shall not be considered "filled cheese" within the meaning of this part.

(3) *Manufacturer.* Every person, firm, or corporation who manufacturers filled cheese for sale shall be deemed a manufacturer of filled cheese.

(4) *Wholesale dealer.* Every person, firm, or corporation who sells or offers for sale filled cheese, in the original manufacturer's packages for resale, or to retail dealers as defined in paragraph (5) shall be deemed a wholesale dealer in filled cheese.

(5) *Retail dealer.* Every person who sells filled cheese at retail, not for resale, and for actual consumption, shall be regarded as a retail dealer in filled cheese.

[Sec. 4846 as originally enacted and in effect July 1, 1960]

§ 45.4846–1 Definitions.

(a) *Cheese.* The term "cheese" shall be understood to mean the food product known as cheese, and made from milk or cream and without the addition of butter, or any animal, vegetable, or other oils or fats foreign to such milk or cream, with or without additional coloring matter.

(b) *Filled cheese.* (1) The term "filled cheese" shall include all substances made of milk or skimmed milk, with the admixture of butter, animal oils or fats, vegetable or any other oils, or compounds foreign to such milk, and made in imitation or semblance of cheese. Substances and compounds, consisting principally of cheese with added edible oils, which are not sold as cheese or as substitutes for cheese but are primarily useful for imparting a natural cheese flavor to other foods shall not be considered "filled cheese" within the meaning of this chapter.

(2) The mixture of cheese with coloring matter does not render it liable to tax as filled cheese, such mixture being permitted under the definition given in section 4846(a) and paragraph (a) of this section. If, however, the annatto or other coloring matter is mixed with a vegetable oil or an animal fat as a mordant, resulting in a compound resembling cheese, this compound would be liable to tax as filled cheese.

(3) The manufacture of cheese from synthetic cream which is prepared by homogenizing a mixture of butter and skimmed milk or a mixture of butter, milk powder, and water results in a product which is clearly "filled cheese" as defined by statute, being a substance made of milk or skimmed milk with an admixture of butter in imitation or semblance of cheese.

§ 45.4846–2 Cross reference.

For definition and application of the terms "manufacturer", "wholesale dealer" and "retail dealer", see section 4841 and the regulations thereunder.

Subpart I—Contracts of Sale of Cotton for Future Delivery

§ 45.4851 Statutory provisions; imposition of tax.

SEC. 4851. *Imposition of tax*—(a) *Rate.* Upon each contract of sale of any cotton for future delivery made at, on, or in any exchange, board of trade, or similar institution or place of business, there shall be imposed a tax in the nature of an excise of 2 cents for each pound of the cotton involved in any such contract.

(b) *By whom paid.* The tax imposed by subsection (a) shall be paid by the seller of the cotton involved in the contract of sale.

[Sec. 4851 as originally enacted and in effect July 1, 1960]

§ 45.4851–1 Imposition and rate of tax.

(a) *Imposition of tax.* Section 4851 imposes a tax upon each contract of sale of cotton for future delivery made at, on, or in any exchange, board of trade, or similar institution or place of business, except contracts for the sale of specific cotton for future delivery which comply with the provisions of the regulations in this subpart.

(b) *Rate of tax.* The tax imposed under section 4851 shall be computed at the rate of 2 cents per pound for each pound of cotton involved in a contract subject to tax.

§ 45.4851–2 Liability for tax.

The tax imposed by section 4851 shall be paid by the seller of the cotton involved in each contract subject to tax.

§ 45.4852 Statutory provisions; definition.

SEC. 4852. *Definition.* For the purpose of this subchapter, the term "contract of sale" shall be held to include sales, agreements of sale, and agreements to sell.

[Sec. 4852 as originally enacted and in effect July 1, 1960]

§ 45.4852–1 Definitions.

(a) *Contract of sale.* The term "contract of sale" shall be held to include sales, agreements of sale, and agreements to sell.

(b) *Designation of contracts*—(1) *Contracts subject to section 4863.* The term "contracts subject to section 4863" shall mean basis grade contracts made in compliance with the provisions of section 4863 and the regulations thereunder.

(2) *Contracts subject to section 4864.* The term "contracts subject to section 4864" shall mean tendered grade contracts made in compliance with the provisions of section 4864 and the regulations thereunder.

(3) *Contracts subject to section 4865.* The term "contracts subject to section 4865" shall mean specific grade contracts made in compliance with section 4865 and the regulations thereunder.

§ 45.4853 Statutory provisions; form and validity of contracts.

SEC. 4853. *Form and validity of contracts*—(a) *Form.* Each contract of sale of cotton for future delivery mentioned in section 4851 (a) shall be in writing plainly stating, or evidenced by written memorandum showing, the terms of such contract, including the quantity of the cotton involved and the names and addresses of the seller and buyer in such contract, and shall be signed by the party to be charged, or by his agent in his behalf. If the contract or memorandum specify in bales the quantity of the cotton involved, without giving the weight, each bale shall, for the purpose of this subchapter, be deemed to weigh 500 pounds.

(b) *Validity.* No contract of sale of cotton for future delivery mentioned in section 4851(a), which does not conform to the requirements of subsection (a) of this section and has not the necessary stamps affixed thereto as required by section 4871, shall be enforceable in any court of the United States by, or on behalf of, any party to such contract or his privies.

[Sec. 4853 as originally enacted and in effect July 1, 1960]

§ 45.4853–1 Form and validity of contracts.

(a) *Form*—(1) *In general.* Every contract mentioned in section 4851(a) for the sale of cotton for future delivery shall be in writing and shall state, or shall be evidenced by written memorandum showing, (i) the terms of the contract, (ii) the quantity of cotton involved, (iii) the name and address of

the buyer, and (iv) the name and address of the seller. The contract or memorandum shall be signed by the person to be charged or by his agent in his behalf. For the purpose of this subpart, if the contract or memorandum specifies in bales the quantity of cotton involved, without giving the weight, each bale shall be deemed to weigh 500 pounds.

(2) *Exceptions.* (i) Contracts for sale of cotton made at, on, or in any exchange, board of trade, or similar institution or place of business and evidenced by memoranda containing the terms of such contract and the signatures of the parties to be charged in the form of punched and/or printed numbers, letters and symbols by the use of machines operated by a clearing house or a clearing association, pursuant to authority given to such clearing house or association by the members to be charged, are considered to be in compliance with section 4853(a) and subparagraph (1) of this paragraph.

(ii) Variations in the method of operation caused by sales of more than 100 bales of cotton and involving, in some cases, more than a single buying or selling broker, will not result in a noncompliance with section 4853(a) provided there are memoranda containing the terms of the contract and the signatures of the parties to be charged in the form of punched and/or printed numbers, letters or symbols as provided in subdivision (i) of this subparagraph.

(b) *Validity of contracts.* No contract for the sale of cotton for future delivery mentioned in section 4851(a) which does not conform to the requirements of section 4853 and paragraph (a) of this section and which does not have affixed thereto the necessary stamps required by section 4871, shall be enforceable in any court of the United States by, or on behalf of, any party to such contract or his privies.

(c) *Stating number of bales involved.* Each contract must provide that all tenders of cotton shall be the full number of bales involved therein. Such variations of the number of bales may be permitted as is necessary to bring the total weight of the cotton tendered within the provisions of the contract as to weight, and necessary variations in the weight of the cotton tendered may be permitted not to exceed 1 percent of the total weight specified in the contract.

§ 45.4854 Statutory provisions; cotton standards.

SEC. 4854. *Cotton standards*—(a) *Source and description.* Subject to the provisions of section 6 of the Act of March 4, 1923 (42 Stat. 1518; 7 U.S.C. 56), the Secretary of Agriculture is authorized, from time to time, to establish and promulgate standards of cotton by which its quality or value may be judged or determined, including its grade, length of staple, strength of staple, color, and such other qualities, properties, and conditions as may be standardized in practical form, which, for the purpose of this subchapter, shall be known as the "Official cotton standards of the United States": *Provided,* That any standard of any cotton established and promulgated under this subchapter by the Secretary of Agriculture shall not be changed or replaced within a period less than one year from and after the date of the promulgation thereof by the Secretary of Agriculture: *Provided further,* That no change or replacement of any standard of any cotton established and promulgated under this subchapter by the Secretary of Agriculture shall become effective until after one year's public notice thereof, which notice shall specify the date when same is to become effective.

(b) *Practical forms*—(1) *Preparation, certification, and distribution.* The Secretary of Agriculture is authorized and directed to prepare practical forms of the official cotton standards which shall be established by him, and to furnish such practical forms from time to time, upon request, to any person, the cost thereof, as determined by the Secretary of Agriculture, to be paid by the person requesting the same, and to certify such practical forms under the seal of the Department of Agriculture and under the signature of the said Secretary, thereto affixed by himself or by some official or employee of the Department of Agriculture thereunto duly authorized by the said Secretary.

(2) *Disposition of receipts from sales.* All sums collected by the Secretary of Agriculture for furnishing practical forms under paragraph (1) shall be deposited and covered into the Treasury as miscellaneous receipts.

[Sec. 4854 as originally enacted and in effect July 1, 1960]

§ 45.4861 Statutory provisions; spot cotton.

SEC. 4861. *Spot cotton.* This subchapter shall not be construed to impose a tax on any sale of spot cotton.

[Sec. 4861 as originally enacted and in effect July 1, 1960]

§ 45.4861–1 Exemption of spot cotton.

The tax imposed under section 4851 is not applicable to the sale of spot cotton.

§ 45.4862 Statutory provisions; definition of bona fide spot markets.

SEC. 4862. *Definition of bona fide spot markets*—(a) *Definition.* For the purpose of this subchapter, the only markets which shall be considered bona fide spot markets shall be those which the Secretary of Agriculture shall, from time to time, after investigation, determine and designate to be such, and of which he shall give public notice.

(b) *Determination.* In determining, pursuant to the provisions of this subchapter, what markets are bona fide spot markets, the Secretary of Agriculture is directed to consider only markets in which spot cotton is sold in such volume and under such conditions as customarily to reflect accurately the value of middling cotton and the differences between the prices or values of middling cotton and of other grades of cotton for which standards shall have been established by the Secretary of Agriculture: *Provided,* That if there be not sufficient places, in the markets of which are made bona fide sales of spot cotton of grades for which standards are established by the Secretary of Agriculture, to enable him to designate at least five spot markets in accordance with section 4863(c), he shall, from data as to spot sales collected by him, make rules and regulations for determining the actual commercial differences in the value of spot cotton of the grades established by him as reflected by bona fide sales of spot cotton, of the same or different grades, in the markets selected and designated by him, from time to time, for that purpose, and in that event differences in value of cotton of various grades involved in contracts made pursuant to section 4863 (a) and (b) shall be determined in compliance with such rules and regulations: *Provided further,* That it shall be the duty of any person engaged in the business of dealing in cotton, when requested by the Secretary of Agriculture or any agent acting under his instructions, to answer correctly to the best of his knowledge, under oath or otherwise, all questions touching his knowledge of the number of bales, the classification, the price or bona fide price offered, and other terms of purchase or sale, of any cotton involved in any transaction participated in by him, or to produce all books, letters, papers, or documents in his possession or under his control relating to such matter.

[Sec. 4862 as originally enacted and in effect July 1, 1960]

§ 45.4863 Statutory provisions; basis grade contracts.

SEC. 4863. *Basis grade contracts*—(a) *Conditions.* No tax shall be imposed under this subchapter on any contract of sale mentioned in section 4851(a) if the contract comply with each of the following conditions:

(1) *Conformity with section 4853(a) and regulations.* Conform to the requirements in section 4853(a) and the rules and regulations made pursuant to this subchapter.

(2) *Specification of grade, price, and dates of sale and settlement.* Specify the basis grade for the cotton involved in the contract, which shall be one of the grades for which standards are established by the Secretary of Agriculture, except grades prohibited from being delivered on a contract made under this section by the fifth paragraph of this subsection, the price per pound at which the cotton of such basis grade is contracted to be bought or sold, the data when the purchase or sale was made, and the month or months in which the contract is to be fulfilled or settled: *Provided,* That middling shall be deemed the basis grade incorporated into the contract if no other basis grade be specified either in the contract or in the memorandum evidencing the same.

(3) *Provision for delivery of standard grades only.* Provide that the cotton dealt with therein or delivered thereunder shall be of or within the grades for which standards are established by the Secretary of Agriculture except grades prohibited from being delivered on a contract made under this section by paragraph (5) and no other grade or grades.

(4) *Provision for settlement on basis of actual commercial differences.* Provide that in case cotton of grade other than the basis grade be tendered or delivered in settlement of such contract, the differences above or below the contract price which the receiver shall pay for such grades other than the basis grade shall be the actual commercial differences, determined as hereinafter provided.

(5) *Prohibition of delivery of inferior cotton.* Provide that cotton that, because of the presence of extraneous matter of any character, or irregularities or defects, is reduced in value below that of low middling, or cotton that is below the grade of low middling, or, if tinged, cotton that is below the grade of strict middling, or, if yellow stained, cotton that is below the grade of good middling, the grades mentioned being of the official cotton standards of the United States, or cotton that is less than seven-eighths of an inch in length of staple, or cotton of perished staple, or of immature staple, or cotton that is "gin cut" or reginned, or cotton that is "repacked" or "false packed" or "mixed packed" or "water packed," shall not be delivered on, under, or in settlement of such contract.

(6) *Provisions for tender in full, notice of delivery date, and certificate of grade.* Provide that all tenders of cotton under such contract shall be the full number of bales involved therein, except that such variations of the number of bales may be permitted as is necessary to bring the total weight of the cotton tendered within the provisions of the contract as to weight; that, on the fifth busi-

ness day prior to delivery, the person making the tender shall give to the person receiving the same written notice of the date of delivery, and that, on or prior to the date so fixed for delivery, and in advance of final settlement of the contract, the person making the tender shall furnish to the person receiving the same a written notice or certificate stating the grade of each individual bale to be delivered and, by means of marks or numbers, identifying each bale with its grade.

(7) *Provision for tender and settlement in accordance with Government classification.* Provide that all tenders of cotton and settlements therefor under such contract shall be in accordance with the classification thereof made under the regulations of the Secretary of Agriculture by such officer or officers of the Government as shall be designated for the purpose, and the costs of such classification shall be fixed, assessed, collected, and paid as provided in such regulations. All moneys collected as such costs may be used as a revolving fund for carrying out the purposes of this paragraph. The Secretary of Agriculture is authorized to prescribe regulations for carrying out the purposes of this paragraph, and the certificates of the officers of the Government as to the classification of any cotton for the purposes of this paragraph shall be accepted in the courts of the United States in all suits between the parties to such contract, or their privies, as prima facie evidence of the true classification of the cotton involved.

(b) *Incorporation of conditions in contracts.* The provisions of subsection (a) (3), (4), (5), (6), and (7) shall be deemed fully incorporated into any such contract if there be written or printed thereon, or on the memoranda evidencing the same, at or prior to the time the same is signed, the phrase "Subject to Internal Revenue Code, section 4863."

(c) *Delivery allowances.* For the purpose of this section, the differences above or below the contract price which the receiver shall pay for cotton of grades above or below the basis grade in the settlement of a contract of sale for the future delivery of cotton shall be determined by the actual commercial differences in value thereof upon the sixth business day prior to the day fixed, in accordance with subsection (a) (6), for the delivery of cotton on the contract, established by the sale of spot cotton in the spot markets of not less than five places designated for the purpose from time to time by the Secretary of Agriculture, as such values were established by the sales of spot cotton, in such designated five or more markets: *Provided,* That for the purpose of this subsection such values in the said spot markets be based upon the standards for grades of cotton established by the Secretary of Agriculture: *And provided further,* That whenever the value of one grade is to be determined from the sale or sales of spot cotton of another grade or grades, such value shall be fixed in accordance with rules and regulations which shall be prescribed for the purpose by the Secretary of Agriculture.

[Sec. 4863 as originally enacted and in effect July 1, 1960]

§ 45.4863–1 Exemption of basis grade contracts, tendered grade contracts, and specific grade contracts.

(a) *In general.* The tax imposed under section 4851 shall not apply to contracts of sale of specific cotton for future delivery made at, on, or in any exchange, board of trade, or similar institution or place of business which meet the requirements, and are made in compliance with the conditions, of section 4863, 4864, or 4865.

(b) *Exchange rules and other matters not to affect contracts exempt from tax under section 4863, 4864, or 4865.* No contract shall be deemed to comply with the conditions of section 4863, 4864, or 4865 so as to exempt it from taxation if it contains or incorporates therein by reference or otherwise any provision or any by-law, rule, or custom of any exchange, board of trade, or similar institution or place of business, which is inconsistent or in conflict with any requirement of section 4863, 4864, or 4865, as the case may be, nor if the parties enter into any collateral or additional agreement or understanding, either verbal or written, respecting the subject matter of such contract which is inconsistent or in conflict with any requirement of said sections.

(c) *Provisions deemed inconsistent and in conflict with requirements.* Any such provision, by-law, rule, custom, agreement, or understanding which in any manner takes away or impairs the right of the person obligated to deliver cotton, to tender any cotton which is of or within the grades, of the quality, and of the length of staple deliverable under a contract made in compliance with section 4863, 4864, or 4865; or which takes away or impairs his right to prepare for himself, or to have prepared by anyone at his direction, the written notice or certificate stating the grade of cotton pursuant to section 4863, or which takes away or impairs the right of either party to submit a dispute as to the classification of the cotton tendered to the Secretary of Agriculture, under a contract subject to section 4863 or 4864; or which contains any device, arrangement, or agreement for the adjustment of the price of the grade or grades of cotton tendered under a contract subject to section 4864, other than the basis grade specified in the contract, by any "fixed difference" system, or by arbitration, shall be deemed inconsistent and in conflict with the requirements of such sections, as the case may be.

(d) *Disputes as to classification to be referred to Secretary of Agriculture.* Contracts subject to sections 4863 and 4864, shall provide that, in case a dispute arises between the person making the tender and the person receiving the same as to the classification of any cotton tendered under the contract, either party may refer the question of the true classification of the cotton to the Secretary of Agriculture for determination, and that such dispute shall be referred and determined, and the cost thereof fixed, assessed, collected and paid in such manner and in accordance with such rules and regulations as may be prescribed by the Secretary of Agriculture.

§ 45.4864 Statutory provisions; tendered grade contracts.

SEC. 4864. *Tendered grade contracts*—(a) *Conditions.* No tax shall be imposed under this subchapter on any contract of sale mentioned in section 4851(a) if the contract—

(1) *Compliance with section 4863.* Comply with all the terms and conditions of section 4863 not inconsistent with this section; and

(2) *Provision for contingent specific performance.* Provide that, in case cotton of grade or grades other than the basis grade specified in the contract shall be tendered in performance of the contract, the parties to such contract may agree, at the time of the tender, as to the price of the grade or grades so tendered, and that if they shall not then agree as to such price, then, and in that event, the buyer of said contract shall have the right to demand the specific fulfillment of such contract by the actual delivery of cotton of the basis grade named therein and at the price specified for such basis grade in said contract.

(b) *Incorporation of conditions in contract.* Contracts made in compliance with this section shall be known as "Section 4864 Contracts." The provisions of this section shall be deemed fully incorporated into any such contract if there be written or printed thereon, or on the memorandum evidencing the same, at or prior to the time the same is signed, the phrase "Subject to Internal Revenue Code, section 4864."

(c) *Application of section.* Nothing in this section shall be so construed as to relieve from the tax imposed by section 4851(a) any contract in which, or in the settlement of or in respect to which, any device or arrangement whatever is resorted to, or any agreement is made, for the determination or adjustment of the price of the grade or grades tendered other than the basis grade specified in the contract by any "fixed difference" system, or by arbitration, or by any other method not provided for by this subchapter.

[Sec. 4864 as originally enacted and in effect July 1, 1960]

§ 45.4864–1 Exemption of tendered grade contracts.

For regulations with respect to the exemption of tendered grade contracts, see the applicable provisions of § 45.4863–1.

§ 45.4865 Statutory provisions; specific grade contracts.

SEC. 4865. *Specific grade contracts*—(a) *Conditions.* No tax shall be imposed under this subchapter on any contract of sale mentioned in section 4851(a) if the contract comply with each of the following conditions:

(1) *Conformity with rules and regulations.* Conform to the rules and regulations made pursuant to this subchapter.

(2) *Specification of grade, price, dates of sale and delivery.* Specify the grade, type, sample, or description of the cotton involved in the contract, the price per pound at which such cotton is contracted to be bought or sold, the date of the purchase or sale, and the time when shipment or delivery of such cotton is to be made.

(3) *Prohibition of delivery of other than specified grade.* Provide that cotton of or within the grade or of the type, or according to the sample or description, specified in the contract shall be delivered thereunder, and that no cotton which does not conform to the type, sample, or description, or which is not of or within the grade specified in the contract shall be tendered or delivered thereunder.

(4) *Provision for specific performance.* Provide that the delivery of cotton under the contract shall not be effected by means of "set-off" or "ring" settlement, but only by the actual transfer of the specified cotton mentioned in the contract.

(b) *Incorporation of conditions in contract.* The provisions of subsection (a) (1), (3), and (4) shall be deemed fully incorporated into any such contract if there be written or printed thereon, or on the document or memorandum evidencing the same, at or prior to the time the same is entered into, the words "Subject to Internal Revenue Code, section 4865."

(c) *Application of section.* This section shall not be construed to apply to any con-

tract of sale made in compliance with section 4863 or 4864.

[Sec. 4865 as originally enacted and in effect July 1, 1960]

§ 45.4865–1 Exemption of specific grade contracts.

For regulations with respect to the exemption of specific grade contracts, see the applicable provisions of § 45.4863–1.

§ 45.4871 Statutory provisions; method of payment.

SEC. 4871. *Method of payment.* The tax imposed by section 4851 (a) shall be paid by means of stamps which shall be affixed to such contracts, or to the memoranda evidencing the same, and canceled in compliance with rules and regulations which shall be prescribed by the Secretary or his delegate.

[Sec. 4871 as originally enacted and in effect July 1, 1960]

§ 45.4871–1 Method of payment.

(a) *Stamps.* Documentary stamps issued under the internal revenue laws shall be used for payment of the taxes imposed by section 4851(a) and may be obtained from (1) district directors and other duly authorized officials; (2) postmasters in all post offices of the first and second classes and such post offices of the third and fourth class as are located in county seats; (3) designated depositaries of the United States; and (4) any person who is duly appointed and acting as agent of any State for the sale of stock transfer stamps of such State, and designated by the Secretary or his delegate for the purpose.

(b) *Affixing stamps.* Stamps representing the tax due are to be affixed by the seller, at the time of signing, to each contract of sale of cotton for future delivery mentioned in section 4851, or to the memorandum evidencing the same, unless the contract under the law and regulations is not subject to tax.

(c) *Canceling stamps.* The person using or affixing a stamp shall write or stamp thereon with ink the initials of his name and the date, including the year, on which the same shall be attached or used, or shall, by cutting and canceling the stamps with a machine or punch, which will affix the initials and date aforesaid, so deface the stamp as to render it unfit for reuse. In addition to the foregoing, stamps of the value of 10 cents or more shall have three parallel incisions made by some sharp instrument lengthwise through the stamp after the stamp has been attached to the document: *Provided,* This will not be required where stamps are canceled by perforation. The cancellation by either method should not so deface the stamp as to prevent its denomination and genuineness from being readily determined.

§ 45.4872 Statutory provisions; collection and enforcement.

SEC. 4872. *Collection and enforcement—*(a) *Rules and regulations.* The Secretary or his delegate is authorized to make and promulgate such rules and regulations as he may deem necessary to collect the tax imposed by this subchapter and otherwise to enforce its provisions.

(b) *Records and returns.* Further to effect the purpose of subsection (a), the Secretary or his delegate shall require all persons coming within its provisions to keep such records and statements of account, and may require such persons to make such returns verified under oath or otherwise, as will fully and correctly disclose all transactions mentioned in section 4851(a), including the making, execution, settlement, and fulfillment thereof; he may require all persons who act in the capacity of a clearing house, clearing association, or similar institution for the purpose of clearing, settling, or adjusting transactions mentioned in section 4851(a) to keep such records and to make such returns as will fully and correctly disclose all facts in their possession relating to such transactions.

(c) *Employment of officers and employees.* The Secretary or his delegate may appoint officers and employees to conduct the inspection necessary to collect said tax and otherwise to enforce this subchapter and all rules and regulations made by him in pursuance hereof.

[Sec. 4872 as originally enacted and in effect July 1, 1960]

§ 45.4872–1 Records of contracts of sale of cotton for future delivery.

All persons who make contracts of sale of cotton for future delivery at, on, or in any exchange, board of trade, or similar institution or place of business, whether said contracts shall be cleared and adjusted through a clearing association, or direct between seller and buyer, or otherwise, shall keep a record thereof showing:

(a) Name and address of contracting person keeping record.

(b) Name and address of other party to contract.

(c) Date contract was made.

(d) Quantity of cotton involved, in bales or pounds.

(e) Time specified in contract for delivery.

(f) Whether transaction is a purchase or a sale.

(g) Whether the contract is (1) a contract subject to section 4863, (2) a contract subject to section 4864, or (3) a contract subject to section 4865, and the basis grade.

(h) Grade, type, sample, or description of cotton, if not basis grade.

(i) Specified price per pound.

(j) Date of delivery or settlement.

(k) Method of actual fulfillment or settlement.

(l) Amount of tax paid (or, if exempt, so state).

§ 45.4872–2 Records to be kept by cotton clearing associations.

All persons who act in the capacity of a clearing house or clearing association for the purpose of clearing, settling, or adjusting transactions mentioned in section 4851(a) shall keep a record thereof showing:

(a) Name and address of clearing house or clearing association keeping record.

(b) Name and address of person for whom contract is cleared.

(c) Date contract was made.

(d) Quantity of cotton involved, in bales or pounds.

(e) Time specified in contract for delivery.

(f) Whether transaction is a purchase or a sale.

(g) Whether the contract is (1) a contract subject to section 4863, (2) a contract subject to section 4864, or (3) a contract subject to section 4865, and the basis grade.

(h) Grade, type, sample, or description of cotton, if not basis contract.

(i) Specified price per pound.

(j) Date of delivery or settlement.

(k) Method of actual fulfillment or settlement.

§ 45.4872–3 Form of record.

(a) *Forms prescribed.* For the purpose of uniformity and to enable the district director to check readily such information, the following forms of record are prescribed:

RECORD NO. 1—Contracts subject to Internal Revenue Code, section 4863

(Name and address of firm keeping the record)

Purchases for _____ delivery.

The following transactions are made on the basis of middling and subject to section 4863, I.R.C., unless otherwise stated:

Date	Party or firm from whom bought	Address	Reference number [1]	Bales [2]	Price	Customer [1]	Settlement		Tax, if any
							Date	Method	

OBVERSE PAGE

(Name and address of firm keeping the record)

Sales for _____ delivery.

The following transactions are made on the basis of middling and subject to section 4863, I.R.C., unless otherwise stated:

Date	Party or firm to whom sold	Address	Reference number [1]	Bales [2]	Price	Customer [1]	Settlement		Tax, if any
							Date	Method	

[1] Filling in of these columns optional.

[2] Transactions can be entered in 100-bale lots to a line; 50 lines to the page; 100 may be printed in on each line, if so desired.

RECORD No. 2—Contracts subject to Internal Revenue Code, section 4864

(Name and address of firm keeping the record)

Purchases for _____ delivery.

The following transactions are made on the basis of grade specified and subject to section 4864, I.R.C., unless otherwise stated:

Date	Party or firm from whom bought	Address	Reference number [1]	Bales [2]	Basis grade	Price	Customer [1]	Settlement [3]		Tax, if any
								Date	Method	

OBVERSE PAGE

(Name and address of firm keeping the records)

Sales for _____ delivery.

The following transactions are made on the basis of grade specified and subject to section 4864, I.R.C., unless otherwise stated:

Date	Party or firm to whom sold	Adderss	Reference number [1]	Bales [2]	Basis grade	Price	Customer [1]	Settlement [3]		Tax, if any
								Date	Method	

[1] Filling in of these columns optional.

[2] Transactions can be entered in 100-bale lots to a line; 50 lines to the page; 100 may be printed in on each line if so desired.

[3] In case of actual delivery, state whether basis grade or what grade is delivered.

RECORD No. 3—Contracts subject to Internal Revenue Code, section 4865

(Name and address of firm keeping records)

The following transactions are made on the basis of grade, type, sample, or description and subject to section 4865, I.R.C., unless otherwise stated:

Date	Bought from—		Bales cotton	Description	Price	Terms	Time of shipment or delivery	Delivery reference	Tax paid or if exempt
	Name	Address							

OBVERSE PAGE

(Name and address of firm keeping records)

The following transactions are made on the basis of grade, type, sample, or description and subject to section 4865, I.R.C., unless otherwise stated:

Date	Sold to—		Bales cotton	Description	Price	Terms	Time of shipment or delivery	Delivery reference	Tax paid or if exempt
	Name	Address							

RECORD No. 4—Contracts subject to Internal Revenue Code, section 4863 [1]

(Name and address of association keeping record)

The following contracts were cleared or adjusted for members of the _____ Cotton Exchange under section 4863,[1] I.R.C.:

Brought forward, long	Purchase	Contracts in 100-bale lots	Grade	Price	Month of delivery	Method of settlement		Carried forward, long	Name of member	Brought forward, short	Sales	Contracts in 100-bale lots	Grade	Price	Month of delivery	Method of settlement		Carried forward, short
						Passed notices	Set-off									Passed notices	Set-off	

[1] If section 4864 contract or section 4865 contract, so state.

(b) *Use of prescribed forms.* The use of Record No. 1 is required to give information regarding all contracts made upon an exchange subject to section 4863, unless otherwise stated; the use of Record No. 2 is required to cover contracts subject to section 4864, unless otherwise stated; the use of Record No. 3 is required to cover contracts subject to section 4865, unless otherwise stated; and the use of Record No. 4 is required by persons who act in the capacity of a clearing house or clearing association for the purpose of clearing, settling or adjusting transactions mentioned in section 4851. Record Nos. 1, 2, and 3 shall contain 50 lines to a page, unless otherwise permitted by the Commissioner; and Record No. 4 shall contain a sufficient number of lines on one page to show all facts required to be disclosed under subchapter D of chapter 39 of the Code and this subpart unless otherwise permitted by the Commissioner. Persons who use such forms may incorporate additional columns which would be of use to them, such columns to be placed in such positions as not to interfere with the continuity of the columns and headings prescribed. Such records will not be supplied by the Internal Revenue Service, but must be procured elsewhere.

§ 45.4872–4 Records to be kept in separate books and open for inspection.

(a) *Records.* All records required by the regulations in this subpart shall be kept in separate books, and not mixed with records of other accounts or transactions, and shall be open to inspection, when demand is made therefor by officers and agents of the Internal Revenue Service. All entries therein must be in writing, and the books preserved for a period of not less than three years.

(b) *Inspection by agents.* Agents duly appointed by the Commissioner shall have authority to examine the books and records kept in pursuance to §§ 45.4872–1 to 45.4872–3, inclusive, and may require the production of any other books, papers, records, or statements of account necessary to determine any liability to the tax imposed by section 4851.

§ 45.4872–5 Return to be made by persons dealing in future contracts.

All persons who make contracts of sale of cotton for future delivery at, on, or in any exchange, board of trade, or similar institution or place of business, whether said contracts shall be cleared and adjusted through a clearing association, or direct between the seller and buyer, or otherwise, shall render a return, in letter form, to the district director for the district in which such person's principal place of business is located. The return shall cover the period of one calendar quarter, shall be filed on or before the last day of the first calendar month following the calendar quarter for which it is made, and shall be verified by a written declaration that it is made under the penalties of perjury. The return shall show the number of contracts brought forward from the preceding quarter; the number of contracts bought or sold; the number of bales of cotton involved in said contracts; the month in which said cotton is to be delivered; the method of settlement of said contract—i.e., whether by "ring," "direct," "notice," "actual delivery," "transfer," through a cotton-exchange clearing association, if any, or otherwise; and the number of contracts left open at the end of the quarter.

§ 45.4872–6 Returns to be made by clearing associations.

All persons who act in the capacity of a clearing house, clearing association, or similar institution for the purpose of clearing, settling or adjusting transactions mentioned in section 4851 shall render, in respect of such transactions,

a return, in letter form, to the district director for the district in which such association is located. The return shall cover the period of one calendar quarter, shall be filed on or before the last day of the first calendar month following the quarter for which it is made, and shall be duly verified by the president, vice-president, secretary, or treasurer of the association by a written declaration that it is made under the penalties of perjury. The return shall show all facts in the possession of the association relating to such transactions, including the number of contracts bought or sold by each member of the association; the number of bales involved in said contracts; the month in which said cotton is to be delivered; the number of contracts cleared for each member of the association; the method of settlement of said contracts—i.e., whether by "notice," "set-off," or by any other method; also the monthly average closing price of cotton for each month dealt in, named in said return.

§ 45.4872–7 Persons failing to make return, district director authorized to do so.

If any person required to make the return under the provision of section 4872(b) and the regulations in this subpart shall fail or refuse to make said return within the time specified, then the return shall be made by the district director upon inspection of the books and records of the person so required: *Provided*, That the making of the return by the district director shall not be construed to relieve the person so required from any penalty incurred by reason of his failure to make such return.

§ 45.4873 Statutory provisions; liability of principal for acts of agent.

SEC. 4873. *Liability of principal for acts of agent.* When construing and enforcing the provisions of this subchapter, the act, omission, or failure of any official, agent, or other person acting for or employed by any association, partnership, or corporation within the scope of his employment or office shall, in every case, also be deemed the act, omission, or failure of such association, partnership, or corporation, as well as that of the person.

[Sec. 4873 as originally enacted and in effect July 1, 1960]

§ 45.4874 Statutory provisions; immunity of witnesses.

SEC. 4874. *Immunity of witnesses.* No person whose evidence is deemed material by the officer prosecuting on behalf of the United States in any case brought under any provision of this subchapter shall withhold his testimony because of complicity by him in any violation of this subchapter or of any regulation made pursuant to this subchapter, but any such person called by such officer who testifies in such case shall be exempt from prosecution for any offense to which his testimony relates.

[Sec. 4874 as originally enacted and in effect July 1, 1960]

§ 45.4875 Statutory provisions; operation of State laws.

SEC. 4875. *Operation of State laws.* The payment of any tax imposed by this subchapter shall not exempt any person from any penalty or punishment now or hereafter provided by the laws of any State for entering into contracts of sale of cotton for future delivery, nor shall the payment of any tax imposed by this subchapter be held to prohibit any State or municipality from imposing a tax on the same transaction.

[Sec. 4875 as originally enacted and in effect July 1, 1960]

§ 45.4876 Statutory provisions; reports of Secretary of Agriculture.

SEC. 4876. *Reports of Secretary of Agriculture.* The Secretary of Agriculture is directed to publish from time to time the results of investigations made in pursuance of this subchapter.

[Sec. 4876 as originally enacted and in effect July 1, 1960]

§ 45.4877 Statutory provisions; cross references.

SEC. 4877. *Cross references.* For penalties and other general and administrative provisions applicable to this subchapter, see subtitle F.

[Sec. 4877 as originally enacted and in effect July 1, 1960]

§ 45.4877–1 Cross references.

(a) For penalties for offenses relating to stamps, see § 45.7208.

(b) For penalties for unauthorized use or sale of stamps, see § 45.7209.

(c) For fines for failure to pay, or attempt to evade payment of, tax on cotton futures, and other violations, see § 45.7233.

(d) For penalties relating to cotton futures, see § 45.7263.

(e) For other administrative provisions relating to the tax imposed on cotton futures, see Subpart L.

Subpart J—Silver Bullion

§ 45.4891 Statutory provisions; imposition of tax.

SEC. 4891. *Imposition of tax.* There shall be imposed on all transfers of any interest in silver bullion, if the price for which such interest is or is to be transferred exceeds the total of the cost thereof and allowed expenses, a tax of 50 percent of the amount of such excess.

[Sec. 4891 as originally enacted and in effect July 1, 1960]

§ 45.4891–1 Imposition of tax.

(a) *Transfers subject to tax.* The tax applies to all transfers, within the scope of the tax as set forth in § 45.4896–1, of any interest in silver bullion, if the price for which such interest is or is to be transferred exceeds the cost thereof and the allowed expenses, unless the transfer is specifically exempted. As to exempt transfers, see paragraph (c) of § 45.4896–1.

(b) *Tax in addition to other taxes.* The tax is in addition to all other taxes under the internal revenue laws of the United States.

(c) *Forward sales.* The tax is not payable twice on the same transaction; that is, when the tax is paid upon an agreement to sell, it is not again payable upon the sale, delivery, or transfer in fulfillment thereof.

(d) *Switching transactions.* A transfer of an interest in silver bullion is taxable if a net profit is realized, even though the transferor simultaneously acquires another equivalent interest in silver bullion for the same or a different delivery.

§ 45.4891–2 Rate and application of tax.

(a) *Rate of tax.* The tax is 50 percent of the amount by which the price for which the interest in silver bullion is or is to be transferred exceeds the total of the cost thereof plus the allowed expenses. For definition of "cost", see paragraph (a) of § 45.4892–1.

(b) *Price.* The price for which an interest in silver bullion is or is to be transferred is the amount of money and/or the market value of any property other than money received or to be received by the transferor, directly or indirectly, in consideration of the transfer.

(c) *Example.* The following examples illustrate the application of this section:

Example (1). A transferred on March 10, 1961, 1,000 ounces of silver to B, who paid $910; on May 16 B sells 100 ounces to C, who pays $90. There is no tax. B then sells 500 ounces to D for an article worth $460. The tax (if any) on this transfer is 50 percent of the amount obtained by subtracting from the sale price ($460, the value of the article), the sum of the cost ($455), and the allowed expenses as to the 500 ounces. B then contracts in July to deliver to E in September 400 ounces for which E agrees to pay $368. E assigns for $380 to F his rights to receive the silver. This is a transfer of an interest in silver bullion, the cost to the transferor (E) being $368 and the sale price $380. The tax on this transfer is 50 percent of the amount by which the sale price to F ($380), exceeds the sum of the cost to E ($368), and allowed expenses, if any. Finally B delivers the silver to F. The tax on this transaction (made up of the agreement to sell to E and the delivery to F) is measured by the sale price ($368) less the aggregate of the cost ($364) and allowed expenses, if there were any.

Example (2). R contracts in June 1961 to deliver to S in September 1,000 ounces of silver at 92 cents an ounce, having previously secured Q's agreement to deliver to him (R) 1,000 ounces in September at 91 cents an ounce. In September R assigns to S the contract of Q which S accepts in fulfillment of R's contract and S pays R $10 and Q $910. The assignment to S of the contract between R and Q is a taxable transfer, and the tax is measured by the sale price ($920) less the cost to R ($910), and less allowed expenses.

§ 45.4892 Statutory provisions; definitions.

SEC. 4892. *Definitions.* For the purpose of this subchapter—

(1) *Cost.* The term "cost" means the cost of the interest in silver bullion to the transferor, except that—

(A) In case of silver bullion produced from materials containing silver which has not previously entered into industrial, commercial, or monetary use, the cost to a transferor who is the producer shall be deemed to be the market price at the time of production determined in accordance with regulations issued hereunder;

(B) In the case of an interest in silver bullion acquired by the transferor otherwise than for valuable consideration, the cost shall be deemed to be the cost thereof to the last previous transferor by whom it was acquired for a valuable consideration; and

(C) In the case of any interest in silver bullion acquired by the transferor in a wash sale, the cost shall be deemed to be the cost to him of the interest transferred by him in such wash sale, but with proper adjustment, in accordance with regulations under this subchapter, when such interests are in silver bullion for delivery at different times.

(2) *Transfer.* The term "transfer" means a sale, agreement of sale, agreement to sell, memorandum of sale or delivery of, or transfer, whether made by assignment in blank or by any delivery, or by any paper or agreement or memorandum or any other evidence of transfer or sale; or means to make a transfer as so defined.

(3) *Interest in silver bullion.* The term "interest in silver bullion" means any title or claim to, or interest in, any silver bullion or contract therefor.

(4) *Allowed expenses.* The term "allowed expenses" means usual and necessary expenses actually incurred in holding, processing, or transporting the interest in silver bullion as to which an interest is transferred (including storage, insurance, and transportation charges but not including interest, taxes, or charges in the nature of overhead), determined in accordance with regulations issued hereunder.

(5) *Memorandum.* The term "memorandum" means a bill, memorandum, agreement, or other evidence of a transfer.

(6) *Wash sale.* The term "wash sale" means a transaction involving the transfer of an interest in silver bullion and, within 30 days before or after such transfer, the acquisition by the same person of an interest in silver bullion. Only so much of the interest so acquired as does not exceed the interest so transferred, and only so much of the interest so transferred as does not exceed the interest so acquired, shall be deemed to be included in the wash sale.

(7) *Silver bullion.* The term "silver bullion" means silver which has been melted, smelted, or refined and is in such state or condition that its value depends primarily upon the silver content and not upon its form.

[Sec. 4892 as originally enacted and in effect July 1, 1960]

§ 45.4892–1 Definitions.

(a) *Cost*—(1) *In general.* Except as otherwise specifically provided in this paragraph, the cost of an interest in silver bullion is the amount paid or agreed to be paid therefor by the transferor in money and/or the market value of any property other than money exchanged or agreed to be exchanged by him for such interest. In computing such cost, the cost of the particular silver bullion (or interest therein) transferred must be used. When more than one lot of silver bullion is acquired on the same day, however, the cost of all lots of 1,000 ounces each, or less, may be averaged and the average cost applied to such lots. In the event that the transferor elects to take advantage of any provisions permitting the delivery in an exempt transfer (see paragraph (c) of § 45.4896–1) of silver bullion in substitution of other silver bullion eligible for such delivery, the cost of the silver bullion for which the substitution has been made shall be deemed to be the cost of the particular silver bullion so delivered.

(2) *Silver bullion produced from natural silver-bearing materials, etc.* When a producer of silver transfers silver bullion produced by him from materials containing silver which has not prior to the transfer entered into industrial, commercial, or monetary use, the cost to him of such silver bullion shall be deemed to be its market price at the time of production (unless the producer shall have elected otherwise under paragraph (f) of § 45.4894–1). The time of production is the time at which the last usual and necessary process of smelting or refining prior to transfer is completed; or in the event that silver bullion is delivered pursuant to a forward contract entered into after the silver contained therein was acquired by the transferor but before the completion of the last usual and necessary process of smelting or refining thereof, the time of making of such contract.

(3) *Interest acquired by gift, bequest, etc.* If the transferor acquired the interest in silver bullion otherwise than for valuable consideration, he shall use, as his cost, the cost of the last previous transferor who acquired it for a valuable consideration.

Example. If A buys silver bullion at a cost of 90 cents an ounce and gives it to B, and B dies and bequeaths it to C, who in turn transfers it to D for 92 cents an ounce, C's tax will be based on the excess of his selling price (92 cents) over the total of the cost to A (90 cents) plus allowed expenses.

(4) *Forward sales.* In the case of a forward sale, as defined in paragraph (k) of this section, the agreement to sell is a transfer, but the cost of the interest transferred cannot be finally determined until the contract is closed out. If the transferor delivers silver under the contract, the cost to him of the silver delivered shall be used in determining the taxability of the agreement and the amount of the tax. In the case of a "ring" settlement of forward contracts, the cost to the transferor on each contract so settled is deemed to be the price he agreed to pay as transferee in his other contract. Otherwise, (i) when the contract is settled without delivery of silver, upon a payment by the transferee, the transferor shall use as his cost the price on the basis of which settlement is made; and (ii) when the contract is settled upon a payment by the transferor, the contract so settled is not itself subject to tax, but the settlement is a transfer subject to tax measured by the amount so paid. In the latter case the original transferee becomes the transferor of an interest in silver bullion.

(b) *Transfer.* The term "transfer" means any sale, agreement of sale, agreement to sell, memorandum of sale or delivery of, or transfer of an interest in silver bullion whether made by assignment in blank or by any delivery, or by any paper or agreement or memorandum or any other evidence of transfer or sale, or means to make such transfer. For regulations with respect to the types of transfers of interest in silver bullion which are subject to tax, see § 45.4896–1.

(c) *Interest in silver bullion.* The term "interest in silver bullion" means any title or claim to, or interest in, any silver bullion or contract therefor.

(d) *Allowed expenses.* In determining the tax, the transferor may add to his cost any usual and necessary expense, such as storage, insurance, and transportation charges, actually incurred in holding, processing or transporting silver bullion with respect to which an interest is transferred. Interest, taxes, and charges in the nature of overhead may not be included in the allowed expenses. In the case of silver bullion produced from materials containing silver which has not previously entered into industrial, commercial, or monetary use, the producer-transferor may include in allowed expenses only expenses actually incurred subsequent to the last usual and necessary process of smelting or refining of the particular silver bullion transferred. If the cost to the transferor is deemed to be the cost to a previous transferor (see paragraph (a)(3) of this section), the allowed expenses may include those incurred with respect to the silver bullion or interest therein in question since the acquisition by such previous transferor. The allowed expenses may in no case be estimated, but must be subject to definite proof as expenses actually incurred.

(e) *Memorandum.* The term "memorandum" means a bill, memorandum, agreement, or other evidence of a transfer of an interest in silver bullion. (See § 45.4895–5.)

(f) *Silver bullion.* Ores, concentrates, and the like, containing silver which has not been melted, smelted, or refined are not silver bullion, whatever their silver content. Material containing silver which has been melted, smelted, or refined, and of which the silver content is not less than 250 troy ounces of fine silver per short ton is silver bullion. Thus, bar silver or crystal silver is silver bullion; as also, is the silver contained in dore, zinc crust, slimes, lead bullion, blister copper, etc., except that materials containing less than 250 troy ounces of fine silver per short ton are not silver bullion. Fabricated silver (defined in paragraph (g) of this section) of which not more than 80 percent of the total value is attributable to the silver content is not silver bullion. Fabricated silver in a form customarily sold for industrial, professional, or artistic use at a stated premium per fine troy ounce above the current market value of commercial bar silver, is not silver bullion, if the current market premium with respect to such fabricated silver is 12 cents or more. Scrap silver is silver bullion.

(g) *Fabricated silver.* The term "fabricated silver" means silver which has in good faith and not for the purpose of evading, or enabling others to evade the tax, been processed or manufactured into such a form that it has one or more specific and customary industrial, professional, or artistic uses.

(h) *Scrap silver.* The term "scrap silver" includes silver sweepings, and fabricated silver or silver coin which is no longer held for the purpose for which it was processed, manufactured, or coined.

(i) *Resident.* The term "resident" includes a domestic corporation or partnership.

(j) *Party to the transfer.* The term "party to the transfer" includes any person who by the transfer disposes of or acquires any ownership or interest in or claim to the interest in silver bullion transferred.

(k) *Forward sale.* The term "forward sale" means a so-called "over-the-counter contract", or a contract to sell silver bullion for spot or future delivery.

(l) *Silver foreign exchange.* The term "silver foreign exchange" means foreign

exchange the fluctuations of which follow generally the fluctuations in the price of silver.

§ 45.4892–2 Expired provisions.

Subparagraph (c) of paragraph (1) and paragraph (6) of section 4892, relating to wash sales, have no application to years as to which the Internal Revenue Code of 1954 is effective.

§ 45.4893 Statutory provisions; liability for tax.

SEC. 4893. *Liability for tax.* This tax imposed by this subchapter shall be paid by any person who makes, signs, issues, or sells any of the documents and instruments subject to the tax imposed by this subchapter, or for whose use or benefit the same are made, signed, issued, or sold. The United States or any agency or instrumentality thereof shall not be liable for the tax with respect to an instrument to which it is a party, and affixing of stamps thereby shall not be deemed payment for the tax, which may be collected by assessment from any other party liable therefor.

[Sec. 4893 as originally enacted and in effect July 1, 1960]

§ 45.4893–1 Liability for the tax.

(a) *In general.* Except as provided in paragraphs (b) and (c) of this section, both parties to a transfer are responsible for affixing stamps in the required amount in payment of the tax imposed by section 4891. Stamps shall be affixed in accordance with the provisions of § 45.4895–1. In the case of a transfer upon which the transferor claims that no tax is due, he may affix a stamp of 1 cent in order to submit the same for cancellation. If, at any time before the expiration of the period of limitation, tax is found to be due on a transfer on which no tax was paid, or if additional tax is found to be due on a transfer, assessment may be made against either the transferor or the transferee, except as provided in paragraphs (b) and (c) of this section.

(b) *After cancellation of stamps.* When stamps on any memorandum have been cancelled as provided in § 45.4895–6, the transferor and not the transferee shall be liable for any additional tax found due or for any penalty with respect to the transfer in question.

(c) *Transfers to the United States Government.* In the case of taxable transfers to the United States Government, the transferor is liable for the tax, which shall be paid in accordance with the provisions of section 4895 and the regulations thereunder. For transfers exempt from the tax, see paragraph (c) of § 45.4896–1.

(d) *Liability of agent or broker.* An agent or broker acting for a party to a transfer is subject to penalties under section 7201 for delivering any silver bullion or interest therein without the required memorandum, or for delivering any such memorandum without having the proper stamps affixed thereto, with the intent to evade or assist in the evasion of the requirements of the law.

§ 45.4894 Statutory provisions; abatement or refund.

SEC. 4894. *Abatement or refund.* The Secretary or his delegate shall abate or refund, in accordance with regulations issued under this subchapter, such portion of any tax imposed by section 4891 as he finds to be attributable to profits—

(1) *Course of regular business.* Realized in the course of the transferor's regular business of furnishing silver bullion for industrial, professional, or artistic use and—

(A) Not resulting from a change in the market price of silver bullion, or

(B) Offset by contemporaneous losses incurred in transactions in interests in silver bullion determined, in accordance with such regulations, to have been specifically related hedging transactions; or

(2) *Silver foreign exchange.* Offset by contemporaneous losses attributable to changes in the market price of silver bullion and incurred in transactions in silver foreign exchange determined, in accordance with such regulations, to have been hedged specifically by the interest in silver bullion transferred.

[Sec. 4894 as originally enacted and in effect July 1, 1960]

§ 45.4894–1 Abatement or refund of tax attributable to profits realized in course of regular business.

(a) *Transferors engaged in business of furnishing silver bullion for industrial, professional, or artistic use*—(1) *General.* Section 4894 provides for the abatement or refund of so much of the tax imposed by section 4891 as is found by the district director to be attributable to profits realized in the course of the transferor's regular business of furnishing silver bullion for industrial, professional, or artistic use, to the extent that such profits (i) do not result from changes in the market price of silver bullion or (ii) are offset by contemporaneous losses incurred in transactions in interests in silver bullion determined in accordance with the regulations in this part to be specifically related hedging transactions.

(2) *Registration requirement.* The abatement or refund provided in subparagraph (1) of this paragraph is available only to a transferor regularly engaged in the business of furnishing silver bullion for industrial, professional, or artistic use who has obtained from the district director a certificate of registration on Form 1A (Silver), and with respect to transactions in the regular course of that business. The district director shall issue such certificate upon application on Form 1 (Silver) if satisfied that the applicant is regularly engaged in the business specified. The provision for abatement or refund does not apply to transfers by a person not registered and regularly engaged in the business specified, regardless of the purpose for which the silver bullion so transferred is to be used. Abatement or refund under subdivisions (i) and (ii) of subparagraph (1) of this paragraph may be allowed with respect to the same transfer.

(b) *Profits not resulting from change in market price.* The amount of profit not resulting from a change in the market price of silver bullion shall be determined by subtracting from the net profit the amount attributable to a change in the market price of silver bullion. For purposes of this subpart, the term "net profit" means gross profit less the allowed expenses. ("Allowed expenses" are deemed to be incurred in the course of the transferor's regular business.)

(c) *Profits attributable to change in market price.* The amount of profit attributable to a change in the market price of silver bullion means the rise, if any, in the market price of an interest in silver bullion equivalent to the interest transferred, during the time the interest was held by the transferor. The interest shall be deemed to have been held by the transferor from the date of its acquisition (or of a prior contract for its acquisition) to the date of the taxable transfer. The market price as of each such date shall be deemed to be the market price on that date of a similar interest in silver bullion for delivery on the date specified in the contract of acquisition or the taxable transfer, as the case may be. In all cases market prices shall be determined in accordance with the prices in the nearest established exchange upon which interests in silver bullion are dealt in, and the same exchange shall be used in determining price as of both dates. In the absence of transactions in an established exchange, the market quotations published in the Mining and Engineering Journal, a trade journal published in New York City, may be used in determining price. In the case of any transfer of an interest in silver bullion in a form other than that in which it is dealt in upon an established exchange the market value shall be determined on the basis of the silver content of such silver bullion. When the cost to a producer-transferor is determined under paragraph (a)(2) of § 45.4892–1, the time of production shall be deemed to be the date of acquisition for purposes of this section.

(d) *Profits offset by losses on hedging transactions.* Specifically related hedging transactions are two or more transactions entered into by the same person, at least one of which has been entered into by him for the purpose of offsetting in whole or in part, the profit or loss which would accrue to him upon the other transaction or transactions as a direct result of any change in the market price of silver bullion. To the extent that a net profit realized upon one or more of a group of specifically related hedging transactions, is offset by a contemporaneous loss upon any one or more of the other specifically related transactions, a transferor registered in accordance with subparagraph (2) of paragraph (a) of this section is entitled to abatement or refund of the tax on such profit; provided that the transfers which constituted the hedge transactions are specifically related to one or more transfers made in the course of the transferor's regular business of furnishing silver bullion for industrial, professional, or artistic use.

(e) *When profits and losses are contemporaneous.* The requirement that the profit and loss, respectively, upon specifically related hedging transactions must be incurred contemporaneously, means that the time between the realization of the profit and the loss must be as brief as is reasonably practicable under the circumstances. For the purpose of this requirement, a profit or loss may, in a proper case, be deemed to be incurred

at the time the contract is made although pursuant to paragraph (a)(4) of § 45.4892–1 the profit may not be ascertainable or the tax payable until the contract is closed out.

(f) *Hedges against sales from necessary inventory*—(1) *Election in case of changes in necessary inventory.* In the case of transfers of any interest in silver bullion made in the course of the transferor's regular business of smelting or refining silver or of furnishing silver bullion for industrial, professional, or artistic use, the transferor may elect (in the manner provided in subparagraph (2) of this paragraph) to have:

(i) The cost of the interest in silver bullion transferred; and

(ii) The amount of contemporaneous losses incurred in specifically related hedging transactions involving acquisitions to be added to inventory

determined in accordance with this paragraph, and such election shall constitute as to the transfers to which subparagraph (4) of this paragraph applies a waiver of any and all rights to have such cost and the amount of such losses determined in any other manner.

(2) *Manner of making election*—(i) *In general.* Any person eligible for, and desiring to obtain, the benefits of this paragraph, shall file with the district director, in accordance with the provisions of § 45.6091–2, an application on Form 6 (Silver). The district director shall, if satisfied that the applicant is qualified, thereupon issue a certificate on Form 7 (Silver) setting forth the findings of the district director as to the applicant's business, the amount of his necessary inventory, and the average of the cost thereof determined in accordance with paragraph (a) of § 45.4892–1, and such certificate shall fix, until amended by a subsequent certificate, the amount of such inventory and the average cost thereof. The applicant may, within 7 days of the issuance of such certificate, file with the district director an agreement on Form 8 (Silver) which shall constitute the election above referred to. Failure to file the agreement (Form 8 (Silver)) in proper form within the required 7-day period (unless the district director extends the period) shall constitute an election not to obtain the benefits of this paragraph, without prejudice to the right to file application at any time after 30 days.

(ii) *Manner of amending certificate.* If the taxpayer at any time shows to the satisfaction of the district director that changes in his business have caused a change in the amount of his necessary inventory, he may make application for the issuance of an amended certificate and may specify the date as of which he desires the amendment to be effective. An amendment made under the provisions of this subdivision may be retroactive in a proper case. If satisfied that the taxpayer is entitled to the amendment, the district director shall issue an amended certificate on Form 7 (Silver), which shall become effective if the taxpayer files a new agreement on Form 8 (Silver). In case of an increase of necessary inventory the cost per ounce of the necessary inventory as so increased shall be computed as the weighted average of the cost per ounce of the necessary inventory previously fixed and the cost per ounce of the actual silver added thereto. In case of a decrease of necessary inventory the cost per ounce shall not be affected thereby.

(iii) *Effect of delivery to United States mint.* In case a transferor delivers to a United States mint in an exempt transfer pursuant to any Executive order (see paragraph (c) of § 45.4896–1) any silver forming a part of the transferor's necessary inventory, the transferor, after replacing the silver so transferred by other silver not required to be delivered to a United States mint, may make application for the issuance of an amended certificate on Form 7 (Silver) in which the average cost of the necessary inventory shall be the weighted average of (*a*) the cost of silver in his necessary inventory not so delivered, and (*b*) the actual cost of the silver acquired to replace silver in his necessary inventory so delivered to a United States mint.

(3) *Definitions applicable to this paragraph.* As used in this paragraph the term "necessary inventory" means the amount of the necessary inventory stated in the certificate issued under subparagraph (2) of this paragraph; the term "average cost of the necessary inventory" means the average of the cost of the silver in the necessary inventory as stated in the certificate issued under subparagraph (2) of this paragraph; and the term "replacement silver" means silver taken into the necessary inventory to replace silver transferred therefrom, provided the replacement takes place within 45 days before or after such transfer.

(4) *Special rules applicable to this paragraph*—(i) *Basis of cost.* Upon every transfer by a transferor who holds a certificate on Form 7 (Silver) and has filed an agreement on Form 8 (Silver), the cost shall be based upon the average cost of the necessary inventory, except that if replacement silver to replace the interest so transferred is acquired at a cost less than the average cost of the necessary inventory, the actual cost of such replacement silver shall be used as the cost of the interest so transferred.

(ii) *Determination of transfer.* In determining which transfers are transfers from necessary inventory (so as to enable the transferor to claim the benefit of any offsetting loss on replacement silver acquired within 45 days before or after such transfer), due regard shall be given, whenever the transferor's actual inventory exceeds his necessary inventory, to the amount of such excess and the period of its continuance, in relation to the reasonable requirements of his business. The burden shall be upon the transferor to justify any such excess continuously maintained for a period of more than 45 days.

(5) *Computation of cost of replacement silver.* The cost of replacement silver shall be the actual purchase price paid to the vendor, plus allowed expenses, or in the case of replacement silver taken from mines owned by the transferor, the cost shall be the market price of silver at the time of mining. The loss incurred on replacement silver may be offset against any profits resulting from transfers from necessary inventory. Such loss shall be determined by deducting from the cost of the replacement silver the cost, as computed under subparagraph (4) of this paragraph, of the interest transferred from necessary inventory. In lieu of adding allowed expenses to the cost of replacement silver, the transferor may add to the cost the toll or similar charges deducted from a purchase price, based upon the market, in which case he shall not be entitled to abatement attributable (under paragraph (b) of this section) to profits taken into account in such charges.

(6) *Rules applicable to smelter and refiner of silver.* A transferor regularly engaged in the business of smelting and refining silver, in determining the amount of replacement silver and the time of acquisition thereof, may use such estimated figures as are regularly employed by him in preserving in good faith and as nearly as may be practicable a constant inventory. He may use as the cost of replacement silver, where the cost cannot practicably be determined in any other manner, the market price thereof at the time of acquisition; in which case no allowed expenses and no abatement on account of nonmarket profits (under paragraph (b) of this section) shall be claimed for any period prior to the completion of the processing of such silver. Any upward revision of such an estimate of the amount of replacement silver acquired, on the basis of which the transferor's selling policy is correspondingly revised, shall be deemed an acquisition of further replacement silver and the amount and cost thereof shall be determined as of the date of the revision; and any such downward revision shall constitute a shortage of replacement silver until the amount, in fine troy ounces, of the shortage has been made good. All data upon which the estimates and revisions provided in this subparagraph are based shall be considered records of the taxpayer within the meaning of § 45.4895–8.

(7) *Rules applicable to foreign corporate subsidiary or affiliate.* Silver owned by a foreign corporation subsidiary to or affiliated with the taxpayer may at the option of the taxpayer (with the written consent of such foreign corporation) be included in the inventory of the taxpayer; in which case all transfers by such foreign corporation shall be deemed to be transfers by the taxpayer, and as such shall be taxable to the taxpayer, and replacement silver acquired by such foreign corporation shall be included as replacement silver acquired by the taxpayer, but transfers as between the corporations shall not be deemed to be transfers of interests in silver bullion, within the meaning of § 45.4892 and paragraph (b) of § 45.4892–1; and the silver so transferred shall be deemed to have been acquired by the transferee otherwise than for a valuable consideration, within the meaning of paragraph (a)(3) of § 45.4892–1. The election to include a foreign corporate subsidiary or affiliate may be revoked by an instrument in writing signed by the taxpayer and by such foreign corporation and filed with

the district director, in accordance with the provisions of § 45.6091–2, and shall be effective as of the close of the calendar month in which it is filed. Any silver acquired by such foreign corporation after the effective date of the revocation provided in the preceding sentence shall not be deemed to be replacement silver. If, on the effective date of the revocation, the amount of silver owned by such foreign corporation which formed a part of the necesary inventory, does not exceed the amount so owned by it at the time of the election to include such foreign corporation, transfers by the foreign corporation after such revocation are taxable only in accordance with §§ 45.4891–1 and 45.4896–1; and if it does not exceed the amount so owned by it at the time of the election to include the foreign corporation, the next succeeding transfers aggregating the amount of such excess shall be deemed to be transfers from the inventory of the taxpayer and as such shall be taxable to the taxpayer. In determining such amounts, transfers between the taxpayer and the foreign corporate subsidiary or affiliate, whether for spot or future delivery, shall be considered as transfers, but the cost of silver so transferred shall be determined in accordance with paragraph (a) of § 45.4892–1.

§ 45.4894–2 Abatement or refund of tax attributable to profits realized in connection with transactions in silver foreign exchange.

(a) *Hedging transactions in silver foreign exchange*—(1) *In general.* Claim for abatement or refund may be made of so much of the tax imposed by section 4891 as is offset by a contemporaneous loss (i) attributable to a change in the market price of silver bullion and (ii) incurred in a transaction in silver foreign exchange specifically hedged by the interest in silver bullion transferred. See paragraph (l) of § 45.4892–1 for definition of silver foreign exchange.

(2) *Rules applicable*—(i) *When profit and loss are contemporaneous.* The requirement that the profit upon the transfer of an interest in silver bullion must be contemporaneous with the loss upon the silver foreign exchange contract means that the time between the realization of the profit and the loss must be as brief as is reasonably practicable under the circumstances.

(ii) *When interest in silver bullion is a hedge.* A transaction in silver foreign exchange is deemed to have been hedged by an interest in silver bullion when such interest is involved in the fulfillment or liquidation of a contract to sell or purchase silver bullion which contract was entered into for the purpose of offsetting, in whole or in part, the profit or loss which would accrue to the same person on the transaction in silver foreign exchange as a direct result of any change in the market price of silver foreign exchange.

(iii) *Grouping transactions in one operation.* Two or more transactions in silver foreign exchange may be grouped, and two or more transfers of interests in silver bullion may be grouped, when they can be shown to have formed a part of a single hedging operation.

(b) *Elective procedure in case of interrelated hedging operations*—(1) *Application of subparagraph.* The provisions of this subparagraph shall apply to a taxpayer who shall have so elected, as provided in this paragraph, and who, in the regular course of his business, enters into a substantial number of transactions in silver foreign exchange for his own account and as a hedge, from time to time, against his position in such silver foreign exchange buys and sells interest in silver bullion. The making of such election shall constitute an agreement to the determination of the tax upon the profits of such business in accordance with the provisions of this subparagraph and a waiver of any claim to have such tax determined in any other manner. If a taxpayer engages in such business and also in other business involving the purchase and sale of interests in silver bullion not incident to his hedging operations, he shall be entitled to the benefits of this paragraph only upon showing to the satisfaction of the district director that his hedging transactions in interests in silver bullion are so far segregated from his other transactions in such interests, that a separate return can be made with respect to such hedging transactions as hereinafter provided in this paragraph, and that any profits or transactions in interests in silver bullion not a part of such hedging transactions and not incidental thereto, will not be included in such return, but will be taxed under the other provisions of this subpart. In case of such segregation the taxpayer, by making the election under this subparagraph, agrees that any transfer of an interest in silver bullion from one account to the other shall be made at the market price for a similar interest as of the date of such transfer, and shall be treated as though a similar interest had been sold in the open market from one account and a similar interest simultaneously purchased in the open market for the other account.

(2) *Manner of making election.* The election provided in this paragraph shall be made by filing with the district director, in accordance with the provisions of § 45.6091–2, an application on Form 9 (Silver). The district director may require such further proof, in the form of affidavits or otherwise, as he deems necessary. If satisfied that the applicant is entitled to the benefits of this subparagraph the district director shall issue to him a certificate on Form 10 (Silver).

(3) *Election may be revoked.* The election by the taxpayer may be revoked as of the close of any calendar month upon giving to the district director issuing the certificate on Form 10 (Silver) 60 days' written notice of intention to revoke. The certificate may be revoked by the district director upon written notice to the taxpayer and opportunity to be heard. Among other causes, the certificate may be revoked for failure to comply with the regulations in this subpart.

(4) *Memorandum to be filed in case of election.* Upon any transfer of an interest in silver bullion by a taxpayer holding a certificate on Form 10 (Silver), which transfer constitutes a part of his hedging operations or transactions incidental thereto, he shall deliver a memorandum in accordance with § 45.4895–5 (omitting, however, any statement of the cost of the interest transferred, and any computation of tax) and shall state thereon, as a claim for abatement of the entire amount of the tax which would otherwise be payable, the fact that he holds such certificate and that the transfer constitutes a part of his hedging operations. No claim for abatement on Form 843 (Silver) need be attached. If satisfied that the statements are true, the district director shall proceed in accordance with § 45.4895–6. Upon cancellation of a 1-cent stamp, if any (see § 45.4895–1), the transferee is relieved of liability for any tax subsequently found due, but the transferor remains liable for the tax computed as hereinafter provided.

(5) *Burden of proof.* The burden shall be upon the taxpayer to show, with respect to any transfer of an interest in silver bullion, that the transfer constituted a part of a hedging operation against transactions in silver foreign exchange or constituted a transaction properly incidental thereto. In determining what transactions in interests in silver bullion are hedges against transactions in silver foreign exchange or transactions incidental thereto, the taxpayer shall include only transactions within the following tolerances: The excess of the total long or short position in interests in silver bullion and in silver foreign exchange over the total short or long position shall not, for a period of more than two consecutive business days, be consistently greater than 20 percent of the lesser total, nor for any period of more than 7 consecutive business days consistently greater than 5 percent, nor for any period of a calendar month consistently greater than 1 percent. In determining the excesses set forth in the preceding sentence, the taxpayer shall apply to each silver foreign exchange the ratio to silver bullion which is customarily applied in hedging operations against such silver foreign exchange. A taxpayer who is unable to determine his actual position, by reason of unavoidable delay in reporting transactions by branch offices or agents, shall be deemed to comply with the foregoing tolerances if his estimated position complies therewith, based on his usual volume of unreported transactions. To the extent that a taxpayer may fail to comply with either of the requirements of this subparagraph, he shall not be entitled to the benefits of this subparagraph or to abatement under this section with respect to transfers of interests in silver bullion.

(6) *Monthly return required.* A taxpayer who has been furnished a certificate on Form 10 (Silver) entitling him to the benefits of this paragraph shall file a return on Form 11 (Silver) for each calendar month, including therein all transactions in interests in silver bullion during the month constituting a part of his hedging operations or transactions incidental thereto. Such returns shall be filed with the district director, in accordance with the provisions of § 45.-

6091–2, on or before the 15th day of the succeeding calendar month, except that a return filed by a taxpayer's branch office in a foreign country shall be filed on or before the 15th day of the second succeeding month. The total tax shown on the return shall be paid to the district director at the time the return is filed.

(7) *Records to be kept.* The taxpayer shall keep the records required by § 45.4895–8, and shall also retain and make available for inspection for a like period of time records of all transactions in silver foreign exchange.

(8) *Conditions for filing Form 11A (Silver).* A taxpayer may treat a part only of his transactions in silver foreign exchange as hedged by his transactions in interests in silver bullion; in which event such part only of his transactions in silver foreign exchange shall be included in the schedules on Form 11A (Silver). The taxpayer shall execute an affidavit on the same day on which any interest in silver bullion is either purchased or sold or on the succeeding day. Such affidavit shall refer to such purchase or sale, stating that it is executed on the same or succeeding day, and shall describe the transactions in silver bullion thereby hedged with sufficient precision to avoid the possibility of later substitution. The affidavit shall be annexed to the return (Form 11 (Silver)) for the month in which the purchase or sale was made.

(9) *Exception on account of foreign branch offices.* A taxpayer having branch offices in foreign countries may exclude from his return on Form 11 (Silver) transactions in interests in silver bullion effected by or for the account of such branch offices: *Provided,* That he designates the branch offices concerned: and *Provided,* That the accounts of each such branch office be kept entirely separate: and *Provided,* That each transfer of an interest in silver bullion by such branch office either be reported by a separate memorandum pursuant to § 45.4895–5, or be included in a return to be filed by any such branch office pursuant to this paragraph. The taxpayer, in designating the branch offices concerned, shall specify which method is to be followed. Such designation and such specification may be changed as of the close of any month.

(10) *Computation of the tax.* The tax shall be computed as follows:

(i) The cost of a net long position or the price of a net short position in interests in silver bullion as of the opening of the month shall be the total cost or the total price (less allowed expenses), as the case may be, of the most recent purchases or sales of interests in silver bullion aggregating in the troy ounces the amount of such net position. Allowed expenses incurred prior to the effective date of the taxpayer's election under this paragraph, in connection with interests in silver bullion constituting his net long position, if any, on such effective date, may be added to the cost thereof.

(ii) All purchases of interests in silver bullion during the month shall be reported, together with the aggregate cost thereof; and there shall be added thereto the net long position at the opening of the month, if any, at the cost thereof. All transfers of such interests during the month shall be reported, together with the aggregate price received therefor (less allowed expenses); and there shall be added thereto the net short position at the opening of the month, if any, at the price thereof.

(iii) To the extent of the smaller of the two aggregates in subdivision (ii) of this subparagraph, determined in fine troy ounces, all transactions shall be deemed to be transactions completed within the month, and the opening net position shall be deemed to have been liquidated during the month, and profit or loss thereon shall be deemed to have been realized during the month. To the extent that one of such aggregates exceeds the other, such excess shall constitute the net long or short position, as the case may be, at the close of the month; and the cost or price thereof shall be determined in accordance with subdivision (i) of this subparagraph.

(iv) The cost or price of such net closing position shall be deducted from the aggregate cost or price specified in subdivision (ii) of this subparagraph and the balance shall be treated as the cost or price of the purchases or sales completed during the month. After making such deduction, the excess of the aggregate price, if any, over the aggregate cost, is the profit for the month on transactions in interests in silver bullion; and, except as offset by losses in transactions in silver foreign exchange, or by aggregate net losses carried forward from previous months, as hereinafter provided, is subject to tax at the rate of 50 percent.

(v) A purchase or sale for future delivery shall be included as a transaction effected in the month when the contract for such delivery is made. The cost or price thereof is the contract price, without adjustment for any difference in market price between spot and future silver.

(vi) Allowed expenses shall be reported for the month during which payments are actually made, and shall be deducted from the aggregate selling price for that month.

(vii) In case the taxpayer has positions in interests in silver bullion in more than one market during the month, the cost or price of his opening net positions may be determined separately, and separate schedules attached to the return for the transactions during the month in the various markets, and the net profit or loss on all such schedules shown as the net profit or loss for the month on transactions in interests in silver bullion.

(viii) There shall be attached to the return a separate schedule on Form 11A (Silver) for each silver foreign exchange (see paragraph (l) of § 45.4892–1 for definition) in which the taxpayer had a position at any time during the month. The net profit or loss, and the cost or price of the net position at the opening and at the close of the month shall be computed for each such exchange in the same manner as in the case of interests in silver bullion, except that no allowed expenses shall be included.

(ix) The aggregate net profit or loss for the month is the difference between the total of the net profits and the total of the net losses shown on the return and on the annexed schedules.

(x) An aggregate net loss for the month may be carried forward and applied against an aggregate net profit for the succeeding month, and any amount thereof not so applied may be applied against an aggregate net profit for the second succeeding month. No aggregate net loss for a month shall be carried forward more than 2 months.

(xi) The taxable profit for the month is the aggregate net profit minus any aggregate net loss carried forward from either or both of the 2 preceding months in accordance with subdivision (x) of this subparagraph; or the profit for the month on transactions in interests in silver bullion, whichever is less.

§ 45.4894–3 Procedure; abatement of tax paid by stamps on memorandum.

(a) *Preparation of Form 843 (Silver).* When the tax on any transfer paid by stamps affixed to the memorandum required by § 45.4895–5 is subject to abatement or refund under section 4894 and this subpart, a claim for abatement on Form 843 (Silver) may be prepared in duplicate, in accordance with § 45.4894–7. The original of the claim (Form 843 (Silver)) shall be attached to the duplicate of the memorandum and filed with the district director, in accordance with the provisions of § 45.6091–2. The duplicate shall be attached to the stamped memorandum and the procedure outlined in §§ 45.4895 and 45.4896 shall be observed.

(b) *Marking and stamping memorandum in case of claim.* The memorandum shall be marked "claim in abatement filed herewith" and shall show the amount of tax abatement of which is claimed. Stamps need be affixed only for the balance of the tax, but if the district director has any reason to doubt the correctness of the claim for abatement, he may refuse to cancel the stamps until he is satisfied of the correctness of the claim or until the necessary additional stamps are affixed. The burden of proof is upon the person making the claim to establish definitely every fact upon which it depends.

§ 45.4894–4 Procedure; abatement of tax shown on return.

When all or any part of the tax shown on any return required by the provisions of § 45.4895–7 is subject to abatement or refund under section 4894 and this subpart, there may be filed with the return a claim for abatement on Form 843 (Silver) for each such transfer. Such form shall be filed in duplicate and the form of the procedure set forth in § 45.4894–3 shall be observed. The amount of the tax abatement of which is claimed shall be deducted from the total tax shown on the return, and payment of the balance, if any, shall be made in accordance with § 45.4895–7.

§ 45.4894–5 Disallowance of claim.

If any claim for abatement is disallowed, in whole or in part, the additional tax found due must be paid. The transferee is not liable for additional tax on transfers with respect to which stamps have been canceled.

§ 45.4894–6 Claim for refund.

When tax which has been paid on any transfer is subject to refund under section 4894 and this subpart, a claim for refund in duplicate, on Form 843, may be filed by the person who paid the tax. The claim shall be filed with the district director who canceled the stamps, or to whom the tax was paid. The claim must be filed within 3 years from the date of payment of the tax.

§ 45.4894–7 Form of claim.

Each claim must be made on the prescribed form and must state in detail all the facts necessary to establish its correctness. Each claim must contain a written declaration that it is made under the penalties of perjury. (See §§ 45.6065 and 45.6065–1.)

§ 45.4895 Statutory provisions; stamps, memorandum, etc.

SEC. 4895. *Stamps*—(a) *Affixing of stamps.* On every transfer subject to the tax imposed by section 4891, there shall be made and delivered by the transferor to the transferee a memorandum to which there shall be affixed lawful stamps in value equal to the tax thereon.

(b) *Memorandum.* Every such memorandum shall show the date thereof, the names and addresses of the transferor and transferee, the interest in silver bullion to which it refers, the price for which such interest is or is to be transferred, and the cost, thereof and the allowed expenses.

(c) *Cancellation of stamps.* Stamps affixed under this section shall be canceled (in lieu of the manner provided in subtitle F) by such officers and in such manner as regulations under this subchapter shall prescribe. Such officers shall cancel such stamps only if it appears that the proper tax is being paid, and, when stamps with respect to any transfer are so canceled, the transferor and not the transferee shall be liable for any additional tax found due or penalty with respect to such transfer.

[Sec. 4895 as originally enacted and in effect July 1, 1960]

§ 45.4895–1 Affixing of stamps.

If a transfer, described in paragraph (a) of § 45.4891–1, evidenced by a memorandum as described in § 45.4895–5 or shown on a return as provided by § 45.4895–7, is taxable, stamps in value equal to the amount of the tax shall be affixed to the original of the memorandum or return before delivery to the transferee, except as provided in § 45.4895–6. If no tax is due, a one-cent stamp may be affixed for the purpose of obtaining a cancellation for the protection of the transferee. The person affixing the stamps shall immediately write or stamp in ink on the stamps, or perforate them, to show his initials and the day, month, and year on which affixed.

§ 45.4895–2 Silver tax stamps issued.

Under authority conferred upon the Secretary or his delegate in section 6801 the following adhesive stamps have been prepared:

Documentary stamps, overprinted by the Government with the words "Silver tax": 1 cent, 2 cents, 3 cents, 4 cents, 5 cents, 8 cents, 10 cents, 20 cents, 25 cents, 40 cents, 50 cents, 80 cents, $1, $2, $3, $4, $5, $10, $20, $30, $50, $60, $100, $500, $1,000.

§ 45.4895–3 Where stamps may be purchased and where requisition forms for the purchase of stamps may be obtained.

(a) *Where stamps may be purchased.* Silver tax stamps for use in payment of the tax imposed by section 4891 may be purchased from district directors of internal revenue.

(b) *Requisitions.* Requisitions for the purchase of such stamps shall be made on Form 9 (Silver). Copies of the form may be obtained from any district director.

§ 45.4895–4 Use of stamps.

Whenever feasible the tax imposed by section 4891 shall be paid by the use of a single stamp. If a stamp of the proper denomination to pay the tax due on a transfer is not readily available, the smallest practical number of stamps shall be used. A stamp affixed to an instrument cannot lawfully be removed therefrom and affixed to another instrument requiring a stamp (see section 7208 (§ 45.7208), relating to penalties). Ordinary postage stamps will not be accepted for the payment of this or any internal revenue tax.

§ 45.4895–5 Memorandum of transfer.

(a) *Data to be supplied in memorandum.* On every transfer of an interest in silver bullion, whether or not subject to tax, the transferor shall, except as provided in paragraph (c) of this section and § 45.4895–7, deliver to the transferee a memorandum on Form 2 (Silver), in duplicate, showing:

(1) The date of the memorandum and the date of the transfer covered thereby.

(2) The name and address of the transferor.

(3) The name and address of the transferee.

(4) The interest in silver bullion which is or is to be transferred.

(5) The date and manner of acquisition (or production when that is the basic date).

(6) The price for which such interest is or is to be transferred.

(7) The cost of such interest. The facts upon which the cost is based shall be stated in detail.

(8) The allowed expenses, if any, itemized.

(b) *Verification.* For rules relating to verification of documents generally, see §§ 45.6065 and 45.6065–1.

(c) *Exceptions.* (1) No memorandum of transfer is required when scrap silver is transferred, in lots not exceeding in the aggregate 300 fine troy ounces within any 10-day period, to any registered jeweler, silversmith, refiner, or other person regularly engaged in the business of furnishing silver for industrial, professional or artistic use.

(2) No memorandum of transfer is required from a transfer of material which was not considered to be silver bullion by reason of its processed form and/or silver content when originally purchased by such transferor for use, when and if he returns such material in whole or in part to any registered dealer or refiner regularly engaged in the business of furnishing silver for industrial, professional, or artistic use, for credit or for the purpose of refining or reprocessing, provided the refining or reprocessing charge is equal to or in excess of the rise, if any, in the market price of silver bullion during the time the material was held, and further provided, the material returned in accordance with the provisions of this subparagraph is identified as the same material in whole or in part as the material originally purchased.

(d) *Delivery of memorandum to the district director.* (1) Except as provided in subparagraph (2) of this paragraph, the memorandum, in duplicate, shall be delivered to the district director within 30 days from the date of the transfer. The 30-day period runs from the date on which the agreement to sell is made. In the case of a forward sale the memorandum shall be delivered to the district director within 30 days from the date of delivery of the interest in fulfillment thereof. If a forward contract is settled without delivery of the interest, the memorandum shall be delivered within 30 days from such settlement.

(2) In the case of transfers outside of the United States, the memorandum, in duplicate, together with the amount of the tax, shall be mailed within the applicable 30-day period to the district director, for the affixing and cancellation of stamps.

(3) For regulations relating to the place for filing the memorandum, see § 45.6091–2.

§ 45.4895–6 Action of district director; cancellation of stamps.

(a) *Method of cancellation.* Upon receipt of the memorandum in duplicate, if no stamps are affixed, the district director shall, if satisfied that no tax is due, write or stamp on the original, or perforate it, to show his name and the date, and return the original to the person from whom received. If stamps are affixed, he shall, if satisfied that the stamps represent the proper amount of tax (or that no tax is due, in case the stamp is of the value of 1 cent), cancel the stamps by writing or stamping on the stamps in ink, or perforating them, to show his name and the date, and return the stamped memorandum to the person from whom received. In every case the district director shall retain the duplicate, noting thereon the date of receipt by him and the amount of stamps, if any, affixed to the original.

(b) *Investigation prior to cancellation.* The district director may, before cancelling the stamps or returning an unstamped original, in addition to the examination of the memorandum, make such investigation and require such information as he deems necessary to satisfy him that the memorandum is true and complete in every respect and that no additional tax is due.

§ 45.4895–7 Payment by producers and registered dealers.

In the case of any transfer (a) by a producer of an interest in silver bullion produced by him from materials containing silver which has not previously entered into industrial, commercial, or monetary use, or (b) by a person registered in accordance with paragraph (a)

(2) of § 45.4894–1, of an interest in silver bullion transferred to him in the regular course of his business of furnishing silver for industrial, professional, or artistic use, the tax, if any, may, at the option of the parties to the transfer, be paid by the affixing of stamps to a return to be filed with the district director on or before the last day of the month following the month in which the transfer is completed. The return shall be made in duplicate, on Form 3 (Silver), and shall set forth all the facts enumerated in paragraph (a) of § 45.4895–5, with respect to each such transfer for which no memorandum in accordance with § 45.4895–5 is delivered to the transferee, except that upon application and proper showing to the district director he may generally, or in individual cases, as he deems appropriate, waive such of the information as he determines to be unnecessary. If abatement is claimed of all or any part of the tax on any transfer, the amount so claimed shall be specified, and a claim for abatement, prepared in accordance with paragraph (i) of § 45.4894–1, shall be attached to the return. The taxpayer shall affix to the return, in the manner specified in §§ 45.4895–1 and 45.4895–4, stamps in value equal to the total amount of tax shown on the return less the total amount of the claims for abatement. If the district director is satisfied that the stamps affixed to the return represent the proper amount of tax, he shall cancel the stamps as provided in § 45.4895–6, return the original and one copy of each claim for abatement to the taxpayer, and retain the duplicate and one copy of each claim. No memorandum in accordance with § 45.4895–5 is required for any transfer included in a return under this section, but the transferee remains liable for any tax or additional tax found due, until the stamps on the return are canceled. For regulations relating to the place for filing the return, see § 45.6091–2.

§ 45.4895–8 Records.

Each party to every transfer of an interest in silver bullion within the scope of section 4891 shall keep an accurate and complete record of every such transfer whether taxable or not. The record of a transferee shall be so kept that on a subsequent transfer the actual cost to him of the particular interest transferred can be determined. Such records, and the memorandum delivered to the transferee, shall be retained for a period of at least 3 years from the date the tax became due, and must be available for inspection at all times by internal revenue officers. The books of every person liable to the tax shall be open for inspection by Goverment officers at all times.

§ 45.4896 Statutory provisions; applicability of tax.

SEC. 4896. *Applicability*—(a) *Territorial extent.* The provisions of this subchapter shall extend to all transfers in the United States of any interest in silver bullion, and to all such transfers outside the United States if either party thereto is a resident of the United States or is a citizen of the United States who has been a resident thereof within 3 months before the date of the transfer or if such silver bullion or interest therein is situated in the United States.

(b) *Transfers to the United States Government.* The provisions of this subchapter shall extend to transfers to the United States Government (the tax in such cases to be payable by the transferor), but shall not extend to transfers of silver bullion by deposit or delivery at a United States mint under proclamation by the President or in compliance with any Executive order issued pursuant to section 7 of the Silver Purchase Act of 1934 (48 Stat. 1179; 31 U.S.C. 316a).

[Sec. 4896 as originally enacted and in effect July 1, 1960]

§ 45.4896–1 Applicability of tax.

(a) *Territorial extent.* The tax imposed by section 4891 applies (1) to every transfer in the United States of any interest in silver bullion, and (2) to every transfer outside the United States of any such interest (i) if either party thereto is a resident of the United States, or (ii) if either party to the transfer is a citizen of the United States who has been a resident of the United States at any time during the 3 months immediately preceding the date of the transfer, or (iii) if the silver bullion or interest therein which is transferred is situated in the United States at the time the transfer is made or agreed to be made.

(b) *Transfers to the United States Government.* Transfers of silver bullion or any interest therein to the United States Government are taxable except as provided in paragraph (c) of this section. In case of transfers to the United States Government the tax is payable by the transferor.

(c) *Exempt transfers.* The tax does not apply to transfers of silver bullion by deposit or delivery at a United States mint (1) in compliance with any Executive order issued pursuant to section 7 of the Silver Purchase Act of 1934 (48 Stat. 1179; 31 U.S.C. 316(a)), or (2) to transfers by the United States Government.

§ 45.4897 Statutory provisions; cross references.

SEC. 4897. *Cross references.* For penalties and other general and administrative provisions applicable to this subchapter, see subtitle F.

[Sec. 4897 as originally enacted and in effect July 1, 1960]

§ 45.4897–1 Cross references.

(a) For penalties for offenses relating to stamps, see § 45.7208.

(b) For penalty for unauthorized use or sale of stamps, see § 45.7209.

(c) For penalties for other offenses relating to stamps, see § 45.7271.

(d) For penalty for failure to register as required by paragraph (a)(2) of § 45.4894–1, see § 45.7272.

(e) For other administrative provisions relating to the tax imposed by section 4891, see Subpart L of this part.

Subpart K—General Provisions Relating to Occupational Taxes

§ 45.4901 Statutory provisions; payment of tax.

SEC. 4901. *Payment of tax*—(a) *Condition precedent to carrying on certain business.* No person shall be engaged in or carry on any trade or business subject to the tax imposed by section * * * 4461(2) [4461(a)(2)] (coin-operated gaming devices), * * * until he has paid the special tax therefor.

(b) *Computation.* All special taxes shall be imposed as of on the first day of July in each year, or on commencing any trade or business on which such tax is imposed. In the former case the tax shall be reckoned for 1 year, and in the latter case it shall be reckoned proportionately, from the first day of the month in which the liability to a special tax commenced, to and including the 30th day of June following.

(c) *How paid*—(1) *Stamp.* All special taxes imposed by law shall be paid by stamps denoting the tax.

(2) *Assessment.* For authority of the Secretary or his delegate to make assessments where the special taxes have not been duly paid by stamp at the time and in the manner provided by law, see subtitle F.

[Sec. 4901 as originally enacted and in effect July 1, 1960]

§ 45.4901–1 Payment of special tax.

(a) *Condition precedent to carrying on certain business.* No person shall maintain for use or permit the use of, on any place or premises occupied by him, a coin-operated amusement or gaming device defined in section 4462(a)(2) (see paragraphs (b) and (c) of § 45.4462–1) until he has filed a return on Form 11–B and paid the special tax imposed by section 4461(a)(2). For other requirements relating to special taxes imposed by sections 4461, 4471, 4821, and 4841, see §§ 45.7011 and 45.7011–1.

(b) *Computation of special tax.* The tax year begins July 1, and ends June 30 of the following calendar year. Persons commencing business between August 1 and June 30 (both dates inclusive) shall pay a proportionate part of the annual tax. The term "commencing business" in the case of a coin-operated amusement and gaming device means the initial maintenance for use on the taxpayer's premises of such a device. Persons in business for only a portion of a month are liable for tax for the full month, i.e., a person first becoming subject to a special tax on, for example, the 25th day of a month, is liable for tax for the entire month. If the business is discontinued prior to the end of the taxable year, the liability is not thereby reduced.

(c) *Tax payment evidenced by a special tax stamp.* (1) Upon receipt of a return on Form 11 or Form 11–B, together with remittance of the full amount of tax due, the district director will issue a special tax stamp, or stamps, as evidence of payment of the special tax.

(2) District directors will distinctly write or print on the stamp before it is delivered or mailed to the taxpayer the following information: (i) the taxpayer's registered name, (ii) the business address of the taxpayer, and (iii) such other information as is called for by the form. Special tax stamps will be transmitted by ordinary mail, unless it is requested that they be transmitted by registered or certified mail in which case the additional cost to cover fees shall be remitted with the return.

(3) District directors and their collection officers are forbidden to issue re-

ceipts in lieu of stamps representing the payment of special taxes.

(d) *Cross references.* For provisions relating to Form 11 or Form 11–B, see § 45.6001–11 (relating to returns), § 45.6071–2 (relating to time for filing returns), § 45.6091–1 (relating to place for filing returns), and paragraph (g) of § 45.6151–1 (relating to time and place for paying tax shown on returns).

§ 45.4902 Statutory provisions; liability of partners.

SEC. 4902. *Liability of partners.* Any number of persons doing business in copartnership at any one place shall be required to pay but one special tax.

[Sec. 4902 as originally enacted and in effect July 1, 1960]

§ 45.4902–1 Partnership liability.

Any number of persons doing business in copartnership shall be required to pay but one special tax. The district director may issue a special tax stamp to a copartnership in a firm or trade name, provided the names and addresses of all members of the partnership are disclosed on Form 11 or Form 11–B.

§ 45.4903 Statutory provisions; liability in case of business in more than one location.

SEC. 4903. *Liability in case of business in more than one location.* The payment of the special tax imposed * * * shall not exempt from an additional special tax the person carrying on a trade or business in any other place than that stated in the register kept in the office of the official in charge of the internal revenue district; but nothing herein contained shall require a special tax for the storage of goods, wares, or merchandise in other places than the place of business, nor, except as provided in this subtitle, for the sale by manufacturers or producers of their own goods, wares, and merchandise, at the place of production or manufacture, and at their principal office or place of business, provided no goods, wares, or merchandise shall be kept except as samples at said office or place of business.

[Sec. 4903 as originally enacted and in effect July 1, 1960]

§ 45.4903–1 Each place taxable.

Special tax shall be paid for each place of business, except that a manufacturer who pays special tax for the place of production may, without incurring additional liability, sell products of his own manufacture at his principal office or place of business, provided no products other than samples are kept there.

§ 45.4904 Statutory provisions; liability in case of different businesses of same ownership and location.

SEC. 4904. *Liability in case of different businesses of same ownership and location.* Whenever more than one of the pursuits or occupations described in this subtitle are carried on in the same place by the same person at the same time, except as otherwise provided in this subtitle, the tax shall be paid for each according to the rates severally prescribed.

[Sec. 4904 as originally enacted and in effect July 1, 1960]

§ 45.4904–1 Each business taxable.

Where more than one taxable business is conducted by the same person at the same address, special tax for each business must be paid. But as to manufacturers see section 4903 and the regulations thereunder. (See also §§ 45.4821–2 and 45.4841–2.)

§ 45.4905 Statutory provisions; liability in case of death or change of location.

SEC. 4905. *Liability in case of death or change of location* — (a) *Requirements.* When any person who has paid the special tax for any trade or business dies, his wife or child, or executors or administrators or other legal representatives, may occupy the house or premises, and in like manner carry on, for the residue of the term for which the tax is paid, the same trade or business as the deceased before carried on, in the same house and upon the same premises, without the payment of any additional tax. When any person removes from the house or premises for which any trade or business was taxed to any other place, he may carry on the trade or business specified in the register kept in the office of the official in charge of the internal revenue district at the place to which he removes, without the payment of any additional tax: *Provided,* That all cases of death, change, or removal, as aforesaid, with the name of the successor to any person deceased, or of the person making such change or removal, shall be registered with the Secretary or his delegate, under regulations to be prescribed by the Secretary or his delegate.

(b) *Registration.* (1) For registration in case of * * *, playing cards, * * *, and white phosphorus matches, see sections * * * 4455 * * *, and 4804(d), respectively.

(2) For other provisions relating to registration, see subtitle F.

[Sec. 4905 as originally enacted and in effect July 1, 1960]

§ 45.4905–1 Change of ownership.

(a) *Changes through death.* Whenever any person who has paid the special tax imposed by section 4461, 4471, 4821 or 4841 dies, the surviving spouse or child, or executor or administrator, or other legal representative, may carry on such business for the remainder of the term for which such special tax has been paid without any additional payment, subject to the conditions hereinafter set forth. If the surviving spouse or child, or executor or administrator, or other legal representative of the deceased taxpayer continues the business, such person shall within 30 days after the date of the death of the taxpayer execute a return on Form 11 or Form 11–B, whichever is applicable. Such return shall show the name of the deceased taxpayer, together with all other information required to be reported thereon, and the stamp issued to such taxpayer shall be submitted with the return for proper notation by the district director.

(b) *Changes from other causes.* A receiver or trustee in bankruptcy may continue the business under the stamp issued to the taxpayer at the place and for the period for which the special tax was paid. An assignee for the benefit of creditors may continue business under his assignor's special tax stamp without incurring additional special tax liability. In cases such as set forth in this paragraph the change shall be registered with the district director in a manner similar to that required by paragraph (a) of this section.

(c) *Changes in firm.* When one or more members of a firm or partnership withdraw, the business may be continued by the remaining partner or partners under the same special tax stamp for the remainder of the period for which the stamp was issued to the firm or partnership. The change, however, shall be registered in the same manner as required in paragraph (a) of this section. If new partners are taken into a firm, the new firm so constituted may not carry on business under the special tax stamp of the old firm. The new firm shall make a return on Form 11 or Form 11–B, whichever is applicable, and pay the special tax imposed by the applicable section (sections 4461, 4471, 4821 or 4841, as the case may be) reckoned from the first day of the month in which it began business, even though the name of such firm be the same as that of the old. If the members of a partnership, which has paid the special tax, form a corporation to continue the business, a new special tax stamp must be obtained in the name of the corporation.

(d) *Change in corporation.* If a corporation changes its name, no additional tax is due, provided the change in name is registered with the district director in the manner required by paragraph (a) of this section. An increase in the capital stock of a corporation does not create a new special tax liability if the laws of the State under which it is incorporated permit such increase without the formation of a new corporation. A stockholder in a corporation, who after its dissolution continues the business, incurs liability for the special tax unless he already has a special tax stamp obtained in respect of activities conducted as a sole proprietor.

§ 45.4905–2 Change of address.

(a) *Procedure by taxpayer.* Whenever a taxpayer changes his business address to a location other than that specified in his last return on Form 11 or Form 11–B, he shall, within 30 days after the date of such change, register the change with the district director from whom the special tax stamp was purchased by filing a new return, Form 11 or Form 11–B, designated "Supplemental Return", and setting forth the new address and the date of change. The taxpayer's special tax stamp shall accompany the supplemental return for proper notation by the district director. As to liability in case of failure to register a change of address within 30 days, see § 45.4905–3.

(b) *Procedure by district director*— (1) *Removal within district.* When registration of a change of address within the same district is made by a taxpayer in the manner specified in paragraph (a) of this section, the district director, if necessary, will enter on his records the new address and the date of change. If the information disclosed on the supplemental return is such as to require a change on the face of the special tax stamp, the district director will make the necessary change and return the stamp to the taxpayer for posting as provided in § 45.6806.

(2) *Removal to another district.* In case of removal of the taxpayer's place

of business to another district, the district director after noting the transfer on his records, shall transmit the special tax stamp to the district director for the district to which such business was removed. The latter will make proper entry on his records, as in the case of an original registration in his district, correct the address on the stamp, if necessary, and also note thereon his name, title, date, and district, and then forward the stamp to the taxpayer for posting as provided in § 45.6806.

§ 45.4905–3 Liability for failure to register change.

A person succeeding to and carrying on a business for which the special tax has been paid, or a taxpayer who relocates his business, without registering the change as provided in §§ 45.4905–1 and 45.4905–2 will be liable to an additional tax and to the interest and additions to the tax prescribed in §§ 301.6601, 301.6601–1, 301.6651, and 301.6651–1 of this chapter (Regulations on Procedure and Administration).

§ 45.4906 Statutory provisions; application of State laws.

SEC. 4906. *Application of State laws.* The payment of any special tax imposed by this subtitle for carrying on any trade or business shall not be held to exempt any person from any penalty or punishment provided by the laws of any State for carrying on the same within such State, or in any manner to authorize the commencement or continuance of such trade or business contrary to the laws of such State or in places prohibited by municipal law; nor shall the payment of any such tax be held to prohibit any State from placing a duty or tax on the same trade or business, for State or other purposes.

[Sec. 4906 as originally enacted and in effect July 1, 1960]

§ 45.4906–1 State laws applicable.

Payment of special tax under Federal law confers no right or privilege to conduct business contrary to State law. The holder of a special-tax stamp issued by the Federal Government may still be punishable under a State law prohibiting or regulating the manufacture or sale of adulterated or process or renovated butter. On the other hand, compliance with State law affords no immunity under Federal law. Persons who engage in business in violation of the law of a State are, nevertheless, required to pay special tax as imposed under the internal revenue laws of the United States.

§ 45.4907 Statutory provisions; Federal agencies or instrumentalities.

SEC. 4907. *Federal agencies or instrumentalities.* Any special tax imposed by this subtitle * * * shall apply to any agency or instrumentality of the United States unless such agency or instrumentality is granted by statute a specific exemption from such tax.

[Sec. 4907 as originally enacted and in effect July 1, 1960]

§ 45.4907–1 Federal agencies or instrumentalities.

Any agency or instrumentality of the United States, such as an Army exchange, Navy exchange, etc., is liable to a special tax unless granted by statute a specific exemption therefrom.

Subpart L—Administrative Provisions

§ 45.6001 Statutory provisions; notice or regulations requiring records, statements, and special returns.

SEC. 6001. *Notice or regulations requiring records, statements, and special returns.* Every person liable for any tax imposed by this title, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary or his delegate may from time to time prescribe. Whenever in the judgment of the Secretary or his delegate it is necessary, he may require any person, by notice served upon such person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary or his delegate deems sufficient to show whether or not such person is liable for tax under this title.

[Sec. 6001 as originally enacted and in effect July 1, 1960]

§ 45.6001–1 Records in general.

(a) *Form of records.* The records required by the regulations in this part shall be kept accurately, but no particular form is required for keeping such records. See, however, the requirements in § 45.4804–10 (relating to form for daily record in the case of manufacturers of white phosphorus matches) and §§ 45.4872–1 to 45.4872–4, inclusive (relating to records regarding sales of cotton for future delivery). Such forms and systems of accounting shall be used as will enable the district director to ascertain whether liability for tax is incurred and, if so, the amount thereof.

(b) *Copies of returns, schedules, and statements.* Every person who is required, by the regulations in this part or by instructions applicable to any form prescribed thereunder, to keep any copy of any return, schedule, statement, or other document, shall keep such copy as a part of his records.

(c) *Records of claimants.* Any person who, pursuant to the regulations in this part, claims a refund, credit, or abatement, shall keep a complete and detailed record with respect to the tax, interest, addition to the tax, additional amount, or assessable penalty to which the claim relates. Such record shall include any records required of the claimant by paragraph (b) of this section and by §§ 45.6001–2 to 45.6001–5, inclusive, which relate to the claim.

(d) *Place and period for retention of records.* (1) All records required by the regulations in this part shall be maintained, by the person required to keep them, at one or more convenient and safe locations accessible to internal revenue officers, and shall at all times be available for inspection by such officers.

(2) Except as otherwise provided in the following sentence, every person required by the regulations in this part to keep records in respect of a tax (whether or not such person incurs liability for such tax) shall retain such records for at least three years after the due date of such tax for the return period to which the records relate, or the date such tax is paid, whichever is the later. The records of claimants required by paragraph (c) of this section shall be retained for a period of at least three years after the date the claim is filed.

(e) *Microfilm reproductions.* General books of account, such as cash books, journals, voucher registers, ledgers, etc., shall be maintained and preserved in their original form. However, microfilm reproductions of supporting records of details, such as invoices, vouchers, production reports, sales records, certificates, proofs of exportation, etc., may be kept in lieu of the original records provided the person required to keep such records (1) retains such microfilmed copies for the period specified in paragraph (d) of this section, (2) provides adequate facilities for the preservation of such films and for the ready inspection and location thereof, including a projector for viewing such records in the event inspection is necessary for tax purposes, and (3) makes any transcription which may be required of the information contained on the microfilm.

§ 45.6001–2 Records required to be kept by manufacturers of adulterated butter, process or renovated butter, or filled cheese.

(a) *Manner of keeping.* (1) A manufacturer shall keep at his place of business separate records of adulterated butter, of process or renovated butter, and of filled cheese. If the record is kept as hereinafter prescribed in the manufacturer's own books or in other convenient form no other record will be necessary. Care should be taken to exclude from the record any product other than (i) adulterated butter, (ii) process or renovated butter, (iii) filled cheese, and (iv) the materials or ingredients used in the manufacture of each product.

(2) Entry shall be made not later than the day following that on which each transaction occurred. Quantities reported shall be as indicated by the tax-paid stamps affixed to the packages, except that where the product is withdrawn free of tax for export, or where the product is returned to the factory, the actual quantity will be recorded. A fraction of a pound shall be accounted as a pound.

(b) *Items.* The record must show:

(1) The number of pounds of each material or ingredient used in the production of adulterated butter, process or renovated butter, or filled cheese, and the number of pounds of such materials used for other purposes.

(2) The number of pounds of each product produced.

(3) The number of pounds in each lot disposed of, the name of the consignee, the address to which delivered, and the date of shipment.

(4) The number of pounds in each lot returned to the factory, the name of the person by whom returned, the address from which returned, and the date of receipt.

(5) The number of pounds reworked, disposed of as grease, dumped, or otherwise destroyed.

(6) The total value of tax stamps purchased and used.

(c) *Transactions.* The following rules will apply:

(1) *Samples.* Sample packages of tax-paid adulterated butter, process or renovated butter or filled cheese distributed

gratuitously shall be recorded in the same manner as if the packages were sold.

(2) *Transfers to self.* Where adulterated butter, process or renovated butter, or filled cheese is transferred by a manufacturer to himself as a wholesale or retail dealer, the transaction shall be recorded in the same manner as a transfer to another person.

(3) *Sales to chain stores.* Where adulterated butter, process or renovated butter, or filled cheese is shipped to one person doing business at different places, as in the case of chain stores, the deliveries to each address shall be recorded separately.

(4) *Drop shipments.* Where a manufacturer receives an order from one person to ship adulterated butter, process or renovated butter, or filled cheese to another, the transaction shall be recorded in the name and address of the consignee, followed by "acc't of" and the name and address of the person for whose account the shipment was made. A manufacturer shall not record consignments on orders in the names of agents, solicitors, or other persons transmitting an order for another party. (See paragraph (c)(5) of § 45.4821–3 as to liability of agents or brokers soliciting orders for adulterated butter.)

§ 45.6001–3 Records required to be kept by wholesale dealers in adulterated butter.

(a) *Manner of keeping.* (1) A wholesale dealer shall keep at his place of business records of transactions in adulterated butter. If the record is kept as hereinafter prescribed in the dealer's own books or in other convenient form no other record will be necessary. Care should be taken to exclude from the record any product other than taxpaid and branded adulterated butter.

(2) Entry shall be made not later than the day following that on which the transaction occurred. Quantities reported shall be as indicated by the taxpaid stamps affixed to the packages, except that where goods are returned to or by the wholesaler the actual quantity shall be recorded. A fraction of a pound shall be accounted as a pound.

(b) *Items.* The record must show: (1) The number of pounds in each consignment of adulterated butter received, the name and address of the consignor, and the date of receipt.

(2) The number of pounds in each lot disposed of, the name of the consignee, the address to which delivered, and the date of shipment.

(c) *Transactions.* The following rules will apply:

(1) *Samples.* Sample packages of tax-paid adulterated butter received and disposed of gratuitously shall be recorded in the same manner as adulterated butter which is purchased and sold.

(2) *Transfers to self.* Where adulterated butter is transferred by a wholesale dealer to himself as a retail dealer, the transaction shall be recorded in the same manner as a sale to another person.

(3) *Sales to chain stores.* Where adulterated butter is shipped to one person doing business at different places, as in the case of chain stores, the deliveries to each address shall be recorded separately.

(4) *Drop shipments.* A wholesale dealer shall not record the receipt of adulterated butter which he orders delivered direct to a third party. The dealer's connection with the transaction shall be shown by the manufacturer as provided in paragraph (c) of § 45.6001–2. Where a wholesale dealer receives an order from one person to ship adulterated butter to another, the transaction shall be recorded in the name and address of the consignee followed by "acc't of" and the name and address of the person giving the order. A wholesale dealer shall not record consignments in the names of agents, solicitors, or other persons transmitting orders for other parties. (See paragraph (c)(5) of § 45.4821–3 as to liability of agents.)

(5) *Returned goods.* Where adulterated butter is returned by a customer to a wholesale dealer the transaction shall be recorded separately from other receipts. The sale of repossessed goods shall be recorded with other disposals. Adulterated butter returned by a wholesale dealer to the manufacturer or other wholesale dealer from whom received shall be recorded separately from other disposals. (See paragraph (c)(6) of § 45.4821–3 as to resales.)

§ 45.6001–4 Records required to be kept by wholesale dealers in filled cheese.

Every wholesale dealer in filled cheese shall keep at his place of business a daily record of (a) the number of pounds in each consignment of filled cheese received by him, giving the name and address of the consignor and date of receipt, and (b) the number of pounds of filled cheese disposed of in each instance, name of person to whom shipped or delivered, date of shipment or delivery, and address to which sent.

§ 45.6001–5 Cross references.

(a) *Manufacturers of white phosphorus matches.* For record requirements, see § 45.4804–10.

(b) *Cotton futures.* For record requirements relating to persons making, clearing, settling or adjusting transactions in contracts of sale of cotton for future delivery, including cotton clearing associations, see §§ 45.4872–1 to 45.4872–4, inclusive.

(c) *Silver bullion.* For record requirements relating to transfers of interests in silver bullion, see § 45.4895–8.

§ 45.6001–6 Returns in general.

(a) *General rule.* Every person subject to any tax imposed by sections 4451, 4461, 4471, 4591, 4801, 4811, 4821, 4831, 4841, 4851, or 4891 shall make such returns, statements, or memorandums as are required by the regulations in this part. The return, statement, or memorandum shall include therein the information required by the applicable regulations or forms.

(b) *Use of prescribed forms.* Except as otherwise provided by the regulations in this part, copies of the prescribed forms will so far as possible be furnished taxpayers by district directors. A taxpayer will not be excused from making a return, however, by the fact that no return form has been furnished to him. Taxpayers not supplied with the proper forms should make application therefor to the district director in ample time to have their returns prepared, verified, and filed on or before the due date with the district director with whom such returns are required to be filed.

(c) *Execution of returns.* Each return required by the regulations in this part, together with any prescribed copies or supporting data, shall be filled in and disposed of in accordance with the forms, instructions, and regulations applicable thereto. The return shall be carefully prepared so as fully and accurately to set forth the data required to be furnished therein. Returns which have not been so prepared will not be accepted as meeting the requirements of the regulations in this part.

§ 45.6001–7 Inventories required of manufacturers.

(a) *Adulterated butter, process or renovated butter, and filled cheese.* Every manufacturer of adulterated butter, process or renovated butter, or filled cheese must file with the district director of internal revenue of the district in which the factory is located a complete and correct inventory, in letter form, stating the quantity of each of the different kinds of materials used in the manufacture of adulterated butter, process or renovated butter, or filled cheese, including all materials or products in process of manufacture or partially manufactured and the quantity of the finished product, stamped and unstamped, and the value of attached and unattached stamps held and owned by him in said factory on the first day of July of each year. An inventory as aforesaid must also be made and filed with the district director at the time of beginning business as a manufacturer, and at the time of discontinuing such business. Letters setting forth the inventories as herein required must contain a written declaration that the statements made therein are made under the penalties of perjury.

(b) *White phosphorus matches.* For inventory requirements relating to white phosphorus matches, see § 45.4804–9.

§ 45.6001–8 Quarterly return by manufacturer or importer of playing cards.

(a) *Form 749.* Every manufacturer or importer of playing cards must furnish to the district director for each calendar quarter an accurate return on Form 749 of the following transactions in packs of playing cards: The number on hand at the beginning of the quarter; the number manufactured during the quarter; the number removed tax-paid and for export during the quarter; the number on hand at the end of the quarter; and the values of all stamps purchased and used during the quarter.

(b) *Return period.* A return on Form 749 must be submitted for each calendar quarter including the calendar quarter in which the manufacturer or importer ceases operations in respect of playing cards. Any stock of playing cards on hand when the business is discontinued

must be accounted for on quarterly returns. The return for the last quarter must be marked "Final return."

§ 45.6001–9 Quarterly return by manufacturer of adulterated butter, process or renovated butter, or filled cheese.

(a) *Quarterly return, Form 216.* Each manufacturer of adulterated butter, process or renovated butter, or filled cheese shall furnish to the district director for the district in which his factory is located at the time provided by § 45.6071–1, for each calendar quarter of the period of special-tax liability, an accurate return, under the penalties of perjury, on Forms 216 and 216a.

(b) *Preparation and distribution of copies.* Quarterly returns should be prepared from the manufacturer's records and typewritten on Form 216, in duplicate. The first page of the return should be filled out as indicated on the form. The original shall be forwarded to the district director and the duplicate shall be retained by the manufacturer at his factory as a record and shall be available for examination at any time by internal revenue officers. In the execution of the return, conformity with the special-tax return and the special-tax stamp shall be observed. If the special-tax return and stamp show a trade name as well as the real name of the proprietor, both names shall also appear on the quarterly returns, together with the identical address of the premises as given on such special-tax return and stamp.

(c) *Separate returns.* Returns required by this section shall be made separately for each product.

(d) *Supplemental sheets.* Form 216a is a supplemental sheet and shall be used for reporting in detail disposals of new stock and receipt and resale of stock returned by customers. The entries should be double spaced, as indicated by the dotted lines on the sheet. Appropriate headings should be set up in capital letters in the center of the page. Each page should be completely used before beginning another page. The order indicated in paragraphs (e) to (n), inclusive, of this section should be observed.

(e) *Disposals during first quarter of fiscal year or first quarter of commencing business.* Disposals to wholesalers, retailers, and consumers made in the first quarter of each fiscal year, or the quarter of commencing business, as the case may be, shall be reported on supplemental sheets, Form 216a, as follows:

(1) *To wholesalers.* Disposals to wholesalers shall be listed under a heading, Withdrawn Tax-Paid, Wholesale Dealers, with the entries grouped in alphabetical order of (i) the names of States and (ii) the names of consignees in each State group. State names should be in capital letters centered on the page at the head of each group, and a line left above and below each State subheading. The State name should be omitted in entering the several individual addresses since it will appear at the head of the group. Where a wholesaler operates at more than one place of business (whether or not within the same State), a separate entry shall be made for each place of business of such wholesaler to which consignments are made during the quarter. The aggregate quantity of adulterated butter, process or renovated butter or filled cheese consigned during the quarter to each wholesaler at each place of business shall be reported as provided for by the form.

(2) *To retailers and consumers.* Following the listing of disposals to wholesale dealers the disposals to retailers and consumers shall be listed under a heading, Withdrawn Tax-Paid, Retailers and Consumers, in the same manner as specified in subparagraph (1) of this paragraph with respect to wholesalers.

(f) *Disposals during other quarters.* Disposals to wholesalers, retailers, and consumers in each quarter other than the first quarter of the fiscal year, or the quarter of commencing business, shall be reported on supplemental sheets, Form 216a, as follows:

(1) *To consignees listed on prior returns of same fiscal year.* The total quantity of adulterated butter, process or renovated butter, or filled cheese disposed of during the quarter to all persons, including wholesalers, retailers, and consumers, listed on returns for prior quarters of the same fiscal year, shall be reported as a single amount designated as "Disposed of to consignees listed on returns for previous quarters of the same fiscal year."

(2) *To other consignees.* Disposals to wholesalers, retailers, and consumers not listed on any return for a prior quarter of the same fiscal year shall be reported in detail in the manner prescribed in paragraph (e) of this section.

(g) *Registered names and addresses required.* Names and addresses shall be entered as they appear on customers' special-tax stamps. Where the shipping address differs from the registered address, the name of the shipping point, in parentheses, should be entered with the registered address. (See paragraph (f) of § 45.4815(a)–1.) Surnames should precede first names. County names should be included in the addresses of customers located in the States specified at the head of Form 216a. This subparagraph is not applicable in the case of manufacturers of process or renovated butter since the wholesalers and retailers thereof do not obtain special-tax stamps.

(h) *Repeat shipments.* Only the aggregate quantity disposed of to each person at one address during the quarter shall be reported. Example: If 20 sales of 10 pounds each were made, the name of the purchaser and the address to which delivered should be entered but once with the total of 200 pounds.

(i) *Chain store entries.* Subject to the provisions of paragraphs (e) and (f) of this section, disposals to chain stores shall be reported in alphabetical order of the names of (1) the cities or towns in which the stores are located and (2) the streets on which situated. Numerical order of street numbers should be observed where more than one store is located on the same street.

(j) *Exportation.* Under a heading, Withdrawn Free of Tax for Export, there shall be entered as to each foreign consignment (1) date of invoice, (2) name of consignee and place of consignment, and (3) quantity. The entries shall be in the order prescribed in paragraph (e) of this section for reporting disposals to wholesale dealers. This paragraph has no application in the case of process or renovated butter or filled cheese, since there is no provision for tax-free exportation thereof.

(k) *Returned goods.* Under a heading, Returned Goods, there shall be shown in alphabetical order (1) the name and address of each consignor, and (2) the total quantity received during the quarter from him. Only adulterated butter, process or renovated butter, or filled cheese of the manufacturer's own production may be entered under this heading. Such product received from other manufacturers for reworking shall be included in the total of returned goods reworked as prescribed in paragraph (m) of this section.

(l) *Resales.* Under the headings, "Resales to wholesale dealers" and "Resales to retailers and consumers", entries shall be made in the same manner as disposals of new stock to such customers as prescribed in paragraph (e) of this section. (See paragraph (c)(6) of § 45.4821–3 as to resale of returned goods.)

(m) *Reworked or denatured.* The total quantity of any adulterated butter, process or renovated butter, or filled cheese not removed from the factory but reworked or disposed of as grease shall be reported in the credit column of the summary of new stock. The total quantity of returned goods reworked or disposed of as grease shall be reported in the credit column of the summary. The combined totals of adulterated butter, process or renovated butter, or filled cheese reworked, as shown in the respective summaries, shall be reported under the heading, "Materials used during month", page 1, Form 216.

(n) *Losses.* Adulterated butter, process or renovated butter, or filled cheese acidentally destroyed, lost in transit, or unaccounted for shall be reported in the credit column of the proper summary and an appropriate explanation inserted.

(o) *Summary.* The quantities entered under the respective headings on Form 216a shall be totaled and the totals carried to the proper lines of the summaries, page 1, Form 216. The actual balances of new stock and returned goods on hand at the beginning and close of the quarter shall be entered in the proper summary, which should balance. The quantities reported on hand at the beginning of the quarter shall agree with the quantities reported on hand at the close of the preceding quarter.

(p) *Correcting entries.* If after rendering a return it is found that any receipts or disposals were omitted or erroneously reported, correcting entries shall be made on the return for the following quarter.

(q) *Final return.* If the business is discontinued, the return for the quarter in which business ceases should be marked "Final."

§ 45.6001–10 Quarterly return by wholesale dealers in adulterated butter or filled cheese.

(a) *Quarterly return, Form 2814.* Each wholesale dealer in adulterated butter or filled cheese shall furnish to the district director for the district in which his business is located at the time provided by § 45.6071–1, for each calendar quarter of the period of special-tax liability, an accurate return, under the penalties of perjury, on Forms 2814 and 2814a.

(b) *Preparation and distribution of copies.* Quarterly returns should be prepared from the wholesale dealer's records and typewritten on Form 2814, in duplicate. The first page of the return should be filled out as indicated on the form. The original shall be forwarded to the district director and the duplicate shall be retained by the wholesale dealer at his principal place of business as a record and shall be available for examination at any time by internal revenue officers. In the execution of the return, conformity with the special-tax return and the special-tax stamp shall be observed. If the special-tax return and stamp show a trade name as well as the real name of the proprietor, both names shall also appear on the quarterly returns, together with the identical address of the premises as given on such special-tax return and stamp.

(c) *Separate returns.* Returns required by this section shall be made separately for each product.

(d) *Receipts*—(1) *During first quarter of fiscal year or quarter of commencing business.* Under the heading, Adulterated Butter (or Filled Cheese) Received From Manufacturers and Wholesale Dealers, page 1, Form 2814, each entry shall show (i) the name and address of each consignor, and (ii) the total quantity received during the quarter from him. Regardless of the number of consignments received during the quarter from the same consignor, only a single entry showing the aggregate of all such consignments shall be made.

(2) *During other quarters.* Adulterated butter or filled cheese received from manufacturers and wholesale dealers in each quarter other than the first quarter of each fiscal year, or the quarter of commencing business, as the case may be, shall be reported on Form 2814 as follows:

(i) *From consignors listed on returns for previous quarters of same fiscal year.* The total quantity of adulterated butter or filled cheese received from all manufacturers and wholesale dealers listed on returns for prior quarters of the same fiscal year, shall be reported as a single amount designated as "Received from consignors listed on returns for previous quarters of the same fiscal year."

(ii) *From other consignors.* Adulterated butter or filled cheese received from manufacturers and wholesale dealers not listed on a return for a prior quarter of the same fiscal year shall be reported in detail in the manner prescribed in subparagraph (1) of this paragraph.

(e) *Returned goods.* Adulterated butter or filled cheese returned by customers should not be entered in detail on returns. Only the total quantity so received during the quarter shall be reported. The amount should be entered in the debit column of the summary.

(f) *Supplemental sheets.* Form 2814a is a supplemental sheet and shall be used for reporting disposals in detail. The entries should be double-spaced as indicated by the dotted lines on the sheet. Appropriate headings should be set up in capital letters in the center of the page. Each page should be completely used before beginning another page. The order indicated in paragraphs (g) to (m) of this section should be observed.

(g) *Disposals during first quarter of fiscal year or quarter of commencing business.* Disposals to wholesalers and retailers and consumers in the first quarter of each fiscal year, or the quarter of commencing business, shall be reported in full detail on supplemental sheets, Form 2814a as follows:

(1) *To wholesalers.* Disposals to wholesalers shall be listed under a heading, Disposals to Wholesale Dealers, with the entries grouped in alphabetical order of (i) the names of States, and (ii) the names of consignees in each State group. State names should be in capital letters centered on the page at the head of each group, and a line left above and below each State subheading. The State name should be omitted in entering the several individual addresses since it will appear at the head of the group. Where a wholesaler operates at more than one place of business whether or not within the same State, a separate entry shall be made for each place of business of such wholesaler to which consignments are made during the quarter. The aggregate quantity of adulterated butter or filled cheese consigned during the quarter to each wholesaler at each place of business shall be reported as provided for by the form.

(2) *To retailers and consumers.* Following the listing of disposals to wholesale dealers the disposals to retailers and consumers shall be listed under a heading, Disposals to Retailers and Consumers, in the same manner as specified in subparagraph (1) of this paragraph with respect to wholesalers.

(h) *Disposals during other quarters.* Disposals to wholesalers, retailers, and consumers in each quarter other than the first quarter of the fiscal year, or the quarter of commencing business, shall be reported on supplemental sheets, Form 2814a, as follows:

(1) *To consignees listed on prior returns of same fiscal year.* The total quantity of adulterated butter or filled cheese disposed of during the quarter to all persons, including wholesalers, retailers, and consumers, listed on returns for prior quarters of the same fiscal year, shall be reported as a single amount designated as "Disposed of to consignees listed on returns for previous months of the same fiscal year."

(2) *To other consignees.* Disposals to wholesalers, retailers, and consumers not listed on any return for a prior quarter of the same fiscal year shall be reported in detail in the manner prescribed in paragraph (g) of this section.

(i) *Registered names and addresses required.* Names and addresses shall be entered as they appear on customers' special-tax stamps. Where the shipping address differs from the registered address, the name of the shipping point, in parentheses, should be entered with the registered address. (See paragraph (f) of § 45.4815(a)–1.) Surnames should precede first names. County names should be included in the addresses of customers located in the States specified at the head of Form 2814a.

(j) *Repeat shipments.* Only the aggregate quantity disposed of to each person at one address during the quarter shall be reported. Example: If 20 sales of 10 pounds each were made, the name of the purchaser and the address to which delivered should be entered but once with the total of 200 pounds.

(k) *Chain store entries.* Subject to the provisions of paragraphs (g) and (h) of this section, disposals to chain stores shall be reported in alphabetical order of the names of (1) the cities or towns in which the stores are located, and (2) the streets on which situated. Numerical order of street numbers should be observed where more than one store is located on the same street.

(l) *Goods returned or otherwise disposed of.* Under a heading, "Returned to Shipper," there shall be shown in alphabetical order (1) the name and address of each consignor and (2) the total quantity received during the month from him. Similar entries, under appropriate headings, shall be made for adulterated butter or filled cheese disposed of as grease, or for other inedible purposes, or destroyed.

(m) *Losses.* Adulterated butter or filled cheese accidentally destroyed, lost in transit, or unaccounted for shall be reported in the credit column of the summary and an appropriate explanation inserted.

(n) *Summary.* The quantities entered under the respective headings on Form 2814a shall be totaled and the totals carried to the proper lines of the summaries, page 1, Form 2814. The actual quantity on hand at the beginning and close of the quarter shall be entered in the summary, which should balance. The quantity reported on hand at the beginning of the quarter shall agree with the quantity reported on hand at the close of the preceding quarter.

(o) *Correcting entries.* If after rendering a return it is found that any receipts or disposals were omitted or erroneously reported, correcting entries shall be made on the return for the following quarter.

(p) *Final return.* If the business is discontinued, the return for the quarter in which business ceases should be marked "Final."

§ 45.6001–11 Returns relating to special taxes.

(a) *In general.* Every person required to pay a special tax imposed by section 4461 or 4471 shall make a return on Form 11–B and every person required to pay a special tax imposed by section 4821 or 4841 shall make a return on Form 11. A return on Form 11 or 11–B shall be

made in accordance with the instructions applicable thereto.

(b) *Separate returns.* A separate return on the prescribed form shall be made for each place of business in respect of which a person incurs liability for a special tax and if more than one taxable business is conducted by the same person at the same address, a separate return shall be made by such person in respect of each taxable business conducted at such address. (See § 45.4903–1 which provides that special tax shall be paid for each place of business and § 45.4904–1 which provides that special tax must be paid for each business conducted at the same address.)

(c) *Execution of returns, Form 11 and Form 11–B.* In addition to the requirements for the execution of returns generally as set forth in paragraph (c) of § 45.6001–6, it is required that where the business is operated in a trade name, both the real name of the proprietor and the trade name shall be used when executing Form 11 and Form 11–B.

§ 45.6001–12 Cross referenecs.

(a) *Manufacturers of white phosphorus matches.* For requirements for quarterly returns, see § 45.4804–11.

(b) *Cotton futures.* For requirements for quarterly returns by persons making, clearing, settling, or adjusting transactions in contracts of sale of cotton for future delivery, including cotton clearing associations, see §§ 45.4872–5 and 45.4872–6.

(c) *Silver bullion.* For requirements for memorandums and returns relating to transfers of interests in silver bullion, see §§ 45.4895–5 and 45.4895–7.

(d) *Signing and verification.* For provisions relating to the signing of returns, see §§ 45.6061 and 45.6061–1. For provisions relating to the verifying of returns, see §§ 45.6065 and 45.6065–1.

§ 45.6061 Statutory provisions; signing of returns and other documents.

SEC. 6061. *Signing of returns and other documents.* * * * any return, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall be signed in accordance with forms or regulations prescribed by the Secretary or his delegate.

[Sec. 6061 as originally enacted and in effect July 1, 1960]

§ 45.6061–1 Signing of returns and other documents.

Each return or other document required under the regulations in this subpart shall be signed by (a) the individual, if the taxpayer is an individual; (b) the president, vice president or other principal officer, if the taxpayer is a corporation; (c) a responsible and duly authorized member or officer having knowledge of its affairs, if the taxpayer is a partnership or other unincorporated organization; or (d) the fiduciary, if the taxpayer is a trust or estate. The return may be executed by an agent in the name of the taxpayer if an acceptable power of attorney is filed with the district director and the return includes the total liability of the taxpayer for the period covered by the return.

§ 45.6065 Statutory provisions; verification of returns.

SEC. 6065. *Verification of returns*—(a) *Penalties of perjury.* Except as otherwise provided by the Secretary or his delegate, any return, declaration, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall contain or be verified by a written declaration that it is made under the penalties of perjury.

(b) *Oath.* The Secretary or his delegate may by regulations require that any return, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall be verified by an oath. This subsection shall not apply to returns and declarations with respect to income taxes made by individuals.

[Sec. 6065 as originally enacted and in effect July 1, 1960]

§ 45.6065–1 Verification of returns.

If a return, declaration, statement, or other document made under the regulations in this part is required by the regulations contained in this part, or the form and instructions issued with respect to such return, declaration, statement, or other document, to contain or be verified by a written declaration that it is made under the penalties of perjury, such return, declaration, statement, or other document shall be so verified by the person signing it.

§ 45.6071 Statutory provisions; time for filing returns and other documents.

SEC. 6071. *Time for filing returns and other documents*—(a) *General rule.* When not otherwise provided for by this title, the Secretary or his delegate shall by regulations prescribe the time for filing any return, statement, or other document required by this title or by regulations.

(b) *Special taxes.* For payment of special taxes before engaging in certain trades and businesses, see section 4901 and * * *.

[Sec. 6071 as amended and in effect July 1, 1960]

§ 45.6071–1 Time for filing returns or other documents.

(a) *Returns or other documents.* A return required under §§ 45.6001–8 to 45.6001–10, inclusive, shall be filed on or before the last day of the first calendar month following the period for which it is made. The inventories required by § 45.6001–7 shall be filed with the district director on the first day of July of each year, or at the time of commencing and at the time of concluding business, if before or after the first day of July.

(b) *Cross references*—(1) *Cotton futures*—(i) *Returns to be made by persons dealing in contracts of sale of cotton for future delivery.* See § 45.4872–5 for provisions relating to time for filing returns.

(ii) *Returns to be made by cotton clearing associations.* See § 45.4872–6 for provisions relating to time for filing returns by persons who act in the capacity of a clearing house, clearing association, or similar institution for the purpose of clearing, settling, or adjusting contracts of sale of any cotton for future delivery.

(2) *Silver bullion.* (i) For regulations relating to time for filing memorandums of transfer or monthly returns in the case of transfers of interests in silver bullion, see paragraph (d) of § 45.4895–5 and § 45.4895–7, respectively.

(ii) For regulations relating to time for filing returns on Form 11 (Silver) and Form 11A (Silver), see paragraph (b) of § 45.4894–2.

§ 45.6071–2 Special taxes.

(a) *Coin-operated gaming devices return on Form 11–B.* The first return required to be made on Form 11–B shall be filed, as provided in § 45.4901–1, to cover the period beginning with the first day of the calendar month in which a person engages in the trade or business of maintaining for use or permitting the use of, on any place or premises occupied by him, a coin-operated gaming device and ending with the following June 30. Thereafter, each return required to be made on Form 11–B shall be filed on or before July 1 to cover a 1-year period (beginning July 1 and ending June 30 of the following calendar year) during which the tax liability continues.

(b) *Other special taxes.* In the case of persons liable for the special taxes imposed by sections 4461(a)(1) (relating to coin-operated amusement devices), 4471 (relating to bowling alleys, billiard and pool tables), 4821 (relating to adulterated butter and process or renovated butter), and 4841 (relating to filled cheese), the first return required to be made on Form 11 or Form 11–B, as the case may be, shall be filed before the last day of the month in which the business commences to cover the period beginning with the first day of such month and ending with the following June 30. Thereafter, each return required to be made on Form 11 or Form 11–B, as the case may be, shall be filed on or before the last day of July to cover a 1-year period (begining July 1 and ending June 30 of the following calendar year) during which the tax liability continues.

§ 45.6071–3 Last day for filing.

For provisions relating to the time for filing a return when the prescribed due date falls on Saturday, Sunday, or a legal holiday, see § 301.7503–1 of this chapter (Regulations on Procedure and Administration).

§ 45.6081(a) Statutory provisions; extension of time for filing returns.

SEC. 6081. *Extension of time for filing returns*—(a) *General rule.* The Secretary or his delegate may grant a reasonable extension of time for filing any return, declaration, statement, or other document required by this title or by regulations. Except in the case of taxpayers who are abroad, no such extension shall be for more than 6 months.

[Sec. 6081(a) as originally enacted and in effect July 1, 1960]

§ 45.6081(a)–1 Extension of time for filing returns.

No extension of time will be granted for filing any return or other document required in respect of the taxes to which the regulations in this part have application.

§ 45.6091 Statutory provisions; place for filing returns or other documents.

SEC. 6091. *Place for filing returns or other documents*—(a) *General rule.* When not otherwise provided for by this title, the Sec-

retary or his delegate shall by regulations prescribe the place for the filing of any return, declaration, statement, or other document, or copies thereof, required by this title or by regulations.

[Sec. 6091 as originally enacted and in effect July 1, 1960]

§ 45.6091–1 Place for filing special tax returns.

A return on Form 11 or 11–B required to be made pursuant to the provisions of § 45.6001–11 shall be filed with the district director for the district in which the taxable business is conducted.

§ 45.6091–2 Place for filing memorandums or returns relating to silver bullion.

(a) *Persons other than corporations.* Except as provided in paragraph (c) of this section, the memorandum of transfer of an interest in silver bullion described in § 45.4895–5, the monthly return provided in § 45.4895–7, and the forms specified in §§ 45.4894–1 to 45.4894–7, inclusive, shall be filed with the district director for the district in which is located the principal place of business or legal residence of the party to the transfer paying the tax on such transfer. If such person has no principal place of business or legal residence in any internal revenue district, the memorandum or monthly return shall be filed with the District Director at Baltimore, Maryland.

(b) *Corporations.* Except as provided in paragraph (c) of this section, if the party to the transfer paying the tax thereon is a corporation, the memorandum, the monthly return, and the forms specified in §§ 45.4894–1 to 45.4894–7, inclusive, shall be filed with the district director for the district in which is located the principal place of business or principal office or agency of such corporation.

(c) *Memorandums or returns filed by taxpayers outside the United States.* If the party to the transfer paying the tax thereon is a person (other than a corporation) outside the United States having no legal residence or principal place of business in any internal revenue district, or is a corporation having no principal place of business or principal office or agency in any internal revenue district, the memorandum, the monthly return, and the forms specified in §§ 45.4894–1 to 45.4894–7, inclusive, shall be filed with the Director, International Operations Division, Internal Revenue Service, Washington 25, D.C.

§ 45.6101 Statutory provisions; period covered by returns or other documents.

SEC. 6101. *Period covered by returns or other documents.* When not otherwise provided for by this title, the Secretary or his delegate may by regulations prescribe the period for which, or the date as of which, any return, statement, or other document required by this title or by regulations, shall be made.

[Sec. 6101 as originally enacted and in effect July 1, 1960]

§ 45.6101–1 Period covered by returns or other documents.

(a) *In general.* Except as provided in paragraphs (b) and (c) of this section, the period for which returns are required by the regulations in this part is a calendar quarter.

(b) *Silver bullion.* For the period for which returns are required in the case of transfers of silver bullion, see § 45.4895–7. For alternative provisions, see § 45.4895–5.

(c) *Special taxes.* For the period for which returns are required in the case of special taxes, see paragraph (b) of § 45.4901–1.

§ 45.6151 Statutory provisions; time and place for paying tax shown on returns.

SEC. 6151. *Time and place for paying tax shown on returns*—(a) *General rule.* Except as otherwise provided in this section, when a return of tax is required under this title or regulations, the person required to make such return shall, without assessment or notice and demand from the Secretary or his delegate, pay such tax to the principal internal revenue officer for the internal revenue district in which the return is required to be filed, and shall pay such tax at the time and place fixed for filing the return (determined without regard to any extension of time for filing the return).

(b) *Exceptions.* * * *

(c) *Date fixed for payment of tax.* In any case in which a tax is required to be paid on or before a certain date, or within a certain period, any reference in this title to the date fixed for payment of such tax shall be deemed a reference to the last day fixed for such payment (determined without regard to any extension of time for paying the tax).

[Sec. 6151 as originally enacted and in effect July 1, 1960]

§ 45.6151–1 Time and place for paying special taxes.

The special taxes required to be reported on Forms 11 and 11–B are due and payable to the district director, without assessment or notice and demand, at the time prescribed in § 45.6071–2 for filing such returns. For regulations relating to place for filing returns, see § 45.6091–1.

§ 45.6161(a)(1) Statutory provisions; extension of time for paying tax.

SEC. 6161. *Extension of time for paying tax*—(a) *Amount determined by taxpayer on return*—(1) *General rule.* The Secretary or his delegate, except as otherwise provided in this title, may extend the time for payment of the amount of the tax shown, or required to be shown, on any return or declaration required under authority of this title (or any installment thereof), for a reasonable period not to exceed 6 months from the date fixed for payment thereof. Such extension may exceed 6 months in the case of a taxpayer who is abroad.

[Sec. 6161(a) as originally enacted and in effect July 1, 1960]

§ 45.6161(a)(1)–1 Extension of time for paying tax shown on return.

No extension of time will be granted for payment of all or any part of the amount of the taxes to which the regulations in this part have application.

§ 45.6804 Statutory provisions; attachment and cancellation.

SEC. 6804. *Attachment and cancellation.* Except as otherwise expressly provided in this title, the stamps referred to in section 6801 shall be attached, protected, removed, canceled, obliterated, and destroyed, in such manner and by such instruments or other means as the Secretary or his delegate may prescribe by rules or regulations.

[Sec. 6804 as originally enacted and in effect July 1, 1960.]

§ 45.6804–1 Attachment and cancellation.

The stamps required to be used for the payment of the taxes imposed by the statutory provisions included in this part shall be attached, protected, removed, canceled, obliterated, and destroyed as set forth in the regulations in this part.

§ 45.6805 Statutory provisions; redemption of stamps.

SEC. 6805. *Redemption of stamps*—(a) *Authorization.* The Secretary or his delegate, subject to regulations prescribed by him, may, upon receipt of satisfactory evidence of the facts, make allowance for or redeem such of the stamps, issued under authority of any internal revenue law, as may have been spoiled, destroyed, or rendered useless or unfit for the purpose intended, or for which the owner may have no use.

(b) *Method and conditions of allowance.* Such allowance or redemption may be made, either by giving other stamps in lieu of the stamps so allowed for or redeemed, or by refunding the amount or value to the owner thereof, deducting therefrom, in case of repayment, the percentage, if any, allowed to the purchaser thereof; but no allowance or redemption shall be made in any case until the stamps so spoiled or rendered useless shall have been returned to the Secretary or his delegate, or until satisfactory proof has been made showing the reason why the same cannot be returned; or, if so required by the Secretary or his delegate, when the person presenting the same cannot satisfactorily trace the history of said stamps from their issuance to the presentation of his claim as aforesaid.

(c) *Time for filing claims.* No claim for the redemption of, or allowance for, stamps shall be allowed under this section unless presented within 3 years after the purchase of such stamps from the Government.

(d) *Finality of decisions.* The findings of fact in and the decision of the Secretary or his delegate upon the merits of any claim presented under or authorized by this section shall, in the absence of fraud or mistake in mathematical calculation, be final and not subject to revision by any accounting officer.

[Sec. 6805 as amended and in effect July 1, 1960]

§ 45.6806 Statutory provisions; posting occupational tax stamps.

SEC. 6806. *Posting occupational tax stamps*—(a) *General rule.* Every person engaged in any business, avocation, or employment, who is thereby made liable to a special tax, shall place and keep conspicuously in his establishment or place of business all stamps denoting payment of said special tax.

(b) *Coin-operated amusement and gaming devices.* The Secretary or his delegate may by regulations require that the stamps denoting the payment of the special tax imposed by section 4461 shall be posted on or in each device in such a manner that it will be visible to any person operating the device.

* * * * *

[Sec. 6806 (a) and (b) as originally enacted and in effect July 1, 1960]

§ 45.6806–1 Special tax stamp to be posted.

(a) *In general.* The special tax stamp issued to a taxpayer as evidence of the

payment of tax imposed under section 4461 (coin-operated amusement and gaming devices), section 4471 (bowling alleys, billiard and pool tables), section 4821 (adulterated, process or renovated butter), and section 4841 (filled cheese), must be kept posted conspicuously on the premises where the business is operated. Failure to comply will subject the taxpayer to the penalties prescribed in § 45.7273(a).

(b) *Posting of certificate in lieu of stamp.* When a special tax stamp has been lost or destroyed, such fact should be reported at once to the internal revenue officer from whom the stamp was obtained for the purpose of obtaining from him a certificate of payment. Such certificate must be posted in place of the stamp; otherwise the penalty referred to in paragraph (a) of this section for failure to post the stamp will be applicable.

§ 45.7011 Statutory provisions; registration—persons paying a special tax.

SEC. 7011. *Registration—persons paying a special tax*—(a) *Requirement.* Every person engaged in any trade or business on which a special tax is imposed by law shall register with the Secretary or his delegate his name or style, place of residence, trade or business, and the place where such trade or business is to be carried on. In case of a firm or company, the names of the several persons constituting the same, and the places of residence, shall be so registered.

(b) *Registration in case of death or change of location.* Any person exempted under the provisions of section 4905 from the payment of a special tax, shall register with the Secretary or his delegate in accordance with regulations prescribed by the Secretary or his delegate.

[Sec. 7011 as originally enacted and in effect July 1, 1960]

§ 45.7011–1 Registration—persons paying a special tax.

The registration required by section 7011 is effected by filing a return, Form 11–B, in the case of the taxes imposed by sections 4461 and 4471, and Form 11, in the case of the taxes imposed by sections 4821 and 4841. Such returns must be executed, signed and verified as required by the regulations prescribed in §§ 45.6001–11, 45.6061–1, and 45.6065–1. See paragraph (a) of § 45.4901–1 for provisions relating to the special tax imposed by section 4461(a)(2), relating to coin-operated gaming devices.

§ 45.7011–2 Registration in case of change of ownership or location.

(a) *Cross reference.* See §§ 45.4905–1 to 45.4905–3, inclusive, for provisions regarding registration in case of change of ownership or location.

§ 45.7011–3 Registration; other requirements.

(a) For requirement for registration by manufacturers of playing cards, see § 45.4455–1.

(b) For requirement for registration by manufacturers of white phosphorus matches, see § 45.4804–8.

§ 45.7208 Statutory provisions; offenses relating to stamps.

SEC. 7208. *Offenses relating to stamps.* Any person who—

(1) *Counterfeiting.* With intent to defraud, alters, forges, makes, or counterfeits any stamp, coupon, ticket, book, or other device prescribed under authority of this title for the collection or payment of any tax imposed by this title, or sells, lends, or has in his possession any such altered, forged, or counterfeited stamp, coupon, ticket, book, or other device, or makes, uses, sells, or has in his possession any material in imitation of the material used in the manufacture of such stamp, coupon, ticket, book, or other device; or

(2) *Mutilation or removal.* Fraudulently cuts, tears, or removes from any vellum, parchment, paper, instrument, writing, package, or article, upon which any tax is imposed by this title, any adhesive stamp or the impression of any stamp, die, plate, or other article provided, made, or used in pursuance of this title; or

(3) *Use of mutilated, insufficient, or counterfeited stamps.* Fraudulently uses, joins, fixes, or places to, with, or upon any vellum, parchment, paper, instrument, writing, package, or article, upon which any tax is imposed by this title,

(A) Any adhesive stamp, or the impression of any stamp, die, plate, or other article, which has been cut, torn, or removed from any other vellum, parchment, paper, instrument, writing, package, or article, upon which any tax is imposed by this title; or

(B) Any adhesive stamp or the impression of any stamp, die, plate, or other article of insufficient value; or

(C) Any forged or counterfeited stamp, or the impression of any forged or counterfeited stamp, die, plate, or other article; or

(4) *Reuse of stamps*—(A) *Preparation for reuse.* Willfully removes, or alters the cancellation or defacing marks of, or otherwise prepares, any adhesive stamp, with intent to use, or cause the same to be used, after it has already been used; or

(B) *Trafficking.* Knowingly or willfully buys, sells, offers for sale, or gives away, any such washed or restored stamp to any person for use, or knowingly uses the same; or

(C) *Possession.* Knowingly and without lawful excuse (the burden of proof of such excuse being on the accused) has in possession any washed, restored, or altered stamp, which has been removed from any vellum, parchment, paper, instrument, writing, package, or article; or

(5) *Emptied stamped packages.* Commits the offense described in section 7271 (relating to disposal and receipt of stamped packages) with intent to defraud the revenue, or to defraud any person;

shall be guilty of a felony and, upon conviction thereof, shall be fined not more than $10,000, or imprisoned not more than 5 years, or both.

[Sec. 7208 as originally enacted and in effect July 1, 1960]

§ 45.7209 Statutory provisions; unauthorized use or sale of stamps.

SEC. 7209. *Unauthorized use or sale of stamps.* Any person who buys, sells, offers for sale, uses, transfers, takes or gives in exchange, or pledges or gives in pledge, except as authorized in this title or in regulations made pursuant thereto, any stamp, coupon, ticket, book, or other device prescribed by the Secretary or his delegate under this title for the collection or payment of any tax imposed by this title, shall, upon conviction thereof, be fined not more than $1,000, or imprisoned not more than 6 months, or both.

[Sec. 7209 as originally enacted and in effect July 1, 1960]

§ 45.7233 Statutory provisions; failure to pay, or attempt to evade payment of, tax on cotton futures, and other violations.

SEC. 7233. *Failure to pay, or attempt to evade payment of, tax on cotton futures, and other violations.* Any person—

(1) *Nonpayment or evasion of tax.* Liable to the payment of any tax imposed by subchapter D of chapter 39, who fails to pay, or evades, or attempts to evade the payment of such tax; and

(2) *Other violations.* Who otherwise violates any provision of subchapter D of chapter 39, or any rule or regulation made in pursuance thereof; shall, upon conviction thereof, be fined not less than $100 nor more than $20,000, in the discretion of the court; and, in case of natural persons, may, in addition, be punished by imprisonment for not less than 60 days nor more than 3 years, in the discretion of the court.

[Sec. 7233 as originally enacted and in effect July 1, 1960]

§ 45.7234 Statutory provisions; violations of laws relating to oleomargarine or adulterated butter operations.

SEC. 7234. *Violation of laws relating to oleomargarine or adulterated butter operations*—(a) *False branding, selling, or packing, in violation of law.* Every person who knowingly sells or offers for sale, or delivers or offers to deliver, any oleomargarine in any other form than in new wooden, tin-plate, or paper packages, as described in section 4594 (a) and (b), or who packs in any package any oleomargarine in any manner contrary to law, or who falsely brands any package or affixes a stamp on any package denoting a less amount of tax than that required by law shall be fined for each offense not more than $1,000, and be imprisoned not more than 2 years.

(b) *Removal or defacement of stamps, marks, or brands.* Any person who shall willfully remove or deface the stamps, marks, or brands on a package containing oleomargarine or adulterated butter, taxed as provided by subchapter F of chapter 38, or subchapter C of chapter 39, respectively, shall be guilty of a misdemeanor, and shall be punished by a fine of not less than $100 nor more than $2,000, and by imprisonment for not less than 30 days nor more than 6 months.

(c) *Failure of wholesale dealers to keep or permit inspection of books, or to render returns.* Any person who willfully violates any of the provisions of section 4597(a) shall for each such offense be fined not less than $50 and not exceeding $500, and imprisoned not less than 30 days nor more than 6 months.

(d) *Imported oleomargarine or adulterated butter*—(1) *Failure of customs officer to comply with law.* Every officer or employee of the Treasury Department having duties under section 4591 who permits any imported oleomargarine or adulterated butter to pass out of his custody or control without compliance by the owner or importer thereof with the provisions of section 4591 relating thereto, shall be fined not less than $1,000 nor more than $5,000, and imprisoned not less than 6 months nor more than 3 years.

(2) *Empty packages*—(A) *Failure to destroy stamps.* Any person who willfully neglects or refuses to destroy utterly the stamps on any empty package which contained oleomargarine or adulterated butter, or filled cheese shall for each such offense be fined not exceeding $50, and imprisoned not less than 10 days nor more than 6 months; and

(B) *Trafficking.* Any person who fraudulently gives away or accepts from another, or who sells, buys, or uses for packing oleo-

margarine or adulterated butter, any such stamped package shall for each such offense be fined not exceeding $100, and be imprisoned not more than 1 year.

(3) *Sale when improperly packed or stamped.* Every person who sells or offers for sale any imported oleomargarine or adulterated butter, or oleomargarine or adulterated butter purporting or claimed to have been imported, not put up in packages and stamped as provided by subchapter F of chapter 38 or subchapter C of chapter 39, shall be fined not less than $500 nor more than $5,000, and be imprisoned not less than 6 months nor more than 2 years.

(4) *Fraud by importer.* Whenever any person importing oleomargarine defrauds, or attempts to defraud, the United States of the tax on the oleomargarine imported by him, or any part thereof, he shall be fined not less than $500 nor more than $5,000, and shall be imprisoned not less than 6 months nor more than 3 years.

[Sec. 7234 as originally enacted and in effect July 1, 1960]

§ 45.7234–1 Violations of laws relating to oleomargarine or adulterated butter operations.

Except for imported oleomargarine, section 7234 has no application in respect of any transactions involving oleomargarine which occurs on or after the effective date of the regulations in this part.

§ 45.7235 Statutory provisions; violation of laws relating to adulterated butter and process or renovated butter.

SEC. 7235. *Violation of laws relating to adulterated butter and process or renovated butter*—(a) *Adulterated butter—False branding, sale, packing, or stamping in violation of law.* Every person who knowingly sells or offers for sale, or delivers or offers to deliver, any adulterated butter in any other form than in new wooden, tin-plate, or paper packages as described in section 4815(a), or who packs in any package any adulterated butter in any manner contrary to law, or who falsely brands any package or affixes a stamp on any package denoting a less amount of tax than that required by law, shall be fined for each offense not more than $1,000, and be imprisoned not more than 2 years.

(b) *Failure of wholesale dealers to keep or permit inspection of books, or to render returns.* Any person who willfully violates any of the provisions of section 4815(b) shall for each such offense be fined not less than $50 and not exceeding $500, and imprisoned not less than 30 days nor more than 6 months.

(c) *Failure to comply with provisions relating to the manufacture, storage, and marking of process or renovated butter.* Any person, firm, or corporation violating any of the provisions of section 4817 shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not more than $1,000, or by imprisonment for not more than 6 months, or by both such fine and imprisonment, in the discretion of the court.

(d) *Dealers in adulterated butter.* Every person who carries on the business of a dealer in adulterated butter without having paid the special tax therefor, as required by law, shall, besides being liable to the payment of the tax, be fined not less than $50 nor more than $500 for each offense.

(e) *Fraud by manufacturer.* Whenever any person manufacturing adulterated butter defrauds, or attempts to defraud, the United States of the tax on the adulterated butter manufactured by him, or any part thereof, he shall be fined not less than $500 nor more than $5,000, and shall be imprisoned not less than 6 months nor more than 3 years.

[Sec. 7235 as originally enacted and in effect July 1, 1960]

§ 45.7236 Statutory provisions; violation of laws relating to filled cheese.

SEC. 7236. *Violation of laws relating to filled cheese—False branding, sale, packing, or stamping in violation of law.* Every person who knowingly sells or offers to sell, or delivers or offers to deliver, filled cheese in any other form than in new wooden or paper packages, marked and branded as provided for and described in section 4834(b), or who packs in any package or packages filled cheese in any manner contrary to law, or who falsely brands any package or affixes a stamp on any package denoting a less amount of tax than that required by law, shall upon conviction thereof be fined for each and every offense not less than $50 and not more than $500, or be imprisoned not less than 30 days nor more than 1 year.

[Sec. 7236 as originally enacted and in effect July 1, 1960]

§ 45.7239 Statutory provisions; violations of laws relating to white phosphorus matches.

SEC. 7239. *Violations of laws relating to white phosphorus matches*—(a) *Selling unstamped matches.* Any manufacturer of matches who manufactures, sells, removes, distributes, or offers to sell or distribute, white phosphorus matches without there being affixed thereto an adhesive stamp, denoting the tax required by subchapter B of chapter 39 effectually canceled as provided by section 4804(a)(2), shall, for each offense, be guilty of a felony and, upon conviction thereof, shall be fined not more than $1,000, or imprisoned not more than 2 years, or both.

(b) *Use of insufficient stamps.* Every person who affixes a stamp on any package of white phosphorus matches denoting a less amount of tax than that required by law shall, for each offense, be guilty of a felony and, upon conviction thereof, shall be fined not more than $1,000, or imprisoned not more than 2 years, or both.

[Sec. 7239 as originally enacted and in effect July 1, 1960]

§ 45.7263 Statutory provisions; penalties relating to cotton futures.

SEC. 7263. *Penalties relating to cotton futures*—(a) *Withholding information.* Any person engaged in the business of dealing in cotton who shall, within a reasonable time prescribed by the Secretary of Agriculture or any agent acting under his instructions, willfully fail or refuse to answer questions or to produce books, letters, papers, or documents, as required under section 4862(b), or who shall willfully give any answer that is false or misleading, shall, upon conviction thereof, be fined not more than $500.

(b) *Civil penalties.* In addition to the criminal penalties provided by section 7233, there shall be imposed, on account of each violation of subchapter D of chapter 39, relating to cotton futures, a penalty of $2,000, to be recovered in a civil action founded on subchapter D of chapter 39 in the name of the United States as plaintiff, and when so recovered one-half of said amount shall be paid over to the person giving the information upon which such recovery was based. It shall be the duty of United States attorneys, to whom satisfactory evidence of violations of subchapter D of chapter 39 is furnished, to institute and prosecute actions for the recovery of the penalties prescribed by this subsection.

[Sec. 7263 as originally enacted and in effect July 1, 1960]

§ 45.7264 Statutory provisions; offenses relating to renovated or adulterated butter.

SEC. 7264. *Offenses relating to renovated or adulterated butter.* Every person who carries on the business of a manufacturer of process or renovated butter or adulterated butter without having paid the special tax therefor, as required by law, shall, besides being liable to the payment of the tax, be fined not less than $1,000 nor more than $5,000.

[Sec. 7264 as originally enacted and in effect July 1, 1960]

§ 45.7265 Statutory provisions; other offenses relating to oleomargarine or adulterated butter operations.

SEC. 7265. *Other offenses relating to oleomargarine or adulterated butter operations*—(a) *Omission or removal of label.* (1) * * *

(2) Every manufacturer of adulterated butter who neglects to affix the label required under section 4814(a)(1) to any package containing adulterated butter made by him, or sold or offered for sale for or by him, and every person who removes any such label so affixed from any such package shall be fined $50 for each package in respect to which such offense is committed.

(b) *Purchasing when not properly branded or stamped.* Every person who knowingly purchases or receives for sale any oleomargarine or adulterated butter which has not been branded or stamped according to law shall be liable to a penalty of $50 for each such offense.

(c) *Other offenses.* If any manufacturer of oleomargarine or adulterated butter, any dealer therein or any importer or exporter thereof shall knowingly or willfully omit, neglect, or refuse to do, or cause to be done, any of the things required by law in the carrying on or conducting of his business, or shall do anything prohibited by subchapter F of chapter 38 or subchapter C of chapter 39, if there be no specific penalty or punishment imposed by any other provision of this chapter or chapter 68 for the neglecting, omitting, or refusing to do, or for the doing or causing to be done, the things required or prohibited, he shall pay a penalty of $1,000.

[Sec. 7265 as originally enacted and in effect July 1, 1960]

§ 45.7265–1 Other offenses relating to oleomargarine or adulterated butter operations.

Except for imported oleomargarine, section 7265 has no application in respect of any transactions involving oleomargarine which occurs on or after the effective date of the regulations in this part.

§ 45.7266 Statutory provisions; offenses relating to filled cheese.

SEC. 7266. *Offenses relating to filled cheese*—(a) *Failure to pay special tax.* Every person, firm, or corporation—

(1) *Manufacturers.* Who carries on the business of a manufacturer of filled cheese without having paid the special tax therefor, as required by law, shall, besides being liable to the payment of the tax, be fined not less than $400 nor more than $3,000; and

(2) *Wholesale dealers.* Who carries on the business of a wholesale dealer in filled cheese without having paid the special tax therefor, as required by law, shall, besides being liable to the payment of the tax, be fined not less than $250 nor more than $1,000; and

(3) *Retail dealers.* Who carries on the business of a retail dealer in filled cheese without having paid the special tax therefor, as required by law, shall, besides being liable for the payment of the tax, be fined not less than $40 nor more than $500 for each and every offense.

(b) *Other offenses.* Any manufacturer of filled cheese who fails to comply with the provisions of section 4833 (b) and (c), or with the regulations therein authorized, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than $500 nor more than $1,000.

(c) *Failure of wholesale and retail dealers to display signs.* Any wholesale or retail dealer in filled cheese who fails or neglects to comply with the provisions of section 4834(a) shall be deemed guilty of a misdemeanor, and shall on conviction thereof be fined for each and every offense not less than $50 and not more than $200.

(d) *Omission or removal of label.* Every manufacturer of filled cheese who neglects to affix the label provided for in section 4833(a)(2) to any package containing filled cheese made by him or sold or offered for sale by or for him, and every person who removes any such label so affixed from any such package, shall be fined $50 for each package in respect to which such offense is committed.

(e) *Purchasing when special tax not paid.* Every person who knowingly purchases or receives for sale any filled cheese from any manufacturer or importer who has not paid the special tax provided for in section 4841 shall be liable, for each offense, to a penalty of $100.

(f) *Purchasing when not stamped, branded, or marked according to law.* Any person who knowingly purchases or receives for sale any filled cheese which has not been branded or stamped according to law, or which is contained in packages not branded or marked according to law, shall be liable to a penalty of $50 for each such offense.

[Sec. 7266 as originally enacted and in effect July 1, 1960]

§ 45.7267 Statutory provisions; offenses relating to white phosphorus matches.

SEC. 7267. *Offenses relating to white phosphorus matches*—(a) *Exportation of matches.* Any person guilty of violation of section 4805(b) shall be fined not less than $1,000 and not more than $5,000.

(b) *Offenses not specifically covered.* If any manufacturer of white phosphorus matches, or any importer or exporter of matches, shall omit, neglect, or refuse to do or cause to be done any of the things required by law in carrying on or conducting his business, or shall do anything prohibited by subchapter B of chapter 39, if there be no specific penalty or punishment imposed by any other provision of this chapter or chapter 68 for the neglecting, omitting, or refusing to do, or for the doing or causing to be done, the thing required or prohibited, he shall be fined $1,000 for each offense.

(c) *Omission of label from packages.* Every manufacturer of white phosphorus matches who neglects to affix the label required by section 4804(a)(4) to any original package containing stamped packages of white phosphorus matches made by him or sold or removed by or for him, and every person who removes any such label so affixed from any such original package, shall be fined not more than $50 for each package in respect of which such offense is committed.

(d) *Omission of factory number from packages.* Every manufacturer of white phosphorus matches who omits to mark, brand, affix, stamp, or print the factory number required under section 4804(b) on every package of white phosphorus matches manufactured, sold, or removed by him shall be fined not more than $50 for each package in respect of which such offense is committed.

[Sec. 7267 as originally enacted and in effect July 1, 1960]

§ 45.7271 Statutory provisions; penalties for offenses relating to stamps.

SEC. 7271. *Penalties for offenses relating to stamps.* Any person who with respect to any tax payable by stamps—

(1) *Failure to attach or cancel stamps, etc.* Fails to comply with rules or regulations prescribed pursuant to section 6804 (relating to attachment, cancellation, etc., of stamps), unless such failure is shown to be due to reasonable cause and not willful neglect; or

(2) *Manufacture or offer for sale.* Manufactures or imports and sells, or offers for sale, or causes to be manufactured or imported and sold, or offered for sale, any playing cards, package, or other article without the full amount of tax being duly paid; or

(3) *Instruments.* Makes, signs, issues, or accepts, or causes to be made, signed, issued, or accepted, any instrument, document, or paper of any kind or description whatsoever without the full amount of tax thereon being duly paid; or

(4) *Disposal and receipt of stamped packages.* In the case of any container which is stamped, branded, or marked (whether or not under authority of law) in such manner as to show that the provisions of the internal revenue laws with respect to the contents or intended contents thereof have been complied with, and which is empty or contains any contents other than contents therein when the container was lawfully stamped, branded, or marked—

(A) Transfers or receives (whether by sale, gift, or otherwise) such container knowing it to be empty or to contain such other contents; or

(B) Stamps, brands, or marks such container, or otherwise produces such a stamped, branded, or marked container, knowing it to be empty or to contain such other contents;

shall be liable for each such offense to a penalty of $50.

[Sec. 7271 as originally enacted and in effect July 1, 1960]

§ 45.7272 Statutory provisions; penalty for failure to register.

SEC. 7272. *Penalty for failure to register*—(a) *In general.* Any person (other than persons required to register under subtitle E, or persons engaging in a trade or business on which a special tax is imposed by such subtitle) who fails to register with the Secretary or his delegate as required by this title or by regulations issued thereunder shall be liable to a penalty of $50.

(b) *Cross references.* For provisions relating to persons required by this title to register, see sections * * * 4455, * * * 4804(d), and 7011.

[Sec. 7272 as amended and in effect July 1, 1960]

§ 45.7273(a) Statutory provisions; penalties for offenses relating to special taxes; general rule.

SEC. 7273. *Penalties for offenses relating to special taxes*—(a) *General rule.* Any person who shall fail to place and keep stamps denoting the payment of the special tax as provided in section 6806 (a) or (b) (whichever is applicable) shall be liable to a penalty equal to the special tax for which his business rendered him liable (unless such failure is shown to be due to reasonable cause); but in no case shall said penalty be less than $10. Where the failure to comply with the provisions of section 6806 (a) or (b) shall be through willful neglect or refusal, then the penalty shall be double the amount above prescribed. Nothing in this subsection shall in any way affect the liability of any person for exercising or carrying on any trade, business, or profession, or doing any act for the exercising, carrying on, or doing of which a special tax is imposed by law, without the payment thereof.

[Sec. 7273(a) as originally enacted and in effect July 1, 1960]

§ 45.7274 Statutory provisions; penalty for offenses relating to white phosphorus matches.

SEC. 7274. *Penalty for offenses relating to white phosphorus matches.* Any manufacturer of white phosphorus matches who omits to mark, brand, affix, stamp, or print the factory number required under section 4804(b) on every package of white phosphorus matches manufactured, sold, or removed by him shall be liable to a penalty of $50 for each package in respect of which such offense is committed.

[Sec. 7274 as originally enacted and in effect July 1, 1960]

§ 45.7303 Statutory provisions; other property subject to forfeiture.

SEC. 7303. *Other property subject to forfeiture.* There may be seized and forfeited to the United States the following:

(1) *Counterfeit stamps.* Every stamp involved in the offense described in section 7208 (relating to counterfeit, reused, cancelled, etc., stamps), and the vellum, parchment, document paper, package, or article upon which such stamp was placed or impressed in connection with such offense.

[(2) Repealed.]

(3) *Offenses by manufacturer or importer of or wholesale dealer in oleomargarine or adulterated butter.* All oleomargarine or adulterated butter owned by any manufacturer or importer of or wholesale dealer in oleomargarine or adulterated butter, or in which he has any interest as owner, if he shall knowingly or willfully omit, neglect, or refuse to do, or cause to be done, any of the things required by law in the carrying on or conducting of his business, or if he shall do anything prohibited by subchapter F of chapter 38, or subchapter C of chapter 39.

(4) *Purchase or receipt of filled cheese or adulterated butter.* All articles of filled cheese or adulterated butter (or the full value thereof) knowingly purchased or received by any person from any manufacturer or importer who has not paid the special tax provided in section 4821 or 4841.

(5) *Packages of oleomargarine or filled cheese.* All packages of oleomargarine or filled cheese subject to the tax under subchapter F of chapter 38, or part II of subchapter C of chapter 39, whichever is applicable, that shall be found without the stamps or marks provided for in the applicable subchapter or part thereof.

(6) *White phosphorus matches.* (A) All packages of white phosphorus matches subject to tax under subchapter B of chapter 39 and found without the stamps required by subchapter B of chapter 39.

(B) All the white phosphorus matches owned by any manufacturer of white phosphorus matches, or any importer or exporter of matches, or in which he has any interest as owner if he shall omit, neglect, or refuse to do or cause to be done any of the things required by law in carrying on or conducting his business, or shall do anything prohibited by subchapter B of chapter 39, if there be no specific penalty or punishment imposed by any other provision of subchapter B of chapter 39 for the neglecting, omitting, or refus-

ing to do, or for the doing or causing to be done, the thing required or prohibited.

(7) *False stamping of packages.* Any container involved in the offense described in section 7271 (relating to disposal of stamped packages), and of the contents of such container.

(8) *Fraudulent bonds, permits, and entries.* All property to which any false or fraudulent instrument involved in the offense described in section 7207 relates.

[Sec. 7303 as amended and in effect July 1, 1960]

§ 45.7326(a) Statutory provisions; disposals of forfeited or abandoned property in special cases.

SEC. 7326. *Disposal of forfeited or abandoned property in special cases*—(a) *Coin-operated gaming devices.* Any coin-operated gaming device as defined in section 4462(a)(2) upon which a tax is imposed by section 4461 and which has been forfeited under any provision of this title shall be destroyed, or otherwise disposed of, in such manner as may be prescribed by the Secretary or his delegate.

[Sec. 7326(a) as amended and in effect July 1, 1960]

§ 45.7328 Statutory provisions; confiscation of matches exported.

SEC. 7328. *Confiscation of matches exported.* Any white phosphorus matches exported or attempted to be exported shall be confiscated to the United States and destroyed in such manner as may be prescribed by the Secretary or his delegate.

[Sec. 7328 as originally enacted and in effect July 1, 1960]

§ 45.7492 Statutory provisions; enforceability of cotton futures contracts.

SEC. 7492. *Enforceability of cotton futures contracts.* No contract of sale of cotton for future delivery mentioned in section 4851(a), which does not conform to the requirements of section 4853 and has not the necessary stamps affixed thereto as required by section 4871, shall be enforceable in any court of the United States by, or on behalf of, any party to such contract or his privies.

[Sec. 7492 as originally enacted and in effect July 1, 1960]

§ 45.7493 Statutory provisions; immunity of witnesses in cases relating to cotton futures.

SEC. 7493. *Immunity of witnesses in cases relating to cotton futures.* No person whose evidence is deemed material by the officer prosecuting on behalf of the United States in any case brought under any provision of subchapter D of chapter 39 (relating to cotton futures) shall withhold his testimony because of complicity by him in any violation of subchapter D of chapter 39, or of any regulation made pursuant to such chapter, but any such person called by such officer who testifies in such case shall be exempt from prosecution for any offense to which his testimony relates.

[Sec. 7493 as originally enacted and in effect July 1, 1960]

§ 45.7510 Statutory provisions; exemption from tax of domestic goods purchased for the United States.

SEC. 7510. *Exemption from tax of domestic goods purchased for the United States.* The privilege existing by provision of law on December 1, 1873, or thereafter of purchasing supplies of goods imported from foreign countries for the use of the United States, duty free, shall be extended, under such regulations as the Secretary or his delegate may prescribe, to all articles of domestic production which are subject to tax by the provisions of this title.

[Sec. 7510 as originally enacted and in effect July 1, 1960]

§ 45.7510–1 Withdrawal of filled cheese and playing cards from factories, free of tax, for use of the United States.

Section 7510 provides for the withdrawal of filled cheese and playing cards from factories, free of tax, for the use of the United States. Withdrawals for the purpose of sale by Federal agencies are not for the use of the United States within the meaning of the statute. Institutions owned or controlled by the governments of the several States or the District of Columbia are not entitled to make withdrawals under section 7510.

§ 45.7510–2 Evidence required to establish exemption.

(a) *Exemption certificates.* To establish the right to remove filled cheese or playing cards tax free under section 7510, the manufacturer must obtain from an authorized officer of an agency of the United States, and retain in his possession a properly executed exemption certificate in the form prescribed in paragraph (c) of this section.

(b) *Frequency of certificates.* Where only occasional tax free removals from the place of manufacture for use of the United States are made, a separate exemption certificate should be furnished for each order. However, where removals are regular or frequently made, a certificate covering all orders for a specific period not to exceed 4 calendar quarters will be acceptable. Such certificates and proper records of invoices, orders, etc., relative to tax-free removals must be retained by the manufacturer and shall at all times be readily accessible for inspection by internal revenue officers and retained as provided in paragraph (d) of § 45.6001–1. If the records with respect to any removal claimed to be tax free do not include a proper certificate, with supporting invoices and such other evidence as may be necessary to establish the exempt character of the removal, the tax is payable on such removal.

(c) *Form of certificate.* The following form of exemption certificate will be acceptable for purposes of this section and must be adhered to in substance:

EXEMPTION CERTIFICATE

(To support tax-free removals of filled cheese or playing cards for the use of the United States under provisions of section 7510 of the Internal Revenue Code of 1954.)

----------, 19--
(Date)

The undersigned hereby certifies that he is ---------- of
(Title of officer)
----------; that he is
(Agency of the United States.)
authorized to execute this certificate; and that the article or articles specified in the accompanying order or on the reverse side hereof are purchased from ----------
(Name of vendor)
for the exclusive use of---------- of
(Government unit)
the United States.

It is understood that the exemption from tax in the case of removals of articles under this exemption certificate for the United States is limited to the removal of articles for its *exclusive use.* The undersigned understands that if articles purchased tax free under this exemption certificate are used otherwise or are sold to employees or others, such fact will be promptly reported to the manufacturer, producer, or importer of the article or articles covered by this certificate. It is also understood that the fradulent use of this certificate for the purpose of securing this exemption will subject the undersigned and all guilty parties to a fine of not more than $10,000, or to imprisonment for not more than 5 years, or both, together with costs of prosecution.

(Signature)

(Address)

§ 45.7510–3 Branding.

(a) Each individual pack of playing cards shall be labeled or branded, "For use of U.S. Government". The letters of such printing shall be conspicuous, in boldfaced type of not less than one-quarter of an inch in height.

(b) Each statutory package of filled cheese, as required by § 45.4833–1, shall, in addition to the markings otherwise required, have legibly and durably marked, stamped, or branded thereon the statement, "For use of U.S. Government", the letters therein to correspond in size and style with the markings required by paragraph (b) of § 45.4833–1.

§ 45.7641 Statutory provisions; supervision of operations of certain manufacturers.

SEC. 7641. *Supervision of operations of certain manufacturers.* Every manufacturer of filled cheese, oleomargarine, * * * process or renovated butter or adulterated butter, or white phosphorus matches shall conduct his business under such surveillance of officers or employees of the Treasury Department as the Secretary or his delegate may by regulations require.

[Sec. 7641 as originally enacted and in effect July 1, 1960]

§ 45.7641–1 Inapplicability.

Section 7641 has no application in respect of any transaction involving oleomargarine which occurs on or after the effective date of the regulations in this part.

§ 45.7701 Statutory provisions; definitions.

SEC. 7701. *Definitions.* (a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof—

(1) *Person.* The term "person" shall be construed to mean and include an individual, a trust, estate, partnership, association, company or corporation.

(2) *Partnership and partner.* The term "partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this title, a trust or estate or a corporation; and the term "partner" includes a member in such a syndicate, group, pool, joint venture, or organization.

(3) *Corporation.* The term "corporation" includes associations, joint-stock companies, and insurance companies.

(4) *Domestic.* The term "domestic" when applied to a corporation or partnership means created or organized in the United States or under the law of the United States or any State or Territory.

(5) *Foreign.* The term "foreign" when applied to a corporation or partnership means a corporation or partnership which is not domestic.

(6) *Fiduciary.* The term "fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person.

* * * * *

(9) *United States.* The term "United States" when used in a geographical sense includes only the States and the District of Columbia.

(10) *State.* The term "State" shall be construed to include the District of Columbia, where such construction is necessary to carry out provisions of this title.

(11) *Secretary.* The term "Secretary" means the Secretary of the Treasury.

(12) *Delegate.* The term "Secretary or his delegate" means the Secretary of the Treasury, or any officer, employee, or agency of the Treasury Department duly authorized by the Secretary (directly, or indirectly by one or more redelegations of authority) to perform the function mentioned or described in the context, and the term "or his delegate" when used in connection with any other official of the United States shall be similarly construed.

(13) *Commissioner.* The term "Commissioner" means the Commissioner of Internal Revenue.

(14) *Taxpayer.* The term "taxpayer" means any person subject to any internal revenue tax.

* * * * *

(28) *Other terms.* Any term used in this subtitle with respect to the application of, or in connection with, the provisions of any other subtitle of this title shall have the same meaning as in such provisions.

(29) *Internal Revenue Code.* The term "Internal Revenue Code of 1954" means this title, and the term "Internal Revenue Code of 1939" means the Internal Revenue Code enacted February 10, 1939, as amended.

(b) *Includes and including.* The terms "includes" and "including" when used in a definition contained in this title shall not be deemed to exclude other things otherwise within the meaning of the term defined.

(c) *Commonwealth of Puerto Rico.* Where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, references in this title to possessions of the United States shall be treated as also referring to the Commonwealth of Puerto Rico.

(d) Cross references—(1) Other definitions. For other definitions, see the following sections of Title 1, of the United States Code:

(1) Singular as including plural, section 1.

(2) Plural as including singular, section 1.

(3) Masculine as including feminine, section 1.

(4) Officer, section 1.

(5) Oath as including affirmation, section 1.

(6) County as including parish, section 2.

(7) Vessel as including all means of water transportation, section 3.

(8) Vehicle as including all means of land transportation, section 4.

(9) Company or association as including successors and assigns, section 5.

(2) *Effect of cross references.* For effect of cross references in this title, see section 7806(a).

[Sec. 7701 as amended and in effect July 1, 1960, and as further amended by secs. 18(i) and 18(j), Hawaii, Omnibus Act (74 Stat. 416)]

§ 45.7805 Statutory provisions; rules and regulations.

SEC. 7805. *Rules and regulations*—(a) *Authorization.* Except where such authority is expressly given by this title to any person other than an officer or employee of the Treasury Department, the Secretary or his delegate shall prescribe all needful rules and regulations for the enforcement of this title including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue.

(b) *Retroactivity of regulations or rulings.* The Secretary or his delegate may prescribe the extent, if any, to which any ruling or regulations, relating to the internal revenue laws, shall be applied without retroactive effect.

(c) *Preparation and distribution of regulations, forms, stamps, and other matters.* The Secretary or his delegate shall prepare and distribute all the instructions, regulations, directions, forms, blanks, stamps, and other matters pertaining to the assessment and collection of internal revenue.

[Sec. 7805 as originally enacted and in effect July 1, 1960]

§ 45.7805–1 Promulgation of regulations.

In pursuance of section 7805 of the Internal Revenue Code of 1954, the foregoing regulations are hereby prescribed. (See § 45.0–3 relating to the scope of the regulations.)

[F.R. Doc. 61–444; Filed, Jan. 18, 1961; 8:50 a.m.]

[T.D. 6529]

[Regulations 105]

PART 81—REGULATIONS RELATING TO ESTATE TAX

Miscellaneous Amendments

On November 24, 1960, notice of proposed rule making was published in the FEDERAL REGISTER (25 F.R. 11157) to conform 26 CFR (1939), Part 81 (Regulations 105), relating to the Estate Tax to sections 1 and 4 of the Act of February 20, 1956 (Public Law 414 (84th Congress) 70 Stat. 23), the Act of February 20, 1956 (Public Law 417 (84th Congress) 70 Stat. 26), the Act of August 1, 1956 (Public Law 901 (84th Congress) 70 Stat. 917), the Act of February 11, 1958 (Public Law 85–318, 72 Stat. 3), and sections 65, 66, 89 and 93 of the Technical Amendments Act of 1958 (72 Stat. 1606). No objection to the rules proposed having been received during the 30-day period prescribed in the notice, the regulations as so proposed are hereby adopted.

(Sec. 3791 of the Internal Revenue Code of 1939 (53 Stat. 467; 26 U.S.C. 3791))

[SEAL] DANA LATHAM,
Commissioner of Internal Revenue.

Approved: January 13, 1961.

FRED C. SCRIBNER, JR.,
Acting Secretary of the Treasury.

In order to conform 26 CFR (1939), Part 81 (Regulations 105), relating to the Estate Tax to sections 1 and 4 of the Act of February 20, 1956 (Public Law 414 (84th Congress) 70 Stat. 23), the Act of February 20, 1956 (Public Law 417 (84th Congress) 70 Stat. 26), the Act of August 1, 1956 (Public Law 901 (84th Congress) 70 Stat. 917), the Act of February 11, 1958 (Public Law 85–318, 72 Stat. 3), and sections 65, 66, 89 and 93 of the Technical Amendments Act of 1958 (72 Stat. 1606) such regulations are amended as follows:

§ 81.2 [Amendment]

PARAGRAPH 1. Section 81.2, as amended by Treasury Decision 6073, approved June 11, 1954, is further amended by adding after the sixth undesignated paragraph of paragraph (a) (26 CFR (1939) 81.2(a)(6)) the following new paragraph:

A credit for Federal estate taxes paid on certain transfers of property to the decedent is allowable against both the basic and additional estate taxes under section 814. See §§ 81.9a to 81.9f, inclusive.

PAR. 2. There is inserted immediately preceding § 81.8 the following:

PUBLIC LAW 414 (EIGHTY-FOURTH CONGRESS, SECOND SESSION), APPROVED FEBRUARY 20, 1956

* * * * *

SEC. 3. Section 2011 of the Internal Revenue Code of 1954 is amended by adding after subsection (d) a new subsection as follows:

"(e) *Limitation in cases involving deduction under section 2053(d).* In any case where a deduction is allowed under section 2053(d) for an estate, succession, legacy, or inheritance tax imposed upon a transfer for public, charitable, or religious uses described in section 2055 or 2106(a)(2), the allowance of the credit under this section shall be subject to the following conditions and limitations:

"(1) The taxes described in subsection (a) shall not include any estate, succession, legacy, or inheritance tax for which a deduction is allowed under section 2053(d).

"(2) The credit shall not exceed the lesser of—

"(A) the amount stated in subsection (b) on a taxable estate determined by allowing the deduction authorized by section 2053(d), or

"(B) that proportion of the amount stated in subsection (b) on a taxable estate determined without regard to the deduction authorized by section 2053(d) as (i) the amount of the taxes described in subsection (a), as limited by the provisions of paragraph (1) of this subsection, bears to (ii) the amount of the taxes described in subsection (a) before applying the limitation contained in paragraph (1) of this subsection.

"(3) If the amount determined under subparagraph (B) of paragraph (2) is less than the amount determined under subparagraph (A) of that paragraph, then for purposes of subsection (d) such lesser amount shall be the maximum credit provided by subsection (b)."

SEC. 4. The amendments to the Internal Revenue Code of 1954 made by sections 2 and 3 of this Act, and provisions having the same effect as this amendment, which shall be considered to be included in chapter 3 of the Internal Revenue Code of 1939, shall apply to the estates of all decedents dying after December 31, 1953.

PUBLIC LAW 417 (EIGHTY-FOURTH CONGRESS, SECOND SESSION), APPROVED FEBRUARY 20, 1956

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subpart

I of part II of subchapter A of chapter 3 of the Internal Revenue Code of 1939 (relating to computation of estate tax) is hereby amended by adding at the end thereof the following new section:

"SEC. 814. CREDIT FOR TAX ON CERTAIN PRIOR TRANSFERS.

"(a) *General rule.* If the executor so elects, the tax imposed by sections 810 and 935 in the case of a decedent (but only if the decedent was a citizen or resident of the United States at the time of his death) dying after December 31, 1951, shall be credited with all or a part of the amount of the Federal estate tax paid with respect to the transfer of property (including property passing as a result of the exercise or non-exercise of a power of appointment) to the decedent by or from a person (herein designated as a 'transferor') who was the spouse of the decedent at the time of such person's death and who died within two years before the decedent's death. The credit shall be the amount determined under subsections (b) and (c).

"(b) *Computation of credit.* Subject to the limitation prescribed in subsection (c), the credit provided by this section shall be an amount which bears the same ratio to the estate tax paid (adjusted as indicated hereinafter) with respect to the estate of the transferor as the value of the property transferred bears to the net estate of the transferor (determined for purposes of the tax imposed by section 935) decreased by any death taxes paid with respect to such estate and increased by the exemption provided for by section 935(c) in determining the net estate of the transferor for purposes of the estate tax. For purposes of the preceding sentence, the estate tax paid shall be the Federal estate tax paid increased by any credits allowed against such estate tax under sections 813(a) and 936(b) on account of gift tax, and for any credits allowed against such estate tax under this section on account of prior transfers where the transferor acquired property from a person who died within two years before the death of the decedent.

"(c) *Limitation on credit.*

"(1) *In general.* The credit provided in this section shall not exceed the amount by which—

"(A) the estate tax imposed by sections 810 and 935 (after deducting the credits for State death taxes, gift tax, and foreign death taxes provided for in sections 810, 813, and 936) computed without regard to this section, exceeds

"(B) such tax computed by excluding from the decedent's gross estate the value of such property transferred and, if applicable, by making the adjustment hereinafter indicated.

If any deduction is otherwise allowable under section 812(d) (relating to charitable deduction) then, for the purpose of the computation indicated in subparagraph (B), the amount of such deduction shall be reduced by that part of such deduction which the value of such property transferred bears to the decedent's entire gross estate reduced by the deductions allowed under section 812(b) (relating to deduction for expenses, losses, etc.). For purposes of this section, the value of such property transferred shall be the value as provided for in subsection (d) of this section.

"(2) *Two or more transferors.* If the credit provided in this section relates to property received from two or more transferors, the limitation provided in paragraph (1) of this subsection shall be computed by aggregating the value of the property so transferred to the decedent. The aggregate limitation so determined shall be apportioned in accordance with the value of the property transferred to the decedent by each transferor.

"(d) *Valuation of property transferred.* The value of property transferred to the decedent shall be the value used for the purpose of determining the Federal estate tax liability of the estate of the transferor but—

"(1) There shall be taken into account the effect of the tax imposed by sections 810 and 935, or any estate, succession, legacy, or inheritance tax, on the net value to the decedent of such property;

"(2) Where such property is encumbered in any manner, or where the decedent incurs any obligation imposed by the transferor with respect to such property, such encumbrance or obligation shall be taken into account in the same manner as if the amount of a gift to the decedent of such property was being determined; and

"(3) if the decedent was the spouse of the transferor at the time of the transferor's death, the net value of the property transferred to the decedent shall be reduced by the amount allowed under section 812(e) (relating to marital deductions) as a deduction from the gross estate of the transferor.

"(e) *Property defined.* For purposes of this section, the term 'property' includes any beneficial interest in property, including a general power of appointment (as defined in section 811(f)).

"(f) *Denial of deduction for property previously taxed.* If the executor elects the credit provided by this section, the deduction provided by section 812(c) shall not be allowed."

SEC. 2. No interest shall be allowed or paid on any overpayment resulting from the amendment made by the first section of this Act.

SEC. 65. PERIOD OF LIMITATION FOR FILING CLAIM FOR CREDIT FOR STATE DEATH TAXES [TECHNICAL AMENDMENTS ACT OF 1958, APPROVED SEPTEMBER 2, 1958]

* * * * *

(b) *Period under 1939 Code.* Section 813 (b) of the Internal Revenue Code of 1939 (relating to period of limitations on credit for State death taxes) is amended by inserting after paragraph (2) the following new paragraph:

"(3) If a claim for refund or credit of an overpayment of tax imposed by this chapter has been filed within the time prescribed in section 910, then within such 4-year period or before the expiration of 60 days from the date of mailing by certified mail or registered mail by the Secretary or his delegate to the taxpayer of a notice of the disallowance of any part of such claim, or before the expiration of 60 days after a decision by any court of competent jurisdiction becomes final with respect to a timely suit instituted upon such claim, whichever is later."

(c) * * * The amendment made by subsection (b) shall apply with respect to estates of decedents dying after February 10, 1939, and on or before August 16, 1954.

§ 81.8 [Amendment]

PAR. 3. Section 81.8(a), as amended by Treasury Decision 6034, approved July 29, 1953, is further amended by revising the first sentence (26 CFR (1939) 81.8 (a)(1)) to read as follows: "If the decedent died after October 21, 1942, the credits authorized against the basic estate tax imposed by section 810 or section 860 are to be deducted in the following order: First, the credit for estate, inheritance, legacy, or succession taxes under § 81.9(a), second, the credit for gift tax under paragraph (b) of this section, third, the credit for gift tax under paragraph (c) of this section, fourth, if the decedent died after October 20, 1951, the credit under § 81.9(b) for death taxes paid to a foreign country, and, fifth, if the decedent died after December 31, 1951, the credit under §§ 81.9a to 81.9f, for Federal estate tax paid on certain transfers of property to the decedent."

§ 81.9 [Amendment]

PAR. 4. Section 81.9, as amended by Treasury Decision 6034, is further amended as follows:

(A) By amending the heading thereof to read as follows: *"Credit for death taxes—(a) Taxes paid a State, Territory, the District of Columbia or a possession of the United States—(1) In general."*

(B) By inserting at the end of paragraph (a) the following:

(2) *Limitation on credit if a deduction is allowed under sections 2 and 4 of Public Law 414 (84th Cong.).* If a deduction is allowed under sections 2 and 4 of Public Law 414 (84th Cong.), approved February 20, 1956, for State death taxes paid with respect to a charitable gift (see § 81.37a), sections 3 and 4 of Public Law 414 subject the credit for State death taxes to special limitations. Under these limitations the credit cannot exceed the least of the following:

(i) The amount of State death taxes paid other than those for which a deduction is allowed under sections 2 and 4 of Public Law 414;

(ii) The amount indicated in section 813(b) to be the maximum credit allowable with respect to the decedent's net estate; or

(iii) An amount, A, which bears the same ratio to B (the amount which would be the maximum credit allowable under section 813(b) if the deduction under sections 2 and 4 of Public Law 414 were not allowed in computing the decedent's net estate) as C (the amount of State death taxes paid other than those for which a deduction is allowed under sections 2 and 4 of Public Law 414) bears to D (the total amount of State death taxes paid). For the purpose of this computation, in determining what the decedent's net estate would be if the deduction under sections 2 and 4 of Public Law 414 were not allowed, adjustment must be made for the decrease in the deduction for charitable gifts under section 812(d) or 861(a)(3) (for estates of nonresidents not citizens) by reason of any increase in Federal estate tax which would be charged against the charitable gifts.

The application of this section may be illustrated by the following example:

Example. The decedent died January 1, 1954, leaving a gross estate of $925,000. Expenses, indebtedness, etc., amounted to $25,000. The decedent bequeathed $400,000 to his son with the direction that the son bear the State death taxes on the bequest. The residuary estate was left to a charitable organization. Except as noted above, all Federal and State death taxes were payable out of the residuary estate. The State imposed death taxes of $60,000 on the son's bequest and death taxes of $75,000 on the bequest to charity. For purposes of determining the basic tax, the decedent's net estate (determined without regard to the limitation imposed by subdivision (iii) of this subparagraph) is computed as follows:

Gross estate				$925,000.00
Expenses, indebtedness, etc			$25,000.00	
Exemption			100,000.00	
Deduction under sections 2 and 4 of P.L. 414			75,000.00	
Charitable deduction:				
Gross estate	$925,000.00			
Expenses, etc	$25,000.00			
Bequest to son	400,000.00			
State death tax paid from residue	75,000.00			
Federal estate tax paid from residue	122,916.67	622,916.67	302,083.33	502,083.33
Net estate for the purpose of determining the basic tax				422,916.67

If the deduction under sections 2 and 4 of Public Law 414 were not allowed, the decedent's net estate would be computed as follows:

Gross estate				$925,000.00
Expenses, indebtedness, etc			$25,000.00	
Exemption			100,000.00	
Charitable deduction:				
Gross estate	$925,000.00			
Expenses, etc	$25,000.00			
Bequest to son	400,000.00			
State death tax paid from residue	75,000.00			
Federal estate tax paid from residue	155,000.00	655,000.00	270,000.00	395,000.00
Net estate for the purpose of determining the basic tax				530,000.00

On a net estate of $530,000, the maximum credit allowable under section 813(b) would be $15,200. Under these facts, the credit for State death taxes is determined as follows:

(1) Amount of State death taxes paid other than those for which a deduction is allowed under sections 2 and 4 of Public Law 414 ($135,000—$75,000)	$60,000.00
(2) Amount indicated in section 813(b) to be the maximum credit allowable with respect to the decedent's net estate of $422,916.67	10,916.67
(3) Amount determined by use of the ratio described in subdivision (iii) of this subparagraph $\left(\frac{\$60,000}{\$135,000} \times \$15,200\right)$	6,755.56
(4) Credit for State death taxes (least of items (1) through (3) above)	6,755.56

(C) By amending paragraph (c) to read as follows:

(c) *Claim for credit or refund and interest on refund.* (1) *In general.* The credit is limited to such taxes as were actually paid and credit therefor claimed within four years after the filing of the return, except as otherwise provided in this paragraph. If a petition is filed with the Tax Court for the redetermination of a deficiency within the time prescribed by section 871(a) (see § 81.73), the credit is limited to such taxes as were actually paid and credit therefor claimed within four years after the filing of the return or before the expiration of 60 days after the decision of the Tax Court becomes final, whichever period is the last to expire. If an extension of time has been granted for payment of the tax shown on the return or of a deficiency under section 822(a)(2) or section 871(h), the credit is limited to such taxes as were actually paid and credit therefor claimed within four years after the filing of the return or before the date of the expiration of the extension, whichever period is the last to expire. Should the executor, in accordance with the provisions of sections 925 and 926, elect to postpone the payment of the Federal estate tax attributable to a reversionary or remainder interest, the credit allowable against the tax attributable to such interest is limited to estate, inheritance, legacy, or succession taxes attributable to such interest as are actually paid and credit therefor claimed within four years after the filing of the return or prior to the expiration of 60 days after the termination of the precedent interest, whichever period is the last to expire. However, if in accordance with sections 925 and 926 there is a postponement, or postponement and extension, of the time for payment of such tax and if the precedent interest did not terminate before July 5, 1958, credit may be allowed for such taxes as were actually paid and credit therefor claimed within four years after the filing of the return or before the expiration of the time for payment as postponed pursuant to section 925 and as extended (on account of undue hardship) under such section, whichever period is the last to expire. See section 927 of the Internal Revenue Code and § 81.79(b).

(2) *Rule applicable to credit for State death taxes only.* If a claim for refund or credit of an overpayment of the Federal estate tax is timely filed, the credit for death taxes paid to a State, Territory, the District of Columbia, or a possession of the United States is limited to such taxes as were actually paid and credit therefor claimed (i) within four years after the filing of the return, or (ii) before the expiration of 60 days from the date of mailing by certified or registered mail of a notice of disallowance of any part of the claim, or (iii) before the expiration of 60 days after a decision by any court of competent jurisdiction becomes final with respect to a timely suit instituted upon the claim, whichever period is the last to expire.

(3) *Refund and interest.* Refund based on the credit, despite the provisions of sections 910, 911, and 912, will be made if claim therefor is filed within the period provided for filing claim for credit. Such refunds will be made without interest.

PAR. 5. There is inserted after § 81.9 the following new sections:

§ 81.9a Credit for tax on prior transfers.

(a) *In general.* The executor of a present decedent's estate may elect to have a credit allowed under section 814 against the Federal estate tax imposed on the present decedent's estate for Federal estate tax paid on the transfer of property to the present decedent from a transferor who died within two years before the present decedent's death, provided all of the following conditions are satisfied:

(1) The present decedent was a citizen or resident of the United States at the time of his death;

(2) The present decedent died after December 31, 1951; and

(3) The present decedent was the spouse of the transferor at the time of the transferor's death.

For purposes of §§ 81.9a through 81.9f, the term "Federal estate tax" means the tax imposed by sections 810, 860, and 935. The word "within" as used in this paragraph means "during". Therefore, if a death occurs on the second anniversary of another death, the first death is considered to have occurred within the two years before the second death. See § 81.9e for definition of the terms "property" and "transfer". There is no requirement that the transferred property be identified in the estate of the present decedent or that the property be in existence at the time of the decedent's death. It is sufficient that the transfer of the property was subjected to Federal estate tax in the estate of the transferor and that the other conditions set forth in this paragraph are satisfied. The executor must submit such proof as may be requested by the district director in order to establish the right of the estate to the credit. No interest is allowed or paid on any refund resulting from the application of section 814. If an executor elects a credit under this paragraph, the deduction provided by section 812(c) (§ 81.41) shall not be allowed for purposes of determining the present decedent's net estate.

(b) *Limitations on credit.* The credit for tax on prior transfers is limited to the smaller of the following amounts:

(1) The amount of the Federal estate tax attributable to the transferred property in the transferor's estate, computed as set forth in § 81.9b; or

(2) The amount of the Federal estate tax attributable to the transferred property in the present decedent's estate, computed as set forth in § 81.9c.

Rules for valuing property for purposes of the credit are contained in § 81.9d.

(c) *Example.* For an illustration of the application of this section, see the example in § 81.9f.

§ 81.9b First limitation.

(a) *Tax attributable to transferred property in transferor's estate.* The amount of the Federal estate tax attributable to the transferred property in the transferor's estate is the "first limitation." Thus, the credit is limited to an amount, A, which bears the same ratio to B (the "transferor's adjusted Federal estate tax", computed as described in paragraph (b) of this section) as C (the

value of the property transferred (see §81.9d)) bears to D (the "transferor's adjusted net estate", computed as described in paragraph (c) of this section). Stated algebraically, the "first limitation" (A) equals

$$\frac{\text{Value of transferred property (C)}}{\text{"Transferor's adjusted net estate" (D)}} \times \text{"Transferor's adjusted Federal estate tax" (B)}$$

(b) *Transferor's adjusted Federal estate tax.* For purposes of the ratio stated in paragraph (a) of this section, the "transferor's adjusted Federal estate tax" referred to as factor "B" is the amount of the Federal estate tax paid with respect to the transferor's estate plus:

(1) Any credit allowed the transferor's estate for gift tax under sections 813(a) and 936(b); and

(2) Any credit allowed the transferor's estate, under section 814, for tax on prior transfers, but only if the transferor acquired property from a person who died within two years before the death of the present decedent.

(c) *Transferor's adjusted net estate.* For purposes of the ratio stated in paragraph (a) of this section, the "transferor's adjusted net estate" referred to as factor "D" is the amount of the transferor's net estate for purposes of the tax imposed by section 935, decreased by the amount of any "death taxes" paid with respect to his gross estate and increased by the amount of the exemption allowed under section 935(c) in computing his net estate. The amount of the transferor's net estate is determined in accordance with the provisions of § 81.6. The term "death taxes" means the Federal estate tax (both the basic tax and the additional tax) plus all other estate, inheritance, legacy, succession, or similar death taxes imposed by and paid to any taxing authority, whether within or without the United States. However, only the net amount of such taxes paid is taken into consideration.

(d) *More than one transferor.* If the credit for tax on prior transfers relates to property received from more than one transferor (as might be the case if following the death of his first wife the decedent remarried and the second wife also predeceased the decedent, with all three deaths taking place within a two year period), the provisions of this section are to be applied separately with respect to the property received from each transferor.

(e) *Example.* For an illustration of the application of this section, see the example in § 81.9f.

§ 81.9c Second limitation.

(a) *Tax attributable to transferred property in present decedent's estate.* The amount of the Federal estate tax attributable to the transferred property in the present decedent's estate is the "second limitation". Thus, the credit is limited to the difference between—

(1) The total estate tax payable (see § 81.7) with respect to the present decedent's estate, determined without regard to any credit for tax on prior transfers under section 814 or any credit for foreign death taxes claimed under the provisions of a death tax convention, and

(2) The total estate tax determined as provided in subparagraph (1) of this paragraph, but computed by subtracting from the present decedent's gross estate the value of the property transferred (see § 81.9d), and by making only the adjustment indicated in paragraph (b) of this section if a charitable deduction is allowable to the estate of the present decedent.

(b) *Reduction of charitable deduction.* If a charitable deduction is allowable to the estate of the present decedent under the provisions of section 812(d), for purposes of determining the tax described in paragraph (a)(2) of this section, the charitable deduction otherwise allowable is reduced by an amount, E, which bears the same ratio to F (the charitable deduction otherwise allowable) as G (the value of the transferred property (see § 81.9d)) bears to H (the value of the present decedent's gross estate reduced by the amount of the deductions for expenses, indebtedness, taxes, losses, etc., allowed under the provisions of section 812(b)).

(c) *More than one transferor.* If the credit for tax on prior transfers relates to property received from more than one transferor, the property received from all such transferors is aggregated in determining the limitation on credit under this section (the "second limitation"). However, the limitation so determined is apportioned to the property received from each transferor in the ratio that the property received from each transferor bears to the total property received from all transferors.

(d) *Example.* For an illustration of the application of this section, see the example in § 81.9f.

§ 81.9d Valuation of property transferred.

(a) *In general.* For purposes of section 814 and §§ 81.9a through 81.9f, the value of the property transferred to the decedent is the value at which such property was included in the transferor's gross estate for the purpose of the Federal estate tax (see §§ 81.10 and 81.11) reduced as indicated in paragraph (b) of this section. If the decedent received a life estate or remainder or other limited interest in property included in the transferor's gross estate, the value of the interest is determined as of the date of the transferor's death on the basis of recognized valuation principles (see especially paragraphs (i) and (j) of § 81.10). The application of this paragraph may be illustrated by the following examples (in each of which H was the husband and W was the wife):

Example (1). H died on January 1, 1951, leaving Blackacre to W. The property was included in H's gross estate at a value of $100,000. On December 1, 1952, W sold Blackacre to C for $150,000. W died on January 1, 1953. For purposes of computing the credit against the tax imposed on W's estate, the value of the property transferred to W is $100,000.

Example (2). H died on July 1, 1952, leaving Blackacre to W for life and, upon W's death, remainder to C who was W's sister. At the time of H's death, W was 56 years of age. The property was included in H's gross estate at a value of $100,000. The part of that value attributable to the life estate is $44,688 (see paragraph (i) of section 81.10), and the part of that value attributable to the remainder is $55,312. W died on January 1, 1954, and C died on July 1, 1954. For purposes of computing the credit against the tax imposed on W's estate, the value of the property transferred to W is $44,688. It should be noted that no credit under section 814 is allowable to C's estate in this example since C was not married to H at the time of H's death.

(b) *Special adjustments.* In arriving at the value of the property transferred to the decedent, the value at which the property was included in the transferor's gross estate (see paragraph (a) of this section) is reduced as follows:

(1) By the amount of the Federal estate tax and any other estate, inheritance, legacy, or succession taxes which were payable out of the property transferred to the decedent or which were payable by the decedent in connection with the property transferred to him. For example, if under the transferor's will or local law all death taxes are to be paid out of other property with the result that the decedent receives a bequest free and clear of all death taxes, no reduction is to be made under this subparagraph;

(2) By the amount of any marital deduction allowed the transferor's estate under section 812(e); and

(3) (i) By the amount of any encumbrance on the property or by the amount of any obligation imposed by the transferor and incurred by the decedent with respect to the property, to the extent such charges would be taken into account if the amount of a gift to the decedent of such property were being determined.

(ii) For purposes of this subparagraph, an obligation imposed by the transferor and incurred by the decedent with respect to the property includes a bequest, etc., in lieu of the interest of the surviving spouse under community property laws, unless the interest was, immediately prior to the transferor's death, a mere expectancy. (As to the circumstances under which the interest of a surviving spouse is regarded as a mere expectancy, see the provisions of paragraph (b) of § 81.47d which are equally applicable here.) However, an obligation imposed by the transferor and incurred by the decedent with respect to the property does not include a bequest, devise, or other transfer in lieu of dower, curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights in the transferor's property or estate.

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

Example (1). The transferor devised to the decedent real estate subject to a mortgage. The value of the property transferred to the decedent does not include the amount of the mortgage. If, however, the transferor by his will directs the executor to pay off the mortgage, such payment constitutes an additional amount transferred to the decedent.

Example (2). The transferor bequeathed certain property to the decedent with a direction that the decedent pay $1,000 to X. The value of the property transferred to the decedent is the value of the property reduced by $1,000.

Example (3). The transferor bequeathed certain property to his wife, the decedent, in lieu of her interest in property held by them as community property under the law of the State of their residence. The wife elected to relinquish her community property interest and to take the bequest. The value of the property transferred to the decedent is the value of the property reduced by the value of the community property interest relinquished by the wife.

Example (4). The transferor bequeathed his entire residuary estate to the decedent, out of which certain claims were to be satisfied. The entire distributable income of the transferor's estate (during the period of its administration) was applied toward the satisfaction of these claims and the remaining portion of the claims was satisfied by the decedent out of her own funds. Thus, the decedent received a larger sum upon settlement of the transferor's estate than she was actually bequeathed. The value of the property transferred to the decedent is the value at which such property was included in the transferor's gross estate, reduced by the amount of the estate income and the decedent's own funds paid out in satisfaction of the claims.

§ 81.9e Property and transfer defined.

(a) *Property.* For purposes of section 814 and §§ 81.9a through 81.9f, the term "property" means any beneficial interest in property, including a general power of appointment (as defined in section 811 (f)) over property. Thus, the term does not include an interest in property consisting merely of a bare legal title, such as that of a trustee. Nor does the term include a power of appointment over property which is not a general power of appointment (as defined in section 811 (f)). Examples of property, as described in this paragraph, are annuities, life estates, estates for terms of years, vested or contingent remainders and other future interests.

(b) *Transfer.* In order to obtain the credit for tax on prior transfers, there must be a transfer of property described in paragraph (a) of this section by or from the transferor to the decedent. The term "transfer" of property by or from a transferor means any passing of property or an interest in property under circumstances which were such that the property or interest was included in the gross estate of the transferor. In this connection, if the decedent receives property as a result of the exercise or nonexercise of a power of appointment, the donee of the power (and not the creator) is deemed to be the transferor of the property if the property subject to the power is includible in the donee's gross estate under section 811(f) (relating to powers of appointment). Thus, notwithstanding the designation by local law of the capacity in which the decedent takes, property received from the transferor includes interests in property held by or devolving upon the decedent: (1) As spouse under dower or curtesy laws or laws creating an estate in lieu of dower or curtesy; (2) as surviving tenant of a tenancy by the entirety or joint tenancy with survivorship rights; (3) as beneficiary of the proceeds of life insurance; (4) as survivor under an annuity contract; (5) as donee (possessor) of a general power of appointment (as defined in section 811 (f)); (6) as appointee under the exercise of a general power of appointment (as defined in section 811(f)); or (7) as remainderman under the release or nonexercise of a power of appointment by reason of which the property is included in the gross estate of the donee of the power under section 811(f).

(c) *Example.* The application of this section may be illustrated by the following example:

Example. H died on July 1, 1951. He devised Blackacre to B, as trustee with directions to pay the income therefrom to W, H's wife, for life. Upon W's death, Blackacre is to be sold. W was given a general testamentary power to appoint one-third of the proceeds, and a testamentary power, which is not a general power, to appoint the remaining two-thirds of the proceeds to such of H's issue as she should choose. W died on June 1, 1953. W's life estate in Blackacre and her testamentary power over the one-third interest in the remainder constitute "property" received from H for purposes of the credit in W's estate. The nongeneral testamentary power over the remaining two-thirds interest in the proceeds of the sale does not constitute "property" for purposes of the credit in W's estate.

§ 81.9f Example.

The application of §§ 81.9a through 81.9e may be further illustrated by the following example:

Example (a) *Facts.* H died December 1, 1952, leaving a gross estate of $1,000,000. Expenses, indebtedness, etc., amounted to $90,000. H bequeathed $200,000 to W, his wife, $100,000 of which qualified for the marital deduction. W died November 1, 1953, leaving a gross estate of $500,000. Expenses, indebtedness, etc., amounted to $40,000. W bequeathed $150,000 to charity. H and W were both citizens of the United States. The estates of H and W both paid State death taxes equal to the maximum credit allowable for State death taxes. Death taxes were not a charge on the bequest to W or on the bequest to charity. The executor of W's estate elects to apply the credit provided by section 814 in determining the Federal estate tax on W's estate.

(b) *"First limitation" on credit for W's estate (§ 81.9b)—(1) H's basic estate tax.*

H's gross estate		$1,000,000.00
Expenses, indebtedness, etc.		90,000.00
H's adjusted gross estate		910,000.00
Marital deduction	$100,000.00	
Exemption	100,000.00	200,000.00
H's net estate		710,000.00
H's gross basic estate tax		29,100.00
Credit for State death taxes		23,280.00
H's net basic estate tax payable		5,820.00

(2) *H's additional estate tax.*

Net estate (computed in same manner as net estate for basic estate tax except for difference in specific exemption)	750,000.00
H's net additional estate tax payable	204,100.00

(3) *H's total estate tax payable.*

Sum of net basic and net additional taxes	$209,920.00

(4) *Computation of limitation.*

"First limitation" = $209,920.00 (§ 81.9b(b)) × $\frac{\$200,000.00-\$100,000.00}{(\S\ 81.9d)}$ / $\$750,000.00-\$209,920.00-\$23,280.00+\$60,000.00$

(§ 81.9b(c))	36,393.90

(c) *"Second limitation" on credit for W's estate (§ 81.9c)—(1) W's total estate tax payable as described in § 81.9c(a)(1) (previously taxed transfer included)—(i) W's basic estate tax.*

W's gross estate		$500,000.00
Expenses, indebtedness, etc.	$40,000.00	
Charitable deduction	150,000.00	
Exemption	100,000.00	290,000.00
W's net estate		210,000.00
W's gross basic estate tax		4,900.00
Credit for State death taxes		3,920.00
W's net basic estate tax payable		980.00

(ii) *W's additional estate tax.*

Net estate (computed in same manner as net estate for basic estate tax except for difference in specific exemption)	250,000.00
W's net additional estate tax payable	60,800.00

(iii) *W's total estate tax payable.*

Sum of net basic and net additional taxes	61,780.00

(2) *W's total estate tax payable as described in § 81c(a)(2) (previously taxed transfer excluded)—(i) W's basic estate tax.*

W's gross estate		$400,000.00
Expenses, indebtedness, etc.	$40,000.00	
Charitable deduction (§ 81.9c(b)) = $150,000.00 − ($150,000.00 × $\frac{\$200,000.00-\$100,000.00}{\$500,000.00-\$40,000.00}$)	117,391.30	
Exemption	100,000.00	257,391.30
W's net estate		142,608.70
W's gross basic estate tax		2,778.26
Credit for State death taxes		2,222.61
W's net basic estate tax payable		555.65

(ii) *W's additional estate tax.*

Net estate (computed in same manner as net estate for basic estate tax except for difference in specific exemption)	182,608.70
W's net additional estate tax payable	42,704.35

(iii) *W's total estate tax payable.*

Sum of net basic and net additional taxes	43,260.00

(3) *"Second limitation".*

Subparagraph (1)	$61,780.00
Less: Subparagraph (2)	43,260.00
	$18,520.00

(d) *Credit of W's estate for tax on prior transfers (§ 81.9a(c)).*

Credit for tax on prior transfers=$18,520.00 (lower of paragraphs (b) and (c)).

PAR. 6. There is inserted immediately after section 208 of the Technical Changes Act of 1953, and preceding section 302(c) of the Revenue Act of 1926 (as originally enacted), which precede § 81.15, the following:

PUBLIC LAW 414 (EIGHTY-FOURTH CONGRESS, SECOND SESSION), APPROVED FEBRUARY 20, 1956

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 208 (b) of the Technical Changes Act of 1953 is amended by striking out "1950" and inserting in lieu thereof "1947".

(b) The amendment made by subsection (a) shall be effective as if enacted as a part of section 208(b) of the Technical Changes Act of 1953.

* * * * *

PUBLIC LAW 901 (EIGHTY-FOURTH CONGRESS, SECOND SESSION), APPROVED AUGUST 1, 1956

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That if, in the case of property transferred by a decedent dying after February 10, 1939, refund or credit of any overpayment resulting from the application of subsections (a) and (b) of section 7 of the Act entitled "An Act to amend certain provisions of the Internal Revenue Code", approved October 25, 1949 (63 Stat. 891; Public Law 378, Eighty-first Congress), was prevented on October 25, 1949, by the operation of any law or rule of law (other than section 3760 of the Internal Revenue Code of 1939, relating to closing agreements, and other than section 3761 of such Code of 1939, relating to compromises), refund or credit of such overpayment (reduced as provided in section 2) may, nevertheless, be made or allowed if claim therefor is filed within one year from the date of the enactment of this Act.

SEC. 2. The amount of the reduction referred to in the first section of this Act is the amount of gift tax refunded (together with interest paid thereon) by the United States by reason of the inclusion in the gross estate of the value of the property causing the overpayment resulting from the application of subsections (a) and (b) of section 7 of the Act approved October 25, 1949.

SEC. 3. No interest shall be allowed or paid on any overpayment resulting from the application of this Act.

§ 81.17 [Amendment]

PAR. 7. Section 81.17, as amended by Treasury Decision 6078, approved July 7, 1954, is further amended by adding the following new paragraph at the end of subparagraph (2) of paragraph (c) thereof:

Public Law 901 (84th Cong.), approved August 1, 1956, provides that in the case of property transferred by a decedent dying after February 10, 1939, if refund or credit of any overpayment resulting from the application of subsections (a) and (b) of section 7 of Public Law 378 was prevented on October 25, 1949, by operation of any law or rule of law (other than section 3760, relating to closing agreements, and section 3761, relating to compromises), refund or credit of such overpayment may, nevertheless, be made or allowed if claim therefor is filed on or before August 1, 1957. However, the amount of the overpayment is reduced by the amount of any gift tax refunded (together with interest paid thereon) by the United States by reason of the inclusion in the gross estate of the value of the property causing the overpayment resulting from the application of subsections (a) and (b) of section 7 of Public Law 378. No interest is allowed or paid on any overpayment resulting from the application of Public Law 901.

§ 81.20 [Amendment]

PAR. 8. Section 81.20, as amended by Treasury Decision 6073, is further amended by striking "1950" from the last undesignated paragraph (26 CFR (1939) 81.20(b)(4)) of paragraph (b), and by substituting in lieu thereof "1947".

PAR. 9. There is inserted immediately preceding § 81.29 the following:

PUBLIC LAW 414 (EIGHTY-FOURTH CONGRESS, SECOND SESSION), APPROVED FEBRUARY 20, 1956

* * * * *

SEC. 2. Section 2053 of the Internal Revenue Code of 1954 (relating to deductions from the gross estate for expenses, indebtedness, and taxes) is hereby amended by redesignating subsection (d) to be subsection (e) and by adding after subsection (c) a new subsection as follows:

"(d) *Certain State death taxes*—(1) *General rule.* Notwithstanding the provisions of subsection (c)(1)(B) of this section, for purposes of the tax imposed by section 2001 the value of the taxable estate may be determined, if the executor so elects before the expiration of the period of limitation for assessment provided in section 6501, by deducting from the value of the gross estate the amount (as determined in accordance with regulations prescribed by the Secretary or his delegate) of any estate, succession, legacy or inheritance tax imposed by a State or Territory or the District of Columbia, or any possession of the United States, upon a transfer by the decedent for public, charitable, or religious uses described in section 2055 or 2106(a)(2). The election shall be exercised in accordance with regulations prescribed by the Secretary or his delegate.

"(2) *Condition for allowance of deduction.* No deduction shall be allowed under paragraph (1) for a State death tax specified therein unless the decrease in the tax imposed by section 2001 which results from the deduction provided for in paragraph (1) will inure solely for the benefit of the public, charitable, or religious transferees described in section 2055 or section 2106(a)(2). In any case where the tax imposed by section 2001 is equitably apportioned among all the transferees of property included in the gross estate, including those described in sections 2055 and 2106(a)(2) (taking into account any exemptions, credits, or deductions allowed by this chapter), in determining such decrease, there shall be disregarded any decrease in the Federal estate tax which any transferees other than those described in sections 2055 and 2106(a)(2) are required to pay.

"(3) *Effect of deduction on credit for State death taxes.* See section 2011(e) for the effect of a deduction taken under this subsection on the credit for State death taxes."

* * * * *

SEC. 4. The amendments to the Internal Revenue Code of 1954 made by sections 2 and 3 of this Act, and provisions having the same effect as this amendment, which shall be considered to be included in chapter 3 of the Internal Revenue Code of 1939, shall apply to the estates of all decedents dying after December 31, 1953.

§ 81.37 [Amendment]

PAR. 10. The last sentence of § 81.37 is amended to read as follows: "Except as otherwise provided in § 81.37a with respect to certain death taxes paid on charitable, etc., transfers, no estate, succession, legacy, or inheritance tax is deductible."

PAR. 11. There is inserted after § 81.37 the following new section:

§ 81.37a Deduction for certain State death taxes.

(a) *General rule.* If the decedent died after December 31, 1953, a deduction is allowed his estate under sections 2 and 4 of Public Law 414 (84th Cong.), approved February 20, 1956, for the amount of any estate, succession, legacy, or inheritance tax imposed by a State, Territory, the District of Columbia, or any possession of the United States upon a transfer by the decedent for charitable, etc., uses described in section 812(d) or 861(a)(3) (relating to the estates of nonresidents not citizens), but only if (1) the conditions stated in paragraph (b) of this section are met, and (2) an election is made in accordance with the provisions of paragraph (c) of this section. See sections 3 and 4 of Public Law 414 and § 81.9(a)(2) for the effect which the allowance of this deduction has upon the credit for State death taxes.

(b) *Condition for allowance of deduction.* (1) The deduction is not allowed unless either—

(i) The entire decrease in the Federal estate tax resulting from the allowance of the deduction inures solely to the benefit of a charitable, etc., transferee described in section 812(d) or 861(a)(3), or

(ii) The Federal estate tax is equitably apportioned among all the transferees (including the decedent's surviving spouse and the charitable, etc., transferees) of property included in the decedent's gross estate.

For allowance of the deduction, it is sufficient if either of these conditions is satisfied. Thus, in a case where the entire decrease in Federal estate tax inures to the benefit of a charitable transferee, the deduction is allowable even though the Federal estate tax is not equitably apportioned among all the transferees of property included in the decedent's

gross estate. Similarly, if the Federal estate tax is equitably apportioned among all the transferees of property included in the decedent's gross estate, the deduction is allowable even though a noncharitable transferee receives some benefit from the allowance of the deduction.

(2) For purposes of this paragraph, the Federal estate tax is considered to be equitably apportioned among all the transferees (including the decedent's surviving spouse and the charitable, etc., transferees) of property included in the decedent's gross estate only if each transferee's share of the tax is based upon the net amount of his bequest subjected to the tax (taking into account any exemptions, credits, or deductions allowed by chapter 3). See examples (2) through (5) of paragraph (e) of this section.

(c) *Exercise of election.* The election to take a deduction for a State death tax imposed upon a transfer for charitable, etc., uses shall be exercised by the executor by the filing of a written notification to that effect with the district director of internal revenue in whose district the estate tax return for the decedent's estate was filed. The notification shall be filed before the expiration of the period of limitation for assessment provided in section 874 (usually 3 years from the last day for filing the return). The election may be revoked by the executor by the filing of a written notification to that effect with the district director at any time before the expiration of such period.

(d) *Amount of State death tax imposed upon a transfer.* If a State death tax is imposed upon the transfer of the decedent's entire estate and not upon the transfer of a particular share thereof, the State death tax imposed upon a transfer for charitable, etc., uses is deemed to be an amount, E, which bears the same ratio to F (the amount of the State death tax imposed with respect to the transfer of the entire estate) as G (the value of the charitable, etc., transfer, reduced as provided in the next sentence) bears to H (the total value of the properties, interests, and benefits subjected to the State death tax received by all persons interested in the estate, reduced as provided in the last sentence of this paragraph). In arriving at amount G of the ratio, the value of the charitable, etc., transfer is reduced by the amount of any deduction or exclusion allowed with respect to such property in determining the amount of the State death tax. In arriving at amount H of the ratio, the total value of the properties, interests, and benefits subjected to State death tax received by all persons interested in the estate is reduced by the amount of all deductions and exclusions allowed in determining the amount of the State death tax on account of the nature of a beneficiary or a beneficiary's relationship to the decedent.

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

Example (1). The decedent's gross estate was valued at $200,000. He bequeathed $90,000 to a nephew, $10,000 to Charity A, and the remainder of his estate to Charity B. State inheritance tax in the amount of $13,500 was imposed upon the bequest to the nephew, $1,500 upon the bequest to Charity A, and $15,000 upon the bequest to Charity B. Under the will and local law, each legatee is required to pay the State inheritance tax on his bequest, and the Federal estate tax is to be paid out of the residuary estate. Since the entire burden of paying the Federal estate tax falls on Charity B, it follows that the decrease in the Federal estate tax resulting from the allowance of deductions for State death taxes in the amounts of $1,500 and $15,000 would inure solely for the benefit of Charity B. Therefore, deductions of $1,500 and $15,000 are allowable under sections 2 and 4 of Public Law 414. If, in this example, the State death taxes as well as the Federal estate tax were to be paid out of the residuary estate, the result would be the same.

Example (2). The decedent's gross estate was valued at $350,000. Expenses, indebtedness, etc., amounted to $50,000. The entire estate was bequeathed in equal shares to a son, a daughter, and Charity C. State inheritance tax in the amount of $2,000 was imposed upon the bequest to the son, $2,000 upon the bequest to the daughter, and $5,000 upon the bequest to Charity C. Under the will and local law, each legatee is required to pay his own State inheritance tax and his proportionate share of the Federal estate tax determined by taking into consideration the net amount of his bequest subjected to the tax. Since each legatee's share of the Federal estate tax is based upon the net amount of his bequest subjected to the tax (note that the deductions under sections 2 and 4 of Public Law 414 and under section 812(d) will have the effect of reducing Charity C's proportionate share of the tax), the tax is considered to be equitably apportioned. Thus, a deduction of $5,000 is allowable under sections 2 and 4 of Public Law 414. This deduction together with a deduction of $95,000 under section 812(d) (charitable deduction) will mean that none of Charity C's bequest is subjected to Federal estate tax. Hence, the son and the daughter will bear the entire estate tax.

Example (3). The decedent bequeathed his property in equal shares, after payment of all expenses, to a son, a daughter, and a charity. State inheritance tax of $2,000 was imposed upon the bequest to the son, $2,000 upon the bequest to the daughter, and $15,000 upon the bequest to the charity. Under the will and local law, each beneficiary pays the State inheritance tax on his bequest and the Federal estate tax is to be paid out of the estate as an administration expense. If the deduction for State death tax on the charitable bequest is allowed in this case, some portion of the decrease in the Federal estate tax would inure to the benefit of the son and the daughter. The Federal estate tax is not considered to be equitably apportioned in this case since each legatee's share of the Federal estate tax is not based upon the net amount of his bequest subjected to the tax (note that the deductions under sections 2 and 4 of Public Law 414 and under section 812(d) will not have the effect of reducing the charity's proportionate share of the tax). Inasmuch as some of the decrease in the Federal estate tax payable would inure to the benefit of the son and the daughter, and inasmuch as there is no equitable apportionment of the tax, no deduction is allowable under sections 2 and 4 of Public Law 414.

Example (4). The decedent bequeathed his entire residuary estate in trust to pay the income to X for life with remainder to charity. The State imposed inheritance taxes of $2,000 upon the bequest to X and $10,000 upon the bequest to charity. Under the will and local law, all State and Federal taxes are payable out of the residuary estate and therefore they would reduce the amount which would become the corpus of the trust. If the deduction for the State death tax on the charitable bequest is allowed in this case, some portion of the decrease in the Federal estate tax would inure to the benefit of X since the allowance of the deduction would increase the size of the corpus from which X is to receive the income for life. Also, the Federal estate tax is not considered to be equitably apportioned in this case since each legatee's share of the Federal estate tax is not based upon the net amount of his bequest subjected to the tax (note that the deductions under sections 2 and 4 of Public Law 414 and under section 812(d) will not have the effect of reducing the charity's proportionate share of the tax). Inasmuch as some of the decrease in the Federal estate tax payable would inure to the benefit of X, and inasmuch as there is no equitable apportionment of the tax, no deduction is allowable under sections 2 and 4 of Public Law 414.

Example (5). The decedent's gross estate was valued at $750,000. Expenses, indebtedness, etc., amounted to $50,000. The decedent bequeathed $350,000 of his estate to his surviving spouse and the remainder of his estate equally to his son and Charity D. State inheritance tax in the amount of $7,000 was imposed upon the bequest to the surviving spouse, $26,250 upon the bequest to the son, and $26,250 upon the bequest to Charity D. The will was silent concerning the payment of taxes. In such a case, the local law provides that each legatee shall pay his own State inheritance tax. The local law further provides for an apportionment of the Federal estate tax among the legatees of the estate. Under the apportionment provisions, the surviving spouse is not required to bear any part of the Federal estate tax with respect to her $350,000 bequest. It should be noted, however, that the marital deduction allowed to the decedent's estate by reason of the bequest to the surviving spouse is limited to $343,000 ($350,000 bequest less $7,000 State inheritance tax payable by the surviving spouse). Thus, the bequest to the surviving spouse is subjected to the Federal estate tax in the net amount of $7,000. If the deduction for State death tax on the charitable bequest is allowed in this case, some portion of the decrease in the Federal estate tax would inure to the benefit of the son. The Federal estate tax is not considered to be equitably apportioned in this case since each legatee's share of the Federal estate tax is not based upon the net amount of his bequest subjected to the tax (note that the surviving spouse is to pay no tax). Inasmuch as some of the decrease in the Federal estate tax payable would inure to the benefit of the son, and inasmuch as there is no equitable apportionment of the tax, no deduction is allowable under sections 2 and 4 of Public Law 414.

PAR. 12. There is inserted immediately preceding § 81.47a the following:

PUBLIC LAW 85-318, APPROVED FEBRUARY 11, 1958

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 812(e)(1)(D) of the Internal Revenue Code of 1939 (relating to bequests of an interest to a surviving spouse conditional on survival for a limited period) is amended by adding at the end thereof the following:

"For the purposes of subparagraph (B), an event or contingency shall not be considered an event or contingency upon the occurrence of which an interest passing to

the surviving spouse will terminate or fail if—

"(iii) Within six months after the date of the decedent's death, such event or contingency becomes impossible of occurrence; and

"(iv) The decedent was adjudged incompetent before April 2, 1948, and was not restored to competency before his death."

SEC. 2. The amendment made by this Act shall apply with respect to decedents dying after April 2, 1948.

SEC. 3. No interest shall be allowed or paid on any overpayment resulting from the amendment made by this Act.

SEC. 93. BEQUESTS, ETC., TO SURVIVING SPOUSE [TECHNICAL AMENDMENTS ACT OF 1958, APPROVED SEPTEMBER 2, 1958].

(a) *Amendment of 1939 Code.* Section 812(e)(1)(F) of the Internal Revenue Code of 1939 (relating to trust with power of appointment in surviving spouse) is amended to read as follows:

"(F) *Life estate with power of appointment in surviving spouse.* In the case of an interest in property passing from the decedent, if his surviving spouse is entitled for life to all the income from the entire interest, or all the income from a specific portion thereof, payable annually or at more frequent intervals, with power in the surviving spouse to appoint the entire interest, or such specific portion (exercisable in favor of such surviving spouse, or of the estate of such surviving spouse, or in favor of either, whether or not in each case the power is exercisable in favor of others), and with no power in any other person to appoint any part of the interest, or such specific portion, to any person other than the surviving spouse—

"(i) The interest or such portion thereof so passing shall, for purposes of subparagraph (A), be considered as passing to the surviving spouse, and

"(ii) No part of the interest so passing shall, for purposes of subparagraph (B)(1), be considered as passing to any person other than the surviving spouse.

This subparagraph shall apply only if such power in the surviving spouse to appoint the entire interest, or such specific portion thereof, whether exercisable by will or during life, is exercisable by such spouse alone and in all events."

(b) *Effective date.* The amendment made by subsection (a) shall apply with respect to estates of decendents dying after April 1, 1948, and before August 17, 1954. If refund or credit of any overpayment resulting from the application of such amendment is prevented on the date of the enactment of this Act, or at any time within one year from such date, by the operation of any law or rule of law (other than section 3760 of the Internal Revenue Code of 1939 or section 7121 of the Internal Revenue Code of 1954, relating to closing agreements, and other than section 3761 of the Internal Revenue Code of 1939 or section 7122 of the Internal Revenue Code of 1954, relating to compromises), refund or credit of such overpayment may, nevertheless, be made or allowed if claim therefor is filed within one year after the date of the enactment of this Act. No interest shall be allowed or paid on any overpayment resulting from the enactment of this section.

§ 81.47a [Amendment]

PAR. 13. Section 81.47a, as amended by Treasury Decision 6082, approved August 2, 1954, is further amended—

(A) By striking the word "trusts" in the second sentence of paragraph (b)(2) (26 CFR (1939) 81.47a(b)(2)(i)) and inserting in lieu thereof "life interests".

(B) By amending paragraph (c) to read as follows:

(c) *Marital deduction; life estate with power of appointment in surviving spouse*—(1) *In general.* Except as otherwise provided in subparagraph (10) of this paragraph (pertaining to estates of decedents dying after December 31, 1947, and on or before April 1, 1948), if an interest in property passes from the decedent to his surviving spouse (whether or not in trust) and the spouse is entitled for life to all the income from the entire interest or all the income from a specific portion of the entire interest, with a power in her to appoint the entire interest or the specific portion, the interest which passes to her is under the provisions of section 812(e)(1)(F), as amended by section 93(a) of the Technical Amendments Act of 1958, a deductible interest, to the extent that it satisfies all five of the conditions set forth below (see subparagraph (2) of this paragraph if one or more of the conditions is satisfied as to only a portion of the interest):

(i) The surviving spouse must be entitled for life to all of the income from the entire interest or a specific portion of the entire interest, or to a specific portion of all the income from the entire interest.

(ii) The income payable to the surviving spouse must be payable annually or at more frequent intervals.

(iii) The surviving spouse must have the power to appoint the entire interest or the specific portion to either herself or her estate.

(iv) The power in the surviving spouse must be exercisable by her alone and (whether exercisable by will or during life) must be exercisable in all events.

(v) The entire interest or the specific portion must not be subject to a power in any other person to appoint any part to any person other than the surviving spouse.

(2) *Specific portion; deductible amount.* If either the right to income or the power of appointment passing to the surviving spouse pertains only to a specific portion of a property interest passing from the decedent, the marital deduction is allowed only to the extent that the rights in the surviving spouse meet all of the five conditions described in subparagraph (1) of this paragraph. While the rights over the income and the power must coexist as to the same interest in property, it is not necessary that the rights over the income or the power as to such interest be in the same proportion. However, if the rights over income meeting the required conditions set forth in subparagraph (1) (i) and (ii) of this paragraph extend over a smaller share of the property interest than the share with respect to which the power of appointment requirements set forth in subparagraph (1) (iii) through (v) of this paragraph are satisfied, the deductible interest is limited to the smaller share. Correspondingly, if a power of appointment meeting all the requirements extends to a smaller portion of the property interest than the portion over which the income rights pertain, the deductible interest cannot exceed the value of the portion to which such power of appointment applies. Thus, if the decedent leaves to his surviving spouse the right to receive annually all of the income from a particular property interest and a power of appointment meeting the specifications prescribed in subparagraph (1) (iii) through (v) of this paragraph as to only one-half of the property interest, then only one-half of the property interest is treated as a deductible interest. Correspondingly, if the income interest of the spouse satisfying the requirements extends to only one-fourth of the property interest and a testamentary power of appointment satisfying the requirements extends to all of the property interest, then only one-fourth of the interest in the spouse qualifies as a deductible interest. Further, if the surviving spouse has no right to income from a specific portion of a property interest but a testamentary power of appointment which meets the necessary conditions over the entire interest, then none of the interest qualifies for the deduction. In addition, if, from the time of the decedent's death, the surviving spouse has a power of appointment meeting all of the required conditions over three-fourths of the entire property interest and the prescribed income rights over the entire interest, but with a power in another person to appoint one-half of the entire interest, the value of the interest in the surviving spouse over only one-half of the property interest will qualify as a deductible interest.

(3) *Definition of "specific portion".* A partial interest in property is not treated as a specific portion of the entire interest unless the rights of the surviving spouse in income and as to the power constitute a fractional or percentile share of a property interest so that such interest or share in the surviving spouse reflects its proportionate share of the increment or decline in the whole of the property interest to which the income rights and the power relate. Thus, if the right of the spouse to income and the power extend to one-half or a specified percentage of the property, or the equivalent, the interest is considered as a specific portion. On the other hand, if the annual income of the spouse is limited to a specific sum, or if she has a power to appoint only a specific sum out of a larger fund, the interest is not a deductible interest. Even though the rights in the surviving spouse may not be expressed in terms of a definite fraction or percentage, a deduction may be allowable if it is shown that the effect of local law is to give the spouse rights which are identical to those she would have acquired if the size of the share had been expressed in terms of a definite fraction or percentage. The following examples illustrate the application of this and the preceding subparagraphs of this paragraph:

Example (1). The decedent transferred to a trustee 500 identical shares of X Company stock. He provided that during the lifetime of the surviving spouse the trustee should pay her annually one-half of the trust income or $6,000, whichever is the larger. The spouse was also given a general power of appointment, exercisable by her last will over the sum of $160,000 or over three-fourths of the trust corpus, whichever should be of larger value. Since there is no certainty that

the trust income will not vary from year to year, for purposes of subparagraphs (1) and (2) of this paragraph, an annual payment of a specified sum, such as the $6,000 provided for in this case, is not considered as representing the income from a definite fraction or a specific portion of the entire interest if that were the extent of the spouse's interest. However, since the spouse is to receive annually at least one-half of the trust income, she will, for purposes of subparagraphs (1) and (2) of this paragraph, be considered as receiving all of the income from one-half of the entire interest in the stock. Inasmuch as there is no certainty that the value of the stock will be the same on the date of the surviving spouse's death as it was on the date of the decedent's death, for purposes of subparagraphs (1) and (2) of this paragraph, a specified sum, such as the $160,000 provided for in this case, is not considered to be a definite fraction of the entire interest. However, since the surviving spouse has a general power of appointment over at least three-fourths of the trust corpus, she is considered as having a general power of appointment over three-fourths of the entire interest in the stock.

Example (2). The decedent bequeathed to a trustee an office building and 250 identical shares of Y Company stock. He provided that during the lifetime of the surviving spouse the trustee should pay her annually three-fourths of the trust income. The spouse was given a general power of appointment, exercisable by will, over the office building and 100 shares of the stock. By the terms of the decedent's will the spouse is given all the income from a definite fraction of the entire interest in the office building and in the stock. She also has a general power of appointment over the entire interest in the office building. However, since the amount of property represented by a single share of stock would be altered if the corporation split its stock, issued stock dividends, made a distribution of capital, etc., a power to appoint 100 shares at the time of the surviving spouse's death is not the same necessarily as a power to appoint 100/250 of the entire interest which the 250 shares represented on the date of the decedent's death. If it is shown in this case that the effect of local law is to give the spouse a general power to appoint not only the 100 shares designated by the decedent but also 100/250 of any shares or amounts which are distributed by the corporation and included in the corpus, the requirements of this subparagraph will be satisfied and the surviving spouse will be considered as having a general power to appoint 100/250 of the entire interest in the 250 shares.

(4) *Definition of "entire interest".* Since a marital deduction is allowed for each qualifying separate interest in property passing from the decedent to his surviving spouse (subject to the percentage limitation contained in § 81.47d concerning the aggregate amount of the deductions), for purposes of subparagraphs (1) and (2) of this paragraph, each property interest with respect to which the surviving spouse received some rights is considered separately in determining whether her rights extend to the entire interest or to a specific portion of the entire interest. A property interest which consists of several identical units of property (such as a block of 250 shares of stock, whether the ownership is evidenced by one or several certificates) is considered one property interest, unless certain of the units are to be segregated and accorded different treatment, in which case each segregated group of items is considered a separate property interest. The bequest of a specified sum of money constitutes the bequest of a separate property interest if immediately following distribution by the executor and thenceforth it, and the investments made with it, must be so segregated or accounted for as to permit its identification as a separate item of property. The application of this subparagraph may be illustrated by the following examples:

Example (1). The decedent transferred to a trustee three adjoining farms, Blackacre, Whiteacre, and Greenacre. His will provided that during the lifetime of the surviving spouse the trustee should pay her all of the income from the trust. Upon her death, all of Blackacre, a one-half interest in Whiteacre, and a one-third interest in Greenacre were to be distributed to the person or persons appointed by her in her will. The surviving spouse is considered as being entitled to all of the income from the entire interest in Blackacre, all of the income from the entire interest in Whiteacre, and all of the income from the entire interest in Greenacre. She also is considered as having a power of appointment over the entire interest in Blackacre, over one-half of the entire interest in Whiteacre, and over one-third of the entire interest in Greenacre.

Example (2). The decedent bequeathed $250,000 to C, as trustee. C is to invest the money and pay all of the income from the investments to W, the decedent's surviving spouse, annually. W was given a general power, exercisable by will, to appoint one-half of the corpus of the trust. Here, immediately following distribution by the executor, the $250,000 will be sufficiently segregated to permit its identification as a seperate item, and the $250,000 will constitute an entire property interest. Therefore, W has a right to income and a power of appointment such that one-half of the entire interest is a deductible interest.

Example (3). The decedent bequeathed 100 shares of Z Corporation stock to D, as trustee. W, the decedent's surviving spouse, is to receive all of the income of the trust annually and is given a general power, exercisable by will, to appoint out of the trust corpus the sum of $25,000. In this case the $25,000 is not, immediately following distribution, sufficiently segregated to permit its identification as a separate item of property in which the surviving spouse has the entire interest. Therefore, the $25,000 does not constitute the entire interest in a property for the purpose of subparagraphs (1) and (2) of this paragraph.

(5) *Application of local law.* In determining whether or not the conditions set forth in subparagraph (1) (i) through (v) of this section are satisfied by the instrument of transfer, regard is to be had to the applicable provisions of the law of the jurisdiction under which the interest passes and, if the transfer is in trust, the applicable provisions of the law governing the administration of the trust. For example, silence of a trust instrument as to the frequency of payment will not be regarded as a failure to satisfy the condition set forth in subparagraph (1) (ii) of this paragraph that income must be payable to the surviving spouse annually or more frequently unless the applicable law permits payment to be made less frequently than annually. The principles outlined in this subparagraph and subparagraphs (6) and (7) of this paragraph which are applied in determining whether transfers in trust meet such conditions are equally applicable in ascertaining whether, in the case of interests not in trust, the surviving spouse has the equivalent in rights over income and over the property.

(6) *Right to income.* (i) If an interest is transferred in trust, the surviving spouse is "entitled for life to all of the income from the entire interest or a specific portion of the entire interest", for the purpose of the condition set forth in subparagraph (1) (i) of this paragraph, if the effect of the trust is to give her substantially that degree of beneficial enjoyment of the trust property during her life which the principles of the law of trusts accord to a person who is unqualifiedly designated as the life beneficiary of a trust. Such degree of enjoyment is given only if it was the decedent's intention, as manifested by the terms of the trust instrument and the surrounding circumstances, that the trust should produce for the surviving spouse during her life such an income, or that the spouse should have such use of the trust property as is consistent with the value of the trust corpus and with its preservation. The designation of the spouse as sole income beneficiary for life of the entire interest or a specific portion of the entire interest will be sufficient to qualify the trust unless the terms of the trust and the surrounding circumstances considered as a whole evidence an intention to deprive the spouse of the requisite degree of enjoyment. In determining whether a trust evidences that intention, the treatment required or permitted with respect to individual items must be considered in relation to the entire system provided for the administration of the trust.

(ii) If the over-all effect of a trust is to give to the surviving spouse such enforceable rights as will preserve to her the requisite degree of enjoyment, it is immaterial whether that result is effected by rules specifically stated in the trust instrument, or, in their absence, by the rules for the management of the trust property and the allocation of receipts and expenditures supplied by the State law. For example, a provision in the trust instrument for amortization of bond premium by appropriate periodic charges to interest will not disqualify the interest passing in trust even though there is no State law specifically authorizing amortization, or there is a State law denying amortization which is applicable only in the absence of such a provision in the trust instrument.

(iii) In the case of a trust, the rules to be applied by the trustee in allocation of receipts and expenses between income and corpus must be considered in relation to the nature and expected productivity of the assets passing in trust, the nature and frequency of occurrence of the expected receipts, and any provisions as to change in the form of investments. If it is evident from the nature of the trust assets and the rules provided for management of the trust that the allocation to income of such receipts as rents, ordinary cash dividends, and interest will give to the spouse the substantial enjoyment during life required by the statute, provisions that such receipts as stock dividends and proceeds

from the conversion of trust assets shall be treated as corpus will not disqualify the interest passing in trust. Similarly, provision for a depletion charge against income in the case of trust assets which are subject to depletion will not disqualify the interest passing in trust, unless the effect is to deprive the spouse of the requisite beneficial enjoyment. The same principle is applicable in the case of depreciation, trustees' commissions, and other charges.

(iv) Provisions granting administrative powers to the trustee will not have the effect of disqualifying an interest passing in trust unless the grant of powers evidences the intention to deprive the surviving spouse of the beneficial enjoyment required by the statute. Such an intention will not be considered to exist if the entire terms of the instrument are such that the local courts will impose reasonable limitations upon the exercise of the powers. Among the powers which if subject to reasonable limitations will not disqualify the interest passing in trust are the power to determine the allocation or apportionment of receipts and disbursements between income and corpus, the power to apply the income or corpus for the benefit of the spouse, and the power to retain the assets passing to the trust. For example, a power to retain trust assets which consist substantially of unproductive property will not disqualify the interest if the applicable rules for the administration of the trust require, or permit the spouse to require, that the trustee either make the property productive or convert it within a reasonable time. Nor will such a power disqualify the interest if the applicable rules for administration of the trust require the trustee to use the degree of judgment and care in the exercise of the power which a prudent man would use if he were owner of the trust assets. Further, a power to retain a residence or other property for the personal use of the spouse will not disqualify the interest passing in trust.

(v) An interest passing in trust will not satisfy the condition set forth in subparagraph (1) (i) of this paragraph that the surviving spouse be entitled to all the income if the primary purpose of the trust is to safeguard property without providing the spouse with the required beneficial enjoyment. Such trusts include not only trusts which expressly provide for the accumulation of the income but also trusts which indirectly accomplish a similar purpose. For example, assume that the corpus of a trust consists substantially of property which is not likely to be income producing during the life of the surviving spouse and that the spouse cannot compel the trustee to convert or otherwise deal with the property as described in subdivision (iv) of this subparagraph. An interest passing to such a trust will not qualify unless the applicable rules for the administration require, or permit the spouse to require, that the trustee provide the required beneficial enjoyment, such as by payments to the spouse out of other assets of the trust.

(vi) If a trust is created during the decedent's life, it is immaterial whether or not the interest passing in trust satisfied the conditions set forth in subparagraph (1) (i) through (v) of this paragraph prior to the decedent's death. If a trust may be terminated during the life of the surviving spouse, under her exercise of a power of appointment or by distribution of the corpus to her, the interest passing in trust satisfies the condition set forth in subparagraph (1) (i) of this paragraph (that the spouse be entitled to all the income) if she (*a*) is entitled to the income until the trust terminates, or (*b*) has the right, exercisable in all events, to have the corpus distributed to her at any time during her life.

(vii) An interest passing in trust fails to satisfy the condition set forth in subparagraph (1) (i) of this paragraph, that the spouse be entitled to all the income, to the extent that the income is required to be accumulated in whole or in part or may be accumulated in the discretion of any person other than the surviving spouse; to the extent that the consent of any person other than the surviving spouse is required as a condition precedent to distribution of the income; or to the extent that any person other than the surviving spouse has the power to alter the terms of the trust so as to deprive her of her right to the income. An interest passing in trust will not fail to satisfy the condition that the spouse be entitled to all the income merely because its terms provide that the right of the surviving spouse to the income shall not be subject to assignment, alienation, pledge, attachment or claims of creditors.

(viii) In the case of an interest passing in trust, the terms "entitled for life" and "payable annually or at more frequent intervals", as used in the conditions set forth in subparagraph (1) (i) and (ii) of this paragraph, require that under the terms of the trust the income referred to must be currently (at least annually; see subparagraph (5) of this paragraph) distributable to the spouse or that she must have such command over the income that it is virtually hers. Thus, the conditions in subparagraph (1) (i) and (ii) of this paragraph are satisfied in this respect if, under the terms of the trust instrument, the spouse has the right exercisable annually (or more frequently) to require distribution to herself of the trust income, and otherwise the trust income is to be accumulated and added to corpus. Similarly, as respects the income for the period between the last distribution date and the date of the spouse's death, it is sufficient if that income is subject to the spouse's power to appoint. Thus, if the trust instrument provides that income accrued or undistributed on the date of the spouse's death is to be disposed of as if it had been received after her death, and if the spouse has a power of appointment over the trust corpus, the power necessarily extends to the undistributed income.

(ix) An interest is not to be regarded as failing to satisfy the conditions set forth in subparagraph (1) (i) and (ii) of this paragraph (that the spouse be entitled to all the income and that it be payable annually or more frequently) merely because the spouse is not entitled to the income from estate assets for the period before distribution of those assets by the executor, unless the executor is, by the decedent's will, authorized or directed to delay distribution beyond the period reasonably required for administration of the decedent's estate. As to the valuation of the property interest passing to the spouse in trust where the right to income is expressly postponed, see § 81.47c.

(7) *Power of appointment in surviving spouse.* (i) The conditions set forth in subparagraph (1) (iii) and (iv) of this paragraph, that is, that the surviving spouse must have a power of appointment exercisable in favor of herself or her estate and exercisable alone and in all events, are not met unless the power of the surviving spouse to appoint the entire interest or a specific portion of it falls within one of the following categories:

(*a*) A power so to appoint fully exercisable in her own favor at any time following the decedent's death (as, for example, an unlimited power to invade); or

(*b*) A power so to appoint exercisable in favor of her estate. Such a power, if exercisable during life, must be fully exercisable at any time during life, or, if exercisable by will, must be fully exercisable irrespective of the time of her death (subject in either case to the provisions of § 81.47b(d), relating to interests conditioned on survival for a limited period); or

(*c*) A combination of the powers described under (*a*) and (*b*) of this subdivision. For example, the surviving spouse may, until she attains the age of 50 years, have a power to appoint to herself and thereafter have a power to appoint to her estate. However, the condition that the spouse's power must be exercisable in all events is not satisfied unless irrespective of when the surviving spouse may die the entire interest or a specific portion of it will at the time of her death be subject to one power or the other (subject to the exception in § 81.47b(d), relating to interests contingent on survival for a limited period).

(ii) The power of the surviving spouse must be a power to appoint the entire interest or a specific portion of it as unqualified owner (and free of the trust if a trust is involved, or free of the joint tenancy if a joint tenancy is involved) or to appoint the entire interest or a specific portion of it as a part of her estate (and free of the trust if a trust is involved), that is, in effect, to dispose of it to whomsoever she pleases. Thus, if the decedent devised property to a son and the surviving spouse as joint tenants with right of survivorship and under local law the surviving spouse has a power of severance exercisable without consent of the other joint tenant, and by exercising this power could acquire a one-half interest in the property as a tenant in common, her power of severance will satisfy the condition set

forth in subparagraph (1)(iii) of this paragraph that she have a power of appointment in favor of herself or her estate. However, if the surviving spouse entered into a binding agreement with the decedent to exercise the power only in favor of their issue, that condition is not met. An interest passing in trust will not be regarded as failing to satisfy the condition merely because takers in default of the surviving spouse's exercise of the power are designated by the decedent. The decedent may provide that, in default of exercise of the power, the trust shall continue for an additional period.

(iii) A power is not considered to be a power exercisable by a surviving spouse alone and in all events as required by subparagraph (1)(iv) of this paragraph if the exercise of the power in the surviving spouse to appoint the entire interest or a specific portion of it to herself or to her estate requires the joinder or consent of any other person. The power is not "exercisable in all events", if it can be terminated during the life of the surviving spouse by any event other than her complete exercise or release of it. Further, a power is not "exercisable in all events" if it may be exercised for a limited purpose only. For example, a power which is not exercisable in the event of the spouse's remarriage is not exercisable in all events. Likewise, if there are any restrictions, either by the terms of the instrument or under applicable local law, on the exercise of a power to consume property (whether or not held in trust) for the benefit of the spouse, the power is not exercisable in all events. Thus, if a power of invasion is exercisable only for the spouse's support, or only for her limited use, the power is not exercisable in all events. In order for a power of invasion to be exercisable in all events, the surviving spouse must have the unrestricted power exercisable at any time during her life to use all or any part of the property subject to the power, and to dispose of it in any manner, including the power to dispose of it by gift (whether or not she has power to dispose of it by will).

(iv) The power in the surviving spouse is exercisable in all events only if it exists immediately following the decedent's death. For example, if the power given to the surviving spouse is exercisable during life, but cannot be effectively exercised before distribution of the assets by the executor, the power is not exercisable in all events. Similarly, if the power is exercisable by will, but cannot be effectively exercised in the event the surviving spouse dies before distribution of the assets by the executor, the power is not exercisable in all events. However, an interest will not be disqualified by the mere fact that, in the event the power is exercised during administration of the estate, distribution of the property to the appointee will be delayed for the period of administration. If the power is in existence at all times following the decedent's death, limitations of a formal nature will not disqualify an interest. Examples of formal limitations on a power exercisable during life are requirements that an exercise must be in a particular form, that it must be filed with a trustee during the spouse's life, that reasonable notice must be given, or that reasonable intervals must elapse between successive partial exercises. Examples of formal limitations on a power exercisable by will are that it must be exercised by a will executed by the surviving spouse after the decedent's death or that exercise must be by specific reference to the power.

(v) If the surviving spouse has the requisite power to appoint to herself or her estate, it is immaterial that she also has one or more lesser powers. Thus, if she has a testamentary power to appoint to her estate, she may also have a limited power of withdrawal or of appointment during her life. Similarly, if she has an unlimited power of withdrawal, she may have a limited testamentary power.

(8) *Requirement of survival for a limited period.* A power of appointment in the surviving spouse will not be treated as failing to meet the requirements of subparagraph (1)(iii) of this paragraph even though the power may terminate, if the only conditions which would cause the termination are those described in section 812(e)(1)(D), and if those conditions do not in fact occur. Thus, the entire interest or a specific portion of it will not be disqualified by reason of the fact that the exercise of the power in the spouse is subject to a condition of survivorship described in section 812(e)(1)(D) if the terms of the condition, that is, the survivorship of the surviving spouse, or the failure to die in a common disaster, are fulfilled. See paragraph (d) of § 81.47b.

(9) *Existence of a power in another.* Subparagraph (1)(v) of this paragraph provides that a transfer described in subparagraph (1) is nondeductible to the extent that the decedent created a power in the trustee or in any other person to appoint a part of the interest to any person other than the surviving spouse. However, only powers in other persons which are in opposition to that of the surviving spouse will cause a portion of the interest to fail to satisfy the condition set forth in subparagraph (1)(v) of this paragraph. Thus, a power in a trustee to distribute corpus to or for the benefit of a surviving spouse will not disqualify the trust. Similarly, a power to distribute corpus to the spouse for the support of minor children will not disqualify the trust if she is legally obligated to support such children. The application of this subparagraph may be illustrated by the following examples:

Example (1). Assume that a decedent created a trust, designating his surviving spouse as income beneficiary for life with an unrestricted power in the spouse to appoint the corpus during her life. The decedent further provided that in the event the surviving spouse should die without having exercised the power, the trust should continue for the life of his son with a power in the son to appoint the corpus. Since the power in the son could become exercisable only after the death of the surviving spouse, the interest is not regarded as failing to satisfy the condition set forth in subparagraph (1)(v) of this paragraph.

Example (2). Assume that the decedent created a trust, designating his surviving spouse as income beneficiary for life and as donee of a power to appoint by will the entire corpus. The decedent further provided that the trustee could distribute 30 percent of the corpus to the decedent's son when he reached the age of 35 years. Since the trustee has a power to appoint 30 percent of the entire interest for the benefit of a person other than the surviving spouse, only 70 percent of the interest placed in trust satisfied the condition set forth in subparagraph (1)(v) of this paragraph. If, in this case, the surviving spouse had a power, exercisable by her will, to appoint only one-half of the corpus as it was constituted at the time of her death, it should be noted that only 35 percent of the interest placed in the trust would satisfy the condition set forth in subparagraph (1)(iii) of this paragraph.

(10) *Estates of decedents dying after December 31, 1947, and on or before April 1, 1948.* Except as otherwise provided in paragraph (h) of this section, if the decedent died after December 31, 1947, and on or before April 1, 1948, an interest in property otherwise constituting a deductible interest under the provisions of subparagraphs (1) through (9) of this paragraph will nevertheless constitute a deductible interest only if all of the following requirements are satisfied:

(i) The property must have passed from the decedent in trust;

(ii) The right of the surviving spouse to income must be a right to receive the entire income of the trust; and

(iii) The power of appointment given to the surviving spouse must be a power to appoint the entire corpus free of the trust, with no power in any other person to appoint any part of the corpus to any person other than the surviving spouse.

(11) *Retroactive operation.* Where refund or credit of any overpayment resulting from the application of section 93 of the Technical Amendments Act of 1958 is prevented on September 2, 1958, or at any time within one year from such date, by the operation of any law or rule of law other than section 3760 relating to closing agreements (or the corresponding provisions of the 1954 Code) and other than section 3761 relating to compromises (or the corresponding provisions of the 1954 Code), refund or credit of such overpayment may, nevertheless, be made or allowed if claim therefor is filed on or before September 2, 1959. No interest shall be allowed or paid on any overpayment resulting from the application of section 93.

(C) By amending the first four sentences in the sixth undesignated paragraph of paragraph (d) (26 CFR (1939) 81.47a(d)(6)) to read as follows: "In determining whether the terms of the contract satisfy conditions (3), (4), and (5), the principles provided in paragraph (c) of this section with respect to decedents dying after December 31, 1947, and on or before April 1, 1948, are applicable. See paragraph (c)(10) of this section. As stated in such paragraph (c), the surviving spouse's power to appoint is 'exercisable in all events' only if it is in existence immediately following the decedent's death subject, however, to the

operation of section 812(e)(1)(D). See paragraph (c)(8). For examples of formal limitations on the power which will not disqualify the contract, see paragraph (c)(7)(iv)."

(D) By amending the third sentence of the last undesignated paragraph of paragraph (e) (26 CFR (1939) 81.47a (e)(2)) to read as follows: "Where, as a result of a disclaimer made by a person other than the surviving spouse, a property interest passes from the decedent to his surviving spouse or to a trust and where the conditions set forth in paragraph (c) are met, the rule stated in the preceding sentence applies, not only with respect to the portion of such interest which beneficially vests in the surviving spouse, but also with respect to the portion over which such spouse acquires a power to appoint."

(E) By amending the last sentence of paragraph (h)(1) to read as follows: "The rules prescribed in § 81.47a(c) for determining with respect to decedents dying after December 31, 1947, and on or before April 2, 1948, whether the surviving spouse is entitled for life to all the income from such property, payable annually or at more frequent intervals, shall be applicable in determining whether interests specified in this paragraph meet conditions (i) and (ii) enumerated above."

§ 81.47b [Amendment]

PAR. 14. Section 81.47b(d), as amended by Treasury Decision 6082, approved August 2, 1954, is further amended—

(A) By amending subdivision (ii) of the sixth undesignated paragraph (26 CFR (1939) 81.47b(d)(6)) to read as follows:

(ii) H devised real property to W for life, and created in W a power, exercisable by will, to appoint the remainder interest to any person. In default of appointment by W, the remainder interest was to go to A and his heirs. Assuming that under the local law W did not take the real property as absolute owner, nor in a manner which meets the requirements of § 81.47a(c), the interest which passed from H to W is a "nondeductible interest" since such interest will terminate upon her death and A (or his heirs or assigns) may thereafter possess or enjoy the property. (As to cases, in general, in which a "deductible interest" may exist where a life interest is coupled with a power to appoint, see paragraphs (c) and (d) of § 81.47a. As to cases in which a "deductible interest" may exist where a life interest is coupled with a power in the case of interests passing by will from decedents dying after December 31, 1947, and on or before April 2, 1948, see paragraph (h) of § 81.47a.)

(B) By amending the second sentence of the ninth undesignated paragraph (26 CFR (1939) 81.47b(d)(9)) to read as follows: "Where such condition (unless it relates to death as the result of a common disaster or is a condition to which the next sentence applies) is one which may occur either within such 6-month period or thereafter, the exception provided under section 812(e)(1)(D) will not apply. However, with respect to decedents dying after April 2, 1948, if the decedent was adjudged incompetent before that date in conformity with applicable local law, if he was not restored to competency before his death, and if the only condition which will cause the interest taken by the surviving spouse to terminate (regardless of whether the condition may occur within the 6-month period or thereafter) does in fact within the 6-month period become impossible of occurrence, the exception provided under section 812(e)(1)(D) will, nevertheless, apply."

§ 81.52 [Amendment]

PAR. 15. The first sentence of the first undesignated paragraph of § 81.52 (26 CFR (1939) 81.52(a)) is amended to read as follows: "In estates of nonresidents not citizens, deductions from the gross estate may be taken, subject to the limitations set forth in §§ 81.29 to 81.40, inclusive, and to the limitations hereinafter stated, for the following: Funeral expenses; administration expenses; claims against the estate; unpaid mortgages; losses incurred during the settlement of the estate arising from fires, storms, shipwrecks, or other casualties, or from theft, if such losses are not compensated for by insurance or otherwise; certain State death taxes deductible under sections 2 and 4 of Public Law 414 (84th Cong.), approved February 20, 1956 (see § 81.37a); and amounts reasonably required and actually expended for the support during the settlement of the estate of those dependent upon the decedent."

PAR. 16. There is inserted immediately preceding § 81.73 the following:

SEC. 89. USE OF CERTIFIED MAIL [TECHNICAL AMENDMENTS ACT OF 1958, APPROVED SEPTEMBER 2, 1958].

* * * * *

(c) *Provisions of Internal Revenue Code of 1939.* In applying any provision of the Internal Revenue Code of 1939 which requires, or provides for, the use of registered mail the reference to registered mail shall be treated as including a reference to certified mail.

(d) *Effective date.* This section shall apply only if the mailing occurs after the date of the enactment of this Act.

§ 81.73 [Amendment]

PAR. 17. Section 81.73, as amended by Treasury Decision 5596, approved December 22, 1947, is further amended by adding a new paragraph (f), as follows:

(f) Pursuant to section 89 of the Technical Amendments Act of 1958 (72 Stat. 1665), any reference in this section or in section 871(a) to the use of registered mail or registered letter shall be treated as including a reference to the use, after September 2, 1958, of certified mail or certified letter.

§ 81.74 [Amendment]

PAR. 18. Section 81.74, as amended by Treasury Decision 6126, is further amended by adding a new paragraph (g), as follows:

(g) Pursuant to section 89 of the Technical Amendments Act of 1958 (72 Stat. 1665), any reference in section 871(a) to the use of registered mail shall be treated as including a reference to the use, after September 2, 1958, of certified mail.

PAR. 19. There is inserted immediately preceding § 81.79 the following:

SEC. 66. ESTATE TAX IN CASE OF REVERSIONARY OR REMAINDER INTEREST IN PROPERTY [TECHNICAL AMENDMENTS ACT OF 1958, APPROVED SEPTEMBER 2, 1958].

(a) *Credit for death taxes.*

* * * * *

(2) *Credit under 1939 Code.* Section 927 of the Internal Revenue Code of 1939 (relating to credit for death taxes) is amended by striking out "60 days after the termination of the precedent interest or interests in the property" and inserting in lieu thereof "the time for payment of the tax imposed by this subchapter as postponed and extended under section 925".

(3) *Effective date.* The amendments made by paragraphs (1) and (2) shall apply in the case of any reversionary or remainder interest in property only if the precedent interest or interests in the property did not terminate before the beginning of the 60-day period which ends on the date of the enactment of this Act.

(b) *Extension of payment of estate tax attributable to future interests.*

* * * * *

(2) *Extension under 1939 Code*—

(A) Section 925 of the Internal Revenue Code of 1939 (relating to period of extension of time for paying estate tax attributable to future interests) is amended by adding at the end thereof the following: "If the Secretary or his delegate finds that the payment of the tax at the expiration of the period of postponement provided for in the preceding sentence would result in undue hardship to the estate, he may extend the time for payment for a reasonable period not in excess of 2 years from the expiration of such period of postponement."

(B) Section 926 of the Internal Revenue Code of 1939 (relating to requirements for postponement) is amended by striking out "interest or interests" and inserting in lieu thereof "interest or interests (or, in the case of an extension under section 925, within the period of such extension)".

(3) *Effective date.* The amendments made by paragraphs (1) and (2) shall apply in the case of any reversionary or remainder interest only if the precedent interest or interests in the property did not terminate before the beginning of the 6-month period which ends on the date of the enactment of this Act.

§ 81.79 [Amendment]

PAR. 20. Section 81.79, as amended by Treasury Decision 6034, is further amended as follows:

(A) By amending the second sentence of the first undesignated paragraph (26 CFR (1939) 81.79(b)(1)) of paragraph (b) to read as follows: "In addition, where the precedent interest or interests did not terminate before March 3, 1958, if the district director finds that the payment of the tax at the expiration of the period of postponement described in the preceding sentence would result in undue hardship to the estate, as such term is described in paragraph (a) of this section, he may, under conditions the same as those under which extensions of time for payment of tax are granted by the Commissioner under paragraph (a) of this section, extend the time for payment for a reasonable period or periods not to exceed in all 2 years from the expiration of the period of postponement. The provisions of this paragraph are limited to cases in which the reversionary or remainder interest is included in the decedent's gross estate as such and do not

extend to cases in which the decedent creates future estates by his own testamentary act."

(B) By amending the first sentence of the third undesignated paragraph (26 CFR (1939) 81.79(b)(3)) of paragraph (b) to read as follows: "As a prerequisite to the postponement or extension of the payment of the tax attributable to a reversionary or remainder interest, a bond must be furnished in such an amount (at least double the amount of the tax and interest for the estimated duration of the precedent interest in the case of a postponement), and with such sureties as the Commissioner deems necessary, conditioned upon the payment of the tax and interest accrued thereon within six months after the termination of the precedent interest in the case of postponements and within the period of the extension in the case of extensions."

(C) By amending the fifth undesignated paragraph (26 CFR (1939) 81.79 (b) (5)) of paragraph (b) to read as follows:

If the time for payment of Federal estate tax attributable to a reversionary or remainder interest in property is postponed or extended under this paragraph, all estate, inheritance, legacy, or succession taxes allowable as a credit under the provisions of sections 813 (b) or (c), or 936(c), which are paid and for which credit is claimed within the period provided in such sections will be allowed (not to exceed the limitations in such sections) and the allowance will be applied first to the respective portions of the Federal tax attributable to the same interests in property to which the estate, inheritance, legacy, or succession taxes are attributable. Estate, inheritance, legacy, or succession taxes, as described in section 813 (b) or (c), or under section 936(c), which are attributable to the reversionary or remainder interest and which are paid and for which credit is claimed after the expiration of the period provided in those sections will also be allowed as a credit against the Federal tax attributable to such interest (not to exceed the limitations in such sections) if such taxes are paid and credit therefor is claimed prior to the expiration of 60 days after the termination of the preceding interest or interests in the property or, if the preceding interest or interests did not terminate before July 5, 1958, within the time for payment of the tax as postponed and extended under section 925.

§ 81.81 [Amendment]

PAR. 21. Section 81.81 is amended—

(A) By amending the first sentence of paragraph (b) to read as follows: "If the time for the payment of the tax attributable to a reversionary or remainder interest is postponed or extended in accordance with the provisions of section 925, the amount the payment of which is so postponed or extended will bear interest at the rate of 4 percent per annum from the expiration of 18 months after the date of the decedent's death until such amount is paid."

(B) By adding at the end of paragraph (b) the following new sentence: "If the time for payment of an amount of tax is also extended in accordance with the provisions of section 925, the portion of such amount of tax, together with interest accrued thereon, which is not paid in full on or before the date of the expiration of the period of the extension bears interest at the rate of 6 percent per annum from the date of the expiration of the period of the extension until paid."

[F.R. Doc. 61-443; Filed, Jan. 18, 1961; 8:49 a.m.]

Title 5—ADMINISTRATIVE PERSONNEL

Chapter II—Employment and Compensation in the Canal Zone

PART 201—GENERAL

PART 204—COMPENSATION AND ALLOWANCES

Miscellaneous Amendments

Effective upon publication in the FEDERAL REGISTER, §§ 201.100(a)(5), 204.6, 204.13(d), 204.13(e) (1) and (2), 204.15 (a) and 204.18 are amended as follows:

§ 201.100 Exclusions.

* * * * *

(a) * * *

(5) Hospital residents and interns, and other student hospital employees in those categories for which maximum stipends have been prescribed by the Civil Service Commission pursuant to statute.

§ 204.6 Service.

Sales-type, food-service, housekeeping, and related submanagerial positions, firefighters, reproduction and printing plant positions, and certain related occupations except for those which are specifically included in the Special Category. This category is established as a transitional job grouping. These positions may be reassigned to the other categories in accordance with the needs of the departments but subject to coordination for uniformity.

§ 204.13 Conversion to new schedules.

* * * * *

(d) If the employee's existing rate is above the maximum rate established for the grade, pay level, and/or designation of his position on the appropriate new schedule, he will retain his existing rate as a saved rate, so long as he remains in the same position as that in which he was serving at the time of initial conversion, or until subsequent change is effected to another position unless the change is made without an increase in pay to a position of equal or higher level, or until he becomes entitled to a higher rate under the normal operation of the pay system to which he has been changed. If the subsequent change is made to a position of equal or higher level and if application of the normal pay fixing rule would result in a decrease in pay, the employee's saved rate will be preserved.

(e) For the purpose of determining entitlement to periodic or longevity increases, service prior to conversion to the new pay schedules will be counted in the following manner:

(1) If upon conversion the employee receives an increase equivalent to the difference between two steps on the old schedule, service prior to conversion will not be counted toward an additional step and will be forfeited.

(2) If upon conversion the employee does not receive an increase equivalent to the difference between two steps on the old schedule, service without an equivalent increase prior to conversion will be counted toward the next step. Any service in excess of the requirement for the step is forfeited.

* * * * *

§ 204.15 Periodic and longevity increases.

* * * * *

(a) *Non-manual and service categories.* Employees in positions in these categories shall be advanced successively to the next higher scheduled or longevity step within their grade in accordance with Subpart A, Part 25, of this title, except that for employees in grades NM-1 through NM-10 and S-1 through S-9 the waiting period for periodic step increases will be fifty-two (52) calendar weeks and for employees in grades NM-11 and above the waiting period for periodic step increases will be seventy-eight (78) calendar weeks.

* * * * *

§ 204.18 Pay saving.

Whenever the rate of basic compensation of an employee established, at any time, in relation to rates of compensation for the same or similar work in the continental United States is converted, on or after the effective date of the initial adjustments under section 5 of the Act, to a rate of basic compensation established in relation to rates in areas other than the continental United States under section 5(b) of the Act, such employees shall, pending transfer to a position for which the rate of basic compensation is established in relation to rates in the continental United States under section 5(b), continue to receive the rate of basic compensation (but excluding additional pay assignments) to which he was entitled immediately prior to such conversion, so long as he remains in the same position as that in which he was serving at the time his rate was converted, or until subsequent change is effected to another position unless the change is made without an increase in pay to a position of equal or higher level. If the subsequent change is made to a position of equal or higher level and if application of the normal pay fixing rule would result in a decrease in pay, the employee's saved rate will be preserved. He shall not be eligible for within-grade salary increases granted to Non-Manual or Service employees, step increases granted to Manual employees, or across-the-board increases granted to Manual employees for so long as he remains in a position the salary for which is derived from or fixed in relation to wage rates existing in the Republic of Panama or elsewhere outside the continental United States.

(Sec. 15, 72 Stat. 405; E.O. 10749, 23 F.R. 9627, 3 CFR 1958 Supp.)

WILBER M. BRUCKER,
Secretary of the Army.

[F.R. Doc. 61-413; Filed, Jan. 18, 1961; 8:45 a.m.]

Title 7—AGRICULTURE

Chapter VIII—Commodity Stabilization Service (Sugar), Department of Agriculture

SUBCHAPTER B—SUGAR REQUIREMENTS AND QUOTAS

[Sugar Reg. 815]

PART 815—ALLOTMENT OF THE DIRECT-CONSUMPTION PORTION OF MAINLAND SUGAR QUOTA FOR PUERTO RICO

Three-Month Period Ending March 31, 1961

Correction

In F.R. Document 60-12176, appearing in the issue for Friday, December 30, 1960, at page 13948, the headings should read as set forth above.

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders), Department of Agriculture

PART 938—IRISH POTATOES GROWN IN RED RIVER VALLEY OF NORTH DAKOTA AND MINNESOTA

Subpart—Exemption Certificates and Safeguards

REGISTERED HANDLERS

Notice of rule making regarding a proposed amendment to § 938.140 (7 CFR 938.140) of the rules and regulations for establishment of safeguards (Subpart—Exemption Certificates and Safeguards) to be made effective under Marketing Agreement No. 135, and Order No. 38 (7 CFR Part 938) was published in the FEDERAL REGISTER December 13, 1960 (25 F.R. 12752). This program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674).

The notice afforded interested persons an opportunity to file data, views, or arguments pertaining thereto not later than 15 days after publication in the FEDERAL REGISTER. None was filed.

After consideration of all relevant matters presented, including the proposals set forth in the aforesaid notice which was recommended by the Red River Valley Potato Committee, established pursuant to said marketing agreement and order, the proposed amendment to § 938.140 (7 CFR 938.140) of the rules and regulations for establishment of safeguards (Subpart—Exemption Certificates and Safeguards) is hereby approved.

As amended, § 938.140 is set forth below.

§ 938.140 Registered handlers of potatoes for chipping.

(a) (1) Handlers of potatoes that have been conditioned, or are to be conditioned, for special use as potato chips may apply for registration with the committee as registered handlers of potatoes for chipping. Handlers who apply for registration as registered handlers of potatoes for chipping shall furnish the committee with evidence of special storage and other facilities for conditioning potatoes for potato chips and shall agree to furnish the committee with such reports as the committee may require. Application may be made on forms furnished by the committee. Evidence required by the committee shall include the following:

(i) Location of the applicant's storage facilities within the production area.

(ii) Size or other description of storage facilities.

(iii) Facilities for control of storage, temperature and humidity, and other pertinent information concerning the adequacy and effectiveness of applicant's facilities for conditioning potatoes for chipping.

(iv) Evidence of a contract or other arrangement with a manufacturer or processor of potatoes for potato chips, or such other evidence of regular operations as a supplier of potatoes for potato chips as the committee deems adequate.

(v) Such other information as the committee may require to enable the committee to determine the applicant's qualifications as a handler of potatoes for chipping.

(2) The committee or its duly authorized agent shall give prompt consideration to each application. Approval of an application based upon a determination as to whether the information contained therein and other information available to the committee supports approval shall be evidenced by notification in writing to the applicant. If an application is denied it shall be returned to the applicant with a brief statement in writing of the reasons therefor.

(b) The committee from time to time may conduct surveys of the operations of registered handlers of potatoes for chipping to determine whether such handlers are complying with requirements applicable to the handling of potatoes for chipping. Whenever the committee finds that a registered handler of potatoes for chipping has failed to furnish reports or information requested by the committee or is failing to comply with requirements and regulations applicable to the handling of potatoes for chipping, the committee may rescind the registration of such handler. Such disqualification shall apply to and not exceed a reasonable period of time as determined by the committee but in no event shall it extend beyond the succeeding fiscal period. Any handler whose registration as a registered handler of potatoes for chipping is rescinded, or whose application therefor has been denied, may appeal to the committee in writing for reconsideration of such disqualification or denial.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: January 16, 1961, to become effective 30 days after publication in the FEDERAL REGISTER.

FLOYD F. HEDLUND,
Deputy Director,
Fruit and Vegetable Division.

[F.R. Doc. 61-433; Filed, Jan. 18, 1961; 8:48 a.m.]

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

Order, as Amended, Regulating Handling

It is hereby ordered that on and after the effective date hereof all handling of dried prunes produced in California shall be in conformity to, and in compliance with, the Order Regulating the Handling of Dried Prunes Produced in California, as amended (Order No. 93, as amended; 7 CFR Part 993), and as further amended by this order. All of the findings, determinations, terms, and conditions of the "Order Amending the Order, as Amended, Regulating the Handling of Dried Prunes Produced in California" which was annexed to and made a part of the decision of the Assistant Secretary of Agriculture, dated November 23, 1960 (F.R. Doc. 60-11044; 25 F.R. 12191), with respect to proposed amendments to the amended marketing agreement and order regulating the handling of such dried prunes shall be, and the same hereby are, the findings, determinations, terms, and conditions of this order as if set forth in full herein.

The aforesaid findings and determinations are hereby supplemented by the following additional determinations: A new paragraph (c) is added to § 993.0.

It is further ordered that, for convenient reference, the texts of the codified portions of said Order No. 93, as amended (7 CFR Part 993), and as further amended by the aforesaid amendatory order shall be published in the FEDERAL REGISTER as a single document in revised codified form. In this connection, certain section number designations (including intrasection references thereto) of Order No. 93, as amended and currently in effect, and of the aforesaid amendatory order have been revised (i.e., renumbered or conformed, as the case may be) to provide an orderly sequence of, as well as proper reference to, the sections.

Accordingly, the order, as amended, is hereby further amended to read as hereinafter set forth and to become effective on August 1, 1961, except §§ 993.24, 993.26 through 993.30, 993.32, 993.34 (§ 993.33 of the revised codification), the deletion of present § 993.33, and the amendment of present §§ 993.41, 993.42, 993.43, 993.44, and 993.45 to read as a single section, designated § 993.41, which shall become effective 30 days after publication in the FEDERAL REGISTER. The provisions of this subpart currently in effect shall continue in full force and effect except as otherwise provided by this order, as amended.

Sec.

993.0 Findings and determinations.

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AUTHORITY: §§ 993.0 to 993.97 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 993.0 Findings and determinations.

(a) *Previous findings and determinations.* The findings and determinations hereinafter set forth are supplementary, and in addition, to the findings and determinations which were made in connection with issuance of the order and of each previously issued amendment thereto. Except the finding as to the base period for parity computation, and except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein, all of the said previous findings and determinations are hereby ratified and affirmed. (For prior findings and determinations see 14 F.R. 5254; 16 F.R. 8437; 19 F.R. 1301; 22 F.R. 8254.)

(b) *Findings upon the basis of the hearing record.* Pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674), and the applicable rules of practice and procedure, as amended (7 CFR Part 900), a public hearing was held in San Francisco, California, on April 18, 1960, on proposed amendments to Marketing Agreement No. 110, as amended, and Order No. 93, as amended (7 CFR Part 993), regulating the handling of dried prunes produced in California. On the basis of the evidence adduced at the hearing, and the record thereof, it is found that:

(1) The said order, as amended and as hereby further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(2) The said order, as amended and as hereby further amended, regulates the handling of dried prunes produced in California in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, the marketing agreement upon which hearings have been held;

(3) There are no differences in the production and marketing of dried prunes in the production area covered by the order, as amended and as hereby further amended, which require different terms applicable to different parts of such area;

(4) The said order, as amended and as hereby further amended, is limited in its application to the smallest regional production area that is practicable, consistently with carrying out the declared policy of the act; and

(5) All handling of dried prunes produced in California is in the current of interstate or foreign commerce, or directly burdens, obstructs, or affects such commerce.

(c) *Determinations.* It is hereby determined that:

(1) The "Marketing Agreement, as Amended, Regulating the Handling of Dried Prunes Produced in California", upon which a public hearing was held April 18, 1960, in San Francisco, California, has been signed by handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping dried prunes covered by the said order, as amended and as hereby further amended) who, during the period August 1, 1959, through July 31, 1960, handled not less than 50 percent of the volume of such dried prunes covered by the said order, as amended and as hereby further amended; and

(2) The issuance of this amendatory order, further amending the aforesaid order, as amended, is favored or approved by at least two-thirds of the producers who participated in a referendum on the question of its approval and who, during the period August 1, 1959, through July 31, 1960 (which has been determined to be a representative period), have been engaged, within the State of California, in the production for market of the commodity specified in such amendatory order, such producers having also produced for market at least two-thirds of the volume of such commodity represented in the referendum.

It is therefore ordered, That, on and after the effective date hereof, all handling of dried prunes produced in California, shall be in conformity to, and in compliance with, the terms and conditions of the said order, as amended, and as hereby further amended, as follows:

DEFINITIONS

§ 993.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any other officer or employee of the United States Department of Agriculture who is, or who may hereafter be, authorized to exercise the powers and to perform the duties of the Secretary under the act.

§ 993.2 Act.

"Act" means Public Act No. 10, 73d Congress, as amended and reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

§ 993.3 Person.

"Person" means an individual, partnership, corporation, association, or any other business unit.

§ 993.4 Area.

"Area" means the State of California.

§ 993.5 Prunes.

"Prunes" means and includes all sun-dried or artificially dehydrated plums, of any type or variety, produced from plums grown in the area, except: (a) Sulfur-bleached prunes which are produced from yellow varieties of plums and are commonly known as silver prunes; and (b) plums which have not been dried or dehydrated to a point where they are capable of being stored prior to packaging, without material deterioration or spoilage unless refrigeration or other artificial means of preservation are used, and so long as they are treated by a process which is in conformity with, or generally similar to, the processes for treatment of plums of that type which have been developed or recommended by the Food Technology Division, College of Agriculture, University of California, for the specialty pack known as "high moisture content prunes," but this exception shall not apply if and when such plums are dried to the point where they are capable of being stored without material deterioration or spoilage, refrigeration or other artificial means of preservation.

§ 993.6 Non-French prunes.

"Non-French prunes" means prunes commonly known as Imperial, Sugar, Robe de Sargent, Burton, Standard, Jefferson, Fellenberg, Italian, President, Giant, and Hungarian (Gross), produced from such varieties of plums. This definition may be modified by the committee with the approval of the Secretary.

§ 993.7 French prunes.

"French prunes" means: (a) Prunes produced from plums of the following varieties of plums: French (Prune d'Agen, Petite Prune d'Agen), Coates (Cox, Double X, Saratoga); and (b) any other prunes which possess taste, flesh texture, and other characteristics similar to those of the prunes named in this section.

§ 993.8 Natural condition prunes.

"Natural condition prunes" means prunes which have not been processed.

§ 993.9 Processed prunes.

"Processed prunes" means prunes which have been cleaned, or treated with water or steam, by a handler.

§ 993.10 Standard prunes.

"Standard prunes" means any lot of natural condition prunes meeting the applicable grade and size standards prescribed pursuant to § 993.49.

§ 993.11 Standard processed prunes.

"Standard processed prunes" means any lot of processed prunes meeting the applicable grade and size standards prescribed pursuant to § 993.50.

§ 993.12 Substandard prunes.

"Substandard prunes" means any lot of processed or natural condition prunes failing to meet the applicable grade and size standards prescribed pursuant to §§ 993.49 and 993.50.

§ 993.13 Handle.

"Handle" means to receive, package, sell, consign, transport, or ship (except as a carrier of prunes owned by another person), or in any other way to place prunes in the current of the commerce within the area or from such area to any point outside thereof: *Provided*, That this term shall not include: (a) Sales or deliveries of prunes by a producer or dehydrator to a producer, dehydrator, or handler within the area; (b) the receiving of prunes by a producer or dehydrator from a producer or dehydrator; and (c) receipts, sales, or shipments of prunes already handled by another person other than pursuant to § 993.50(f).

§ 993.14 Handler.

"Handler" means any person who handles prunes.

§ 993.15 Dehydrator.

"Dehydrator" means any person who produces prunes by drying or dehydrating plums by means of sun-drying or artificial heat.

§ 993.16 Producer.

"Producer" means any person who is engaged, in a proprietary capacity, in growing plums for drying or dehydrating into prunes.

§ 993.17 Ton.

"Ton" means a short ton of 2,000 pounds.

§ 993.18 Grade.

"Grade" means the classification of prunes for quality and condition according to the grading specifications established pursuant to the provisions of this subpart.

§ 993.19 Size.

"Size" means the number of prunes contained in a pound and may be referred to in terms of size ranges.

§ 993.20 Crop year.

"Crop year" means the 12-month period beginning August 1 of any year and ending July 31 of the following year.

§ 993.21 Domestic.

"Domestic" means the United States, Canal Zone, Puerto Rico, Virgin Islands, and Canada.

§ 993.22 Consumer package.

"Consumer package" means: (a) Any container of prunes holding less than 10 pounds of standard processed prunes or standard prunes; or (b) any container holding less than 10 pounds of prunes and other dried fruit if more than 60 percent of the net weight of mixed dried fruit in the lot consists of standard processed prunes or standard prunes.

§ 993.23 Part and subpart.

"Part" means the order regulating the handling of dried prunes produced in California, and all rules, regulations, and supplementary orders issued thereunder. This order regulating the handling of dried prunes produced in California shall be a "subpart" of such part.

PRUNE ADMINISTRATIVE COMMITTEE

§ 993.24 Establishment and membership.

A Prune Administrative Committee (hereinafter referred to as the "committee"), consisting of 21 members, with an alternate member for each such member, is hereby established to administer the terms and provisions of this part, of whom with their respective alternates, 14 shall represent producers and 7 shall represent handlers. For the term of office beginning June 1, 1960, the membership of the committee shall be as selected by the Secretary for such term in accordance with the provisions of this part in effect on such date. The committee membership for subsequent terms of office shall be allocated in accordance with the following groupings, with the alternate member positions identically allocated:

(a) Three handler members to represent handlers who are cooperative marketing associations of producers (referred to in this part as "cooperative handlers");

(b) Three handler members to represent handlers other than cooperative handlers (referred to in this part as "independent handlers");

(c) One handler member to represent handlers who are cooperative handlers or independent handlers, whichever of such handlers handled as first handlers more than 50 percent of the prunes handled by all handlers during the crop year preceding the year in which nominations are made;

(d) Fourteen producer members to be selected from and to represent producers who are members of cooperative marketing associations (referred to in this part as "cooperative producers") and producers other than "cooperative producers" (referred to in this part as "independent producers"); the number of the producer members for the cooperative producer group or the independent producer group, as the case may be, shall be in the same proportion, as near as practicable, to the total of 14, as the tonnage of prunes handled by the respective group of cooperative handlers or independent handlers as first handlers during the crop year preceding the year in which nominations are made is to the total tonnage of prunes handled by all handlers as first handlers.

§ 993.25 Term of office.

The term of office of members, and their respective alternates, shall be two years, ending on May 31 of even numbered years, and any later date which may be necessary for the selection and qualification of their respective successors.

§ 993.26 Selection.

Selection of members of the committee, and their respective alternates, shall be made in the appropriate number specified in § 993.24, by the Secretary from nominees nominated pursuant to this part or, in the discretion of the Secretary, from other eligible persons.

§ 993.27 Eligibility.

Each producer member of the committee shall be at the time of his selection, and during his term of office, a producer in the group, and if to represent a district also in the district, for which selected, and, except for producer members representing cooperative producers, shall not be engaged in the handling of prunes either in a proprietary capacity or as a director, officer, or employee. Each handler member of the committee shall be a handler in the group he represents or a director, officer, or employee of such handler.

§ 993.28 Nominees.

(a) For the purpose of obtaining nominations for producer members to represent independent producers, the Committee shall, with the approval of the Secretary, divide the area into districts giving, insofar as practicable, equal representation to numbers of independent producers and production of prune tonnage by such producers. The number of districts shall be equal to the number of such producer members or seven, whichever is the lesser. Candidates for nomination by independent producers from the various districts shall be obtained at meetings convened by the committee. Following such meetings, the

committee shall prepare a separate ballot for each of the districts, or a joint ballot for two or more districts, containing (1) the names of the candidates for each district involved and (2) provision for write-in candidates. The ballot shall be mailed to each independent producer of record in each district. The voting procedure (including the casting of the ballot by mail addressed to the committee), and tabulation of votes shall be in accordance with rules and regulations prescribed by the committee, with the approval of the Secretary. Each voter shall be entitled to cast only one vote for a member nominee and only one vote for an alternate member nominee in a district in which he is a producer, and no voter shall vote for candidates in more than one district. In case he is a producer in more than one district, he shall elect in which of such districts he will vote and notify the committee as to his choice. Whenever the number of producer members to represent independent producers during the ensuing term of office is to exceed seven, one nominee shall be nominated by independent producers in each of the seven districts and an additional nominee for each member in excess of the seven members shall be nominated, without reference to districts, by such seven nominees. The committee shall recommend the establishment of districts, or any changes therein, to the Secretary prior to January 31 of each year in which nominations are made.

(b) Nominations of producer members to represent cooperative producers and handler members to represent cooperative handlers shall be submitted to the Secretary by cooperative marketing associations engaged in the handling of prunes before April 16 of each year in which nominations are made.

(c) In any year in which nominations are made following a crop year during which the tonnage of prunes handled by independent handlers as first handlers exceeded the tonnage of prunes handled by cooperative handlers as first handlers, nominees for member positions to represent independent handlers shall be nominated as follows:

(1) Each of the two independent handlers who handled during such preceding crop year, the two largest percentages of the prune tonnage handled by all independent handlers shall nominate from their respective organizations, one nominee for a handler member and one for an alternate member;

(2) Three independent handlers who handled during such preceding crop year the next three largest percentages of the prune tonnage handled by all independent handlers shall nominate from among their organizations, one nominee for a handler member and one for an alternate member;

(3) All other independent handlers who handled the remaining percentage of such prune tonnage shall nominate from their organizations, one nominee for a handler member and one for an alternate member.

In any year in which nominations are made following a crop year during which the tonnage of prunes handled by cooperative handlers as first handlers exceeded the tonnage of prunes handled by independent handlers as first handlers, nominees for two member and alternate positions to represent the independent handlers referred to in paragraph (c)(1) of this section shall be nominated in accordance with said paragraph (c)(1), and one nominee for the member and one for the alternate position to represent all other independent handlers shall be nominated by the handlers referred to in paragraph (c) (2) and (3) of this section and the votes of such handlers shall be weighted by the tonnage of prunes handled during the preceding crop year by the respective handlers.

(d) The committee shall establish, with the approval of the Secretary, the procedures by which such nominations, other than by cooperative marketing associations engaged in the handling of prunes, shall be obtained and shall submit such nominations to the Secretary before April 16 of the year in which nominations are made. In the event the committee determines that any nominating procedure specified in this section does not result in equitable representation, it may establish, with the prior approval of the Secretary, such modifications as will tend to assure such representation.

§ 993.29 Alternates.

An alternate for a member of the committee shall act in the place and stead of such member (a) during his absence, and (b) in the event of his removal, resignation, disqualification, or death, until a successor for such member's unexpired term has been selected and has qualified. Except as otherwise specifically provided in this subpart, the provisions of this part applicable to members also apply to alternate members.

§ 993.30 Failure to nominate.

If a nomination for any position on the committee is not received by the Secretary by May 1, the Secretary may select an eligible individual without regard to nominations.

§ 993.31 Acceptance.

Each person selected as a member or alternate member of the committee shall, prior to serving on the committee, qualify by filing with the Secretary a written acceptance within 15 days after receiving notice of his selection.

§ 993.32 Vacancies.

In the event of any committee vacancy occasioned by the removal, resignation, disqualification, or death of any member, or in the event of the failure of any person selected as a member or alternate member to qualify, a successor for the unexpired term shall be nominated within 60 calendar days thereof. Such nominations shall be made in the manner provided for in this subpart, insofar as applicable, except that nominations of nominees for a producer member position to represent independent producers may, at the discretion of the committee, be made to the committee by the incumbent producer members of the committee who represent independent producers.

§ 993.33 Voting procedure.

Decisions of the committee shall be by majority vote of the members present and voting and a quorum must be present: *Provided,* That decisions on marketing policy, grade or size regulations, or pack specifications shall require at least 11 affirmative votes. A quorum shall consist of at least 12 members of whom at least eight must be producer members and at least four must be handler members. Except in case of emergency, a minimum of five days' advance notice must be given with respect to any meeting of the committee. In case of an emergency, to be determined within the discretion of the chairman of the committee, as much advance notice of a meeting as is practicable in the circumstances shall be given. The committee may vote by mail or telegram upon due notice to all members, but any proposition to be so voted upon first shall be explained accurately, fully, and identically by mail or telegram to all members. When any proposition is submitted to be voted on by such method, one dissenting vote shall prevent its adoption and at least 11 affirmative votes shall be required for adoption.

§ 993.34 Compensation and expenses.

The members of the committee, and their alternates when acting as members, shall receive $10.00 per day for each day devoted to performing their duties hereunder, plus their reasonably necessary expenses.

§ 993.35 Powers.

The committee shall have the following powers:

(a) To administer the terms and provisions of this subpart;

(b) To make rules and regulations to effectuate the terms and provisions of this subpart;

(c) To receive, investigate, and report to the Secretary complaints of violations of this subpart; and

(d) To recommend to the Secretary amendments to this subpart.

§ 993.36 Duties.

The committee shall have, among others, the following duties:

(a) To act as intermediary between the Secretary and any producer, dehydrator, or handler;

(b) To keep minutes, books, and other records which shall clearly reflect all of its acts and transactions, and such minutes, books, and other records shall be subject to examination by the Secretary at any time;

(c) To make, subject to the prior approval of the Secretary, scientific and other studies, and assemble data on the producing, handling, shipping, and marketing conditions relative to prunes, which are necessary in connection with the performance of its official duties;

(d) To select, from among its members, a chairman and other appropriate officers, and to adopt such rules and regulations for the conduct of the business of the committee as it may deem advisable;

(e) To appoint or employ such other persons as it may deem necessary, and

to determine the salaries and define the duties of such persons;

(f) To submit to the Secretary not later than the fourth Tuesday of July of each year, a budget of its anticipated expenditures and the recommended rate of assessment for the ensuing crop year, and the supporting data therefor;

(g) To submit to the Secretary such available information with respect to prunes as the committee may deem appropriate, or as the Secretary may request;

(h) To prepare and submit to the Secretary monthly statements of the financial operations of the committee and to make such statements, together with the minutes of the meetings of said committee, available for inspection at the offices of the committee by producers, dehydrators, and handlers;

(i) To cause the books of the committee to be audited by a certified public accountant at least once each crop year, and at such other times as the committee may deem necessary or as the Secretary may request, and two copies of each such audit report shall be submitted to the Secretary and a copy which does not contain confidential data shall be available for inspection at the offices of the committee, by producers, dehydrators, and handlers;

(j) To give the Secretary the same notice of meetings of the committee as is given to the members of the committee;

(k) To give producers, dehydrators, and handlers reasonable advance notice of meetings of the committee, and to maintain all such meetings open to such persons;

(l) To investigate compliance with the provisions of this subpart and with any rules and regulations established pursuant to such provisions; and

(m) To establish, with the approval of the Secretary, such rules and procedures relative to administration of this subpart as may be consistent with the provisions contained in this subpart and as may be necessary to accomplish the purposes of the act and the efficient administration of this subpart.

§ 993.37 Research and development.

The committee, with the approval of the Secretary, may establish or provide for the establishment of marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of prunes. The expense of such projects shall be paid from funds collected pursuant to § 993.81.

Marketing Policy

§ 993.41 Marketing policy.

Prior to the fourth Tuesday of each July, the committee shall prepare and submit to the Secretary a report setting forth its recommended marketing policy for the ensuing crop year. In the event it becomes advisable to modify such policy, because of changed demand, supply or other conditions, the committee shall formulate a new policy and shall submit a report thereon to the Secretary. In developing the marketing policy, the committee shall give consideration to the handler carryover, production, probable quality and prune sizes in the crop, demands in domestic and foreign markets, whether producer prices are likely to exceed parity and the probable assessable tonnage for the purposes of § 993.81 and such other factors as may have a bearing on the marketing of prunes or the administration of this part. Notice of the committee's marketing policy, and of any modifications thereof, shall be given promptly by reasonable publicity, to producers, dehydrators and handlers.

Grade and Size Regulations

§ 993.48 Regulation.

No handler shall handle prunes except in accordance with the provisions of this part.

§ 993.49 Incoming regulation.

(a) No handler shall receive prunes from producers or dehydrators, other than substandard prunes, unless such prunes meet the minimum standards for natural condition prunes set forth in § 993.97 (Exhibit A), or as such standards may be modified, or the more restrictive grade regulation established pursuant to this section, and then in effect: *Provided,* That no handler shall receive any prunes (including substandard prunes) from producers or dehydrators unless such prunes have been properly dried and cured in original natural condition, without the addition of water, and are free from active insect infestation, so that they are capable of being received, stored, and packed without material deterioration or spoilage. Any "high moisture content prunes," as described in the exception in § 993.4(b), in the possession of a handler, shall be held separate and apart from any prunes held by him. If such "high moisture content prunes" are dried or dehydrated to a point where they are capable of being stored, without material deterioration or spoilage, unrefrigerated or not otherwise artificially preserved, they shall be deemed, at that time, to have been received by such handler as prunes, and shall be subject to all of the conditions and restrictions of this subpart.

(b) The Secretary, on the basis of a recommendation of the committee or other information, may establish size regulations or more restrictive grade regulations with respect to prunes that may be received by a handler from producers and dehydrators whenever he finds that such action would tend to effectuate the declared policy of the act.

(c) When an inspection certificate shows that a lot of substandard prunes received by a handler from a producer or dehydrator contains prunes with defects in excess of those permitted in IC (1) or (2) of § 993.97 the quantity of prunes with such defects necessary to be removed from the lot in order that the balance of the lot would then be within the tolerances for such defects shall be determined and the handler shall dispose of a like quantity of prunes affected by such defects in non-human consumption outlets: *Provided,* That the committee, by its rules and regulations, shall prescribe a maximum percentage of such defects in any lot received by a handler; and any lot so received which contains a greater percentage of such defects shall be disposed of in its entirety in non-human consumption outlets. In determining the defective prunes to be disposed of, consideration shall be given to the size ranges of their occurrence and variations in their condition. With the approval of the Secretary, the committee shall issue such rules and regulations (including the prescription of a maximum percentage) as may be necessary to administer the provisions of and to insure compliance with, this section.

§ 993.50 Outgoing regulation.

(a) Except as otherwise specifically provided, no handler shall ship or otherwise make final disposition of prunes which fail to meet the applicable minimum standards set forth in § 993.97 (Exhibit A), or as such standards may be modified, for standard prunes or standard processed prunes.

(b) The Secretary, on the basis of a recommendation of the committee or other information, may establish size regulations, pack specifications, or more restrictive grade regulations with respect to prunes that may be shipped or otherwise disposed of by a handler if such action would tend to effectuate the declared policy of the act. If a more restrictive grade regulation is established in connection with § 993.97 (Exhibit A) it shall insofar as practicable apply comparably to both natural condition prunes and processed prunes. When pack specifications are in effect, no handler shall ship prunes in consumer packages, unless such prunes are identified by an appropriate label, seal, stamp, or tag affixed to such container by the handler showing the size of prunes in the lot from which the container was packed. In order to effectuate such orderly marketing of prunes as will be in the public interest, whether prices are above or below parity, no handler shall use descriptive terms in a manner inconsistent with that set forth in this subpart or in any pack specifications or other regulation issued by the Secretary pursuant to this subpart.

(c) Non-French prunes: No handler shall ship or otherwise make final disposition of any lot of standard prunes or standard processed prunes of the non-French varieties or any lot which includes non-French prunes in excess of a tolerance to be prescribed by the Secretary on recommendation of the committee, unless the average count of such non-French prunes is 50 or less per pound, or if of the Robe de Sargent variety is 60 or less per pound. However, under safeguards to be established by the committee, such prunes may be shipped to or disposed of in prune product outlets in which they lose their form and character as prunes by conversion prior to consumption. A tolerance as to the permitted deviation of sizes about the average count shall be prescribed by the Secretary, upon recommendation of the committee.

(d) French prunes: No handler shall ship or otherwise make final disposition of any lot of consumer packages of French prunes unless the average count of such prunes contained in such lot is

100 or less per pound. In determining whether such lot of prunes conforms to this minimum size requirement, the following tolerance shall apply: In a sample of 100 ounces, the count per pound of 10 ounces of the smallest prunes shall not vary from the count per pound of 10 ounces of the largest prunes by more than 45 points. The Secretary may, upon the basis of the recommendation and information submitted by the committee and other available information, modify or change this tolerance for uniformity of size.

(e) No handler shall ship or otherwise make final disposition of any lot of substandard prunes except for use as prune products in which the prunes lose their form and character as prunes by conversion prior to consumption, or for use in non-human consumption outlets: *Provided*, That any such prunes which are shipped or otherwise disposed of for human consumption shall meet the minimum standards prescribed in II C (1), (2), and (3) of § 993.97 or as such standards as may pursuant to § 993.52 be modified. The committee shall issue any such rules and regulations as may be necessary to insure such uses.

(f) Notwithstanding the restrictions contained in this section, any handler may transfer prunes from one plant owned by him to another plant owned by him within the area without having an inspection made as provided for in § 993.51. Any handler may ship prunes from his plant to another handler's plant within the area without having an inspection made as provided for in § 993.51, but a report of such inter-handler transfer shall be made promptly by the transferring handler to the committee. The receiving handler shall, before shipping or otherwise making final disposition of such prunes, comply with the requirements of this section and of § 993.51.

§ 993.51 Inspection and certification.

Each handler shall at his own expense, before or upon the receiving, and before the shipping or disposing of prunes, cause an inspection to be made of such prunes to determine whether they meet the applicable grade and size requirements or the pack specifications, including labeling, effective pursuant to this part. Such handler shall obtain a certificate that such prunes meet the aforementioned applicable requirements and shall submit such certificate, or cause it to be submitted, to the committee. Acceptable certificates shall be those issued by inspectors of the Dried Fruit Association of California. The Secretary may designate another inspection service in the event the services of the Association prove unsatisfactory.

§ 993.52 Modification.

Minimum standards, pack specifications or size regulations may be modified by the Secretary, on the basis of a recommendation of the committee or other information, whenever he finds that such modification would tend to effectuate the declared policy of the act.

§ 993.53 Above parity situations.

The minimum standards, the minimum sizes, and the provisions of this part relating to administration shall continue in effect irrespective of whether the estimated season average price for prunes is in excess of the parity level specified in section 2(1) of the act.

REPORTS AND BOOKS AND OTHER RECORDS

§ 993.71 Confidential information.

All reports and records furnished or submitted by handlers to the committee which include data or information constituting a trade secret or disclosing of the trade position, financial condition, or business operations of the particular handler from whom received shall be received by, and at all times kept in the custody and under the control of one or more employees of the commitee, who shall disclose such information to no person except the Secretary. Nothwithstanding the above provisions of this section, information may be disclosed to the committee when reasonably necessary to enable the committee to carry out its functions under this subpart.

§ 993.72 Reports of acquisitions, sales, uses, and shipments.

Each handler shall file such reports of his acquisitions, sales, uses, and shipments of prunes, as may be requested by the committee.

§ 993.73 Other reports.

Upon the request of the committee, each handler shall furnish such other reports and information as are needed to enable the committee to perform its functions under this subpart.

§ 993.74 Records.

Each handler shall maintain such records of prunes received, held and disposed of by him, as are prescribed by the committee and needed by it to perform its functions under this subpart. Such records shall be retained for at least two years beyond the crop year of their applicability.

§ 993.75 Verification of reports.

For the purpose of checking and verifying reports filed by handlers or the operation of handlers under the provisions of this subpart, the committee, through its duly authorized agents, shall have access to any premises where prunes may be held by any handler and at any time during reasonable business hours, shall be permitted to inspect any prunes so held by such handler and any and all records of such handler with respect to the holding or disposition of all prunes which may be held or which may have been disposed of by him.

EXPENSES AND ASSESSMENTS

§ 993.80 Expenses.

The committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by it during each crop year for the maintenance and functioning of the committee and for such other purposes as the Secretary may, pursuant to the provisions of this subpart, determine to be appropriate.

§ 993.81 Assessments.

(a) Each handler shall pay to the committee, upon demand, with respect to all prunes received by him from producers and dehydrators, his pro rata share of all expenses which the Secretary finds are reasonable and likely to be incurred by the committee during each crop year. Each handler's pro rata share shall be the rate of assessment per ton fixed by the Secretary. At any time during or after a crop year the Secretary may increase the rate of assessment to cover unanticipated expenses of the committee or a deficit in assessable tonnage.

(b) In order to provide funds to carry out the functions of the committee, the committee may accept advance payments from any handler to be credited toward such assessments as may be levied pursuant to this section against the respective handler.

(c) Any money collected as assessments during any crop year and not expended in connection with the committee's operations may be used by the committee for a period of five months subsequent to such crop year. At the end of such period the committee shall, from funds on hand, refund or credit to handler accounts the aforesaid excess. Each handler's share of such excess funds shall be the amount of assessments he has paid in excess of his pro rata share of the actual net expenses of the committee for the preceding crop year. Any money collected from assessments hereunder and remaining unexpended in the possession of the committee at the termination of this part, shall be distributed in such manner as the Secretary may direct: *Provided*, That to the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

§ 993.82 Funds.

All funds received by the committee pursuant to the provisions of this part shall be used solely for authorized purposes. The Secretary may, at any time, require the committee or its members and alternate members to account for all receipts and disbursements.

MISCELLANEOUS PROVISIONS

§ 993.83 Rights of the Secretary.

The members of the committee (including successors or alternates) and any agent or employee appointed or employed by the committee, shall be subject to the removal or suspension by the Secretary, in his discretion, at any time. Each and every decision, determination, or other acts of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time, and upon such disapproval, shall be deemed null and void.

§ 993.84 Personal liability.

No member or alternate member of the committee, or any employee, representative, or agent thereof shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person, for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate member, employee, representative, or agent, except for acts of dishonesty.

§ 993.85 Separability.

If any provision of this subpart is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this subpart or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

§ 993.86 Derogation.

Nothing contained in this subpart is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 993.87 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this subpart shall cease upon the termination of this subpart, except with respect to acts done under and during the existence of this subpart.

§ 993.88 Agents.

(a) *Authorization by Secretary.* The Secretary may, by a designation in writing, name any person, including any officer or employee of the United States Government, or name any bureau or division in the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this subpart.

(b) *Authorization by committee.* The committee may authorize any person or persons or agency to act as its agent or representative in connection with the provisions of this subpart.

§ 993.89 Effective time.

The provisions of this subpart, as well as any amendments to this subpart, shall become effective at such time as the Secretary may declare, and shall continue in force until terminated, or during suspension, in one of the ways specified in § 993.90.

§ 993.90 Termination or suspension.

(a) *Failure to effectuate policy of act.* The Secretary may, at any time, terminate the provisions of this subpart, by giving at least one day's notice by means of a press release or in any other manner which he may determine. The Secretary shall terminate or suspend the operation of any or all of the provisions of this subpart, whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(b) *Referendum.* The Secretary shall terminate the provisions of this subpart on or before the fifteenth day of July of any crop year, to be effective at the end of such crop year, whenever he is required to do so by the provisions of section 8c(16)(B) of the act. The Secretary may, at any time he deems it desirable, hold a referendum of producers to determine whether they favor termination of this subpart. However, beginning with 1951, if the Secretary receives a recommendation, adopted by at least a majority vote of the producer members of the committee, requesting the holding of such a referendum, the Secretary shall hold such a referendum: *Provided,* That the Secretary shall not be required to hold such a referendum upon the basis of such a request more than once every two years.

(c) *Termination of act.* The provisions of this subpart shall terminate, in any event, upon the termination of the act.

§ 993.91 Procedure upon termination.

Upon the termination of this subpart, the members of the committee then functioning shall continue as joint trustees, for the purpose of liquidating the affairs of the committee. Action by such trustee shall require the concurrence of a majority of the said trustees. Such trustees shall continue in such capacity until discharged by the Secretary, and shall, from time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and the joint trustees, to such person as the Secretary may direct; and shall, upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all the funds, properties, and claims vested in the committee or the joint trustees, pursuant to this subpart. Any person to whom funds, property, or claims have been transferred or delivered by the committee or the joint trustees, pursuant to this section, shall be subject to the same obligations imposed upon the members of the said committee and upon said joint trustees.

§ 993.92 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant to this subpart, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued under this subpart, or (b) release or extinguish any violation of this subpart or any regulation issued under this subpart, or (c) affect or impair any rights or remedies of the Secretary, or of any other person, with respect to such violation.

§ 993.93 Amendments.

Amendments to this subpart may be proposed from time to time, by any person or by the committee, and may be made a part of this subpart by the procedures provided under the act.

§ 993.97 Exhibit A; minimum standards.

I. Minimum standards for natural condition prunes:

A. *Defects.* Defects are: (1) Off-color; (2) inferior meat condition; (3) end cracks; (4) fermentation; (5) skin or flesh damage; (6) scab; (7) burned; (8) mold; (9) imbedded dirt; (10) insect infestation; (11) decay.

B. *Explanation of terms.* (1) "Off-color" means a dull color or skin differing noticeably in appearance from that which is characteristic of mature, properly handled fruit of a given variety or type.

(2) "Inferior meat condition" means flesh which is fibrous, woody or otherwise inferior due to immaturity to the extent that the characteristic texture of the meat is substantially affected.

(3) "End cracks" means callous growth cracks, at the blossom end of prunes, aggregating more than three-eighths of one inch (⅜") but not more than one-half of one inch (½") in length.

(4) "Fermentation" means damage to the flesh by fermentation to the extent that the characteristic appearance or flavor is substantially affected.

(5) "Skin or flesh damage" means growth cracks, splits, breaks in skin or flesh of the following descriptions:

(a) Callous growth cracks, except end cracks as defined in this section, aggregating more than three-eighths of one inch (⅜") in length;

(b) Splits or skin breaks exposing flesh and affecting materially the normal appearance of the prunes;

(c) Any cracks, splits or breaks open to the pit;

(d) Healed or unhealed surface or flesh blemishes caused by insect injury and which materially affect appearance, edibility or keeping quality;

(e) Skin damage caused by rain or overdipping to the extent that the prunes cannot be processed normally without material sloughing of the skin.

(6) "Scab" means tough or thick scab exceeding in the aggregate the area of a circle three-eighths of one inch (⅜") in diameter or by unsightly scab of another character exceeding in the aggregate the area of a circle three-fourths of one inch (¾") in diameter.

(7) "Burned" means injury by sunburn or excessive heat in dehydration to the extent that the characteristic appearance, flavor or edibility of the fruit is noticeably affected.

(8) "Mold" means a characteristic fungus growth and is self-explanatory.

(9) "Imbedded dirt" means the presence of dirt or other extraneous material so imbedded in, or adhering to, the prune that it cannot be removed in normal processing.

(10) "Insect infestation" means the presence of insects, insect fragments or insect remains.

C. *Maximum tolerances.* Tolerance allowances shall be on a weight basis and shall not exceed the following:

(1) The tolerance allowance for decay shall not exceed one percent (1%).

(2) The combined tolerance allowance for mold, imbedded dirt, insect infestation, and decay shall not exceed five percent (5%).

(3) The combined tolerance allowance for fermentation, skin or flesh damage, scab, burned, mold, imbedded dirt, insect infestation, and decay shall not exceed eight percent (8%).

(4) The combined tolerance allowance for end cracks, fermentation, skin or flesh damage, scab, burned, mold, imbedded dirt, insect infestation, and decay shall not exceed ten percent (10%), except that the first eight percent (8%) of end cracks shall be given one-half value and any additional percentage of end cracks shall be given full value.

(5) The combined tolerance allowance for off-color, inferior meat condition, end cracks, fermentation, skin or flesh damage, scab, burned, mold, imbedded dirt, insect infestation, and decay shall not exceed twenty percent (20%), except that the first eight percent (8%) of end cracks shall be given one-half value and any additional percentage of end cracks shall be given full value.

(6) Prunes showing obvious live insect infestation shall be fumigated prior to acceptance.

D. Natural condition prunes must be properly dried and cured in original natural condition, without the addition of water, and free from active infestation, so that they are

capable of being received, stored and packed without deterioration or spoilage.

II. Minimum standards for processed prunes:

A. *Defects.* Defects are: (1) Off-color; (2) inferior meat conditions; (3) end cracks; (4) fermentation; (5) skin or flesh damage; (6) scab; (7) burned; (8) mold; (9) imbedded dirt; (10) insect infestation; (11) decay.

B. *Explanation of terms.* (1) "Off-color" means a dull color or skin differing noticeably in appearance from that which is characteristic of mature, properly handled fruit of a given variety or type.

(2) "Inferior meat condition" means flesh which is fibrous, woody or otherwise inferior due to immaturity to the extent that the characteristic texture of the meat is substantially affected.

(3) "End cracks" means callous growth cracks, at the blossom end of prunes, aggregating more than three-eighth of one inch (⅜") but not more than one-half of one inch (½") in length.

(4) "Fermentation" means damage to the flesh by fermentation to the extent that the characteristic appearance or flavor is substantially affected.

(5) "Skin or flesh damage" means growth cracks, splits, breaks in skin or flesh of the following descriptions:

(a) Callous growth cracks, except end cracks as defined in this section, aggregating more than three-eighths of one inch (⅜") in length;

(b) Splits or skin breaks exposing flesh and materially affecting the normal appearance of French prunes; or markedly affecting the normal appearance of varieties other than the French variety;

(c) Any cracks, splits or breaks open to the pit;

(d) Healed or unhealed surface or flesh blemishes caused by insect injury and which materially affect appearance, edibility or keeping quality.

(6) "Scab" means tough or thick scab exceeding in the aggregate the area of a circle three-eighth of one inch (⅜") in diameter or by unsightly scab of another character exceeding in the aggregate the area of a circle three-fourths of one inch (¾") in diameter.

(7) "Burned" means injury by sunburn or excessive heat in dehydration to the extent that the characteristic appearance, flavor or edibility of the fruit is noticeably affected.

(8) "Mold" means a characteristic fungus growth and is self-explanatory.

(9) "Imbedded dirt" means the presence of dirt or other extraneous material so imbedded in, or adhering to, the prune that it cannot be readily removed in washing the fruit.

(10) "Insect infestation" means the presence of insects, insect fragments or insect remains.

C. *Maximum tolerances.* Tolerance allowances shall be on a weight basis and shall not exceed the following:

(1) There shall be no tolerance allowance for live insect infestation.

(2) The tolerance allowance for decay shall not exceed one percent (1%).

(3) The combined tolerance allowance for mold, imbedded dirt, insect infestation, and decay shall not exceed five percent (5%).

(4) The combined tolerance allowance for fermentation, skin or flesh damage, scab, burned, mold, imbedded dirt, insect infestation, and decay shall not exceed eight percent (8%).

(5) The combined tolerance allowance for end cracks, fermentation, skin or flesh damage, scab, burned, mold, imbedded dirt, insect infestation, and decay shall not exceed ten percent (10%), except that the first eight percent (8%) of end cracks shall be given one-half value and any additional percentage of end cracks shall be given full value.

(6) The combined tolerance allowance for off-color, inferior meat condition, end cracks, fermentation, skin or flesh damage, scab, burned, mold, imbedded dirt, insect infestation, and decay shall not exceed twenty percent (20%), except that the first eight percent (8%) of end cracks shall be given one-half value and any additional percentage of end cracks shall be given full value.

Dated at Washington, D.C., this 13th day of January 1961.

CLARENCE L. MILLER,
Assistant Secretary.

[F.R. Doc. 61-477; Filed, Jan. 18, 1961; 8:54 a.m.]

Title 8—ALIENS AND NATIONALITY

Chapter I—Immigration and Naturalization Service, Department of Justice

PART 211—DOCUMENTARY REQUIREMENTS: IMMIGRANTS; WAIVERS

Returning Residents

The following amendment to Chapter I of Title 8 of the Code of Federal Regulations is hereby prescribed:

The first sentence of § 211.1 *Visas* is amended by adding the word "Cuba," after the word "Albania".

(Sec. 103, 66 Stat. 173; 8 U.S.C. 1103)

This order shall become effective on the date of its publication in the FEDERAL REGISTER. Compliance with the provisions of section 4 of the Administrative Procedure Act (60 Stat. 238; 5 U.S.C. 1003) as to notice of proposed rule making and delayed effective date is contrary to the public interest in this instance because the amendment prescribed by the order affects the internal security of the United States.

Dated: January 16, 1961.

J. M. SWING,
Commissioner of Immigration and Naturalization.

[F.R. Doc. 61-504; Filed, Jan. 18, 1961; 8:54 a.m.]

Title 22—FOREIGN RELATIONS

Chapter I—Department of State

[Dept. Reg. 108.457]

PART 46—CONTROL OF ALIENS DEPARTING FROM THE UNITED STATES

Amendment of Regulation

Part 46, Chapter I, Title 22 of the Code of Federal Regulations is hereby amended in the following respect:

Paragraph (k) of § 46.3 is amended to read as follows:

§ 46.3 Aliens whose departure is deemed prejudicial to the interests of the United States.

* * * * *

(k) Any alien lawfully admitted for permanent residence who seeks to depart from the United States for travel to, in, or through Albania, Communist-controlled China ("Chinese People's Republic"), Cuba, North Korea ("Democratic People's Republic of Korea") or North Viet-Nam ("Democratic Republic of Viet-Nam").

Effective date. The regulations contained in this order shall become effective upon publication in the FEDERAL REGISTER.

The provisions of section 4 of the Administrative Procedure Act (60 Stat. 238; 5 U.S.C. 1003) relative to notice of proposed rule making are inapplicable to this order because the regulations contained therein involve foreign affairs functions of the United States.

Dated: January 14, 1961.

[SEAL] CHRISTIAN A. HERTER,
Secretary of State.

Dated: January 14, 1961.

Concurred in:

WILLIAM ROGERS,
Attorney General.

[F.R. Doc. 61-507; Filed, Jan. 18, 1961; 8:54 a.m.]

[Dept. Reg. 108.456]

PART 53—TRAVEL CONTROL OF CITIZENS AND NATIONALS IN TIME OF WAR OR NATIONAL EMERGENCY

Exceptions to Regulations

Pursuant to the authority vested in me by paragraph 126 of Executive Order No. 7856, dated March 31, 1938, issued under the authority of section 1 of the act of Congress approved July 3, 1926 (44 Stat. 887, 22 U.S.C. 211a), and section 4 of the act of May 26, 1949 (63 Stat. 111; 5 U.S.C. 151c), I hereby amend paragraph (b) of 53.3, Exceptions to regulations in § 53.2 of Title 22 of the Code of Federal Regulations to read as follows:

§ 53.3 Exceptions to Regulations in 53.2.

* * * * *

(b) When traveling between the United States and any country, territory or island adjacent thereto in North, Central, or South America, excluding Cuba: *Provided,* That this exception shall not be applicable to any such person when traveling to or arriving from a place outside the United States for which a valid passport is required under this part, if such travel is accomplished via any country or territory in North, Central, or South America or any island adjacent thereto: *And provided also,* That this section shall not be applicable to any seaman except as provided in paragraph (c) of this section; or

(Sec. 215, 66 Stat. 190; 8 U.S.C. 1185 and Executive Order 3004 dated January 17, 1953, 18 F.R. 489)

The regulation contained in this order shall become effective upon publication in the FEDERAL REGISTER. The provisions