support of its request, Pan American states that the DC–8–51 aircraft is sufficiently different, structurally, from earlier models of DC–8's to require that it be given separate treatment as to minimum load. Aircraft of the DC–8–50 series, which includes the DC–8–51, are capable of accommodating seating for 149 passengers. However, earlier models of DC–8's, because of structural limitations, are physically incapable of accommodating more than 147 passengers, and to modify such aircraft to align their capacities with the later 50-series models would involve considerable expense. Thus, according to Pan American, amendment of § 288.7(b) as proposed in EDR–89 would foreclose earlier model DC–8's from participating in substitute and short-notice charter service in MATS operations because of the expense and delay involved in restructuring those aircraft.

Inasmuch as TIA's petition related only to the DC–8–51 aircraft, we will grant Pan American's request and limit the amendment of § 288.7(b) at the present time to that aircraft. In consideration of the foregoing, the Civil Aeronautics Board hereby amends § 288.7(b) of Part 288 of the Economic Regulations (14 CFR Part 288), effective November 1, 1965, by adding a line in the table therein between "B–707–100 series" and "DC–8 (other)" to read as follows:

Aircraft type	Number of passengers	Tons of cargo	
	All-passenger and convertible flights	All-cargo flights	Convertible flights
* * *			
DC–8 (50 series)	149		
* * *			

(Secs. 204, 416, Federal Aviation Act of 1958; 72 Stat. 743, 771; 49 U.S.C. 1324, 1386)

Adopted: October 14, 1965.

Effective date. November 1, 1965.

By the Civil Aeronautics Board.

[SEAL] HAROLD R. SANDERSON, *Secretary.*

[F.R. Doc. 65–11224; Filed, Oct. 19, 1965; 8:48 a.m.]

Title 21—FOOD AND DRUGS

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

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 121—FOOD ADDITIVES

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

ANTIOXIDANTS AND/OR STABILIZERS FOR POLYMERS

The Commissioner of Food and Drugs, having evaluated the data in a petition (FAP 5B1684) filed by the Dow Chemical Co., Post Office Box 467, Midland, Mich., 48641, and other relevant material, has concluded that the food additive regulations should be amended to provide for the use of 4,4'-cyclohexylidenebis(2-cyclohexylphenol) as an antioxidant and/or stabilizer in polymers used in the manufacturing of articles intended for use in contact with food. Therefore, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1)), and under the authority delegated to the Commissioner by the Secretary of Health, Education, and Welfare (21 CFR 2.90), § 121.2566(b) is amended by inserting alphabetically in the list of substances the following new item:

§ 121.2566 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) List of substances:

	Limitations
* * *	* * *
4,4'-Cyclohexylidenebis(2-cyclohexylphenol).	For use only at levels not to exceed 0.1 percent by weight of olefin polymers identified in §§ 121.2501, 121.2508, and 121.2510; *Provided*, That the finished polymers contact food only of the types identified in § 121.2526(c), table 1, under categories I, II, IV–B, VI, VII–B, and VIII.

* * * * *

Any person who will be adversely affected by the foregoing order may at any time within 30 days from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington, D.C., 20201, written objections thereto, preferably in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

Effective date. This order shall be effective on the date of its publication in the FEDERAL REGISTER.

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

Dated: October 14, 1965.

JOHN L. HARVEY, *Deputy Commissioner of Food and Drugs.*

[F.R. Doc. 65–11228; Filed, Oct. 19, 1965; 8:48 a.m.]

PART 121—FOOD ADDITIVES

Subpart C—Food Additives Permitted in Feed and Drinking Water of Animals or for the Treatment of Food-Producing Animals

Subpart D—Food Additives Permitted in Food for Human Consumption

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

Chlortetracycline

1. The Commissioner of Food and Drugs, having evaluated the data submitted in a petition (FAP 5C1744) filed by American Cyanamid Company, Post Office Box 400, Princeton, New Jersey, 08540, and other relevant material, has concluded that the following amendment to § 121.208 should issue to provide for the safe use of chlortetracycline in feed of beef cattle and nonlactating dairy cows as an aid in the elimination of the carrier state of anaplasmosis. Therefore, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1)), and under the authority delegated to the Commissioner by the Secretary of Health, Education, and Welfare (21 CFR 2.90), § 121.208(d) is amended by adding to Table 6 a new item 9, as follows:

§ 121.208 Chlortetracycline.

* * * * *

(d) * * *

TABLE 6—CHLORTETRACYCLINE IN CATTLE FEED

Principal ingredient	Amount	Combined with—	Amount	Limitations	Indications for use
* * *	* * *	* * *	* * *	* * *	* * *
9. Chlortetracycline.	5.0 (milligrams per pound of body weight per day).			For beef cattle and nonlactating dairy cows; feed for 60 days; for use in the carrier state only; not to be fed with in 10 days of slaughter; from a concentrate containing not less than 2.0 grams of chlortetracycline per pound. Labeling shall include a statement that a positive complement-fixation test at conclusion of a 60-day feeding period does not necessarily establish that anaplasmosis carrier state is still active. To positively establish that the carrier state has been eliminated, inject blood from a suspected carrier into a splenectomized (susceptible) calf.	Aid in the elimination of the carrier state of anaplasmosis.

* * * * * * *

§ 121.1014 [Amended]

2. Based upon an evaluation of the data before him and proceeding under the authority of the Federal Food, Drug, and Cosmetic Act (sec. 409(c)(4), 72 Stat. 1786; 21 U.S.C. 348(c)(4)), the Commissioner of Food and Drugs has further concluded that where nonlactating dairy cows are treated with chlortetracycline in accordance with § 121.208(d), table 6, as amended, tolerance limitations are required to assure that edible tissues from treated cows are safe for human consumption. Therefore, § 121.1014(d) is amended by adding after the words "beef cattle", the words "and nonlactating dairy cows".

3. Under the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (sec. 507(c), 59 Stat. 463 as amended; 21 U.S.C. 357(c)), and delegated to the Commissioner of Food and Drugs by the Secretary (21 CFR 2.90), the Commissioner finds that animal feeds containing combinations of certifiable antibiotics and certain food additives need not comply with the requirements of sections 502(*l*) and 507(c) in order to insure their safety and efficacy when used as prescribed in Part 121, Subpart C. Therefore, § 146c.219(f)(4) is amended by adding thereto a new subdivision (viii), as follows:

§ 146c.219 Crude chlortetracycline oral veterinary.

* * * * *

(f) * * *

(4) * * *

(viii) Aid in the elimination of the carrier state of anaplasmosis.

Any person who will be adversely affected by the foregoing order may at any time within 30 days from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington, D.C., 20201, written objections thereto, preferably in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

Effective date. This order shall be effective on the date of its publication in the FEDERAL REGISTER.

(Secs. 409(c)(1), (4), 507(c), 59 Stat. 463 as amended, 72 Stat. 1786; 21 U.S.C. 348(c)(1), (4), 357(c))

Dated: October 14, 1965.

JOHN L. HARVEY,
Deputy Commissioner of Food and Drugs.

[F.R. Doc. 65-11227; Filed, Oct. 19, 1965; 8:48 a.m.]

SUBCHAPTER D—HAZARDOUS SUBSTANCES

PART 191—HAZARDOUS SUBSTANCES; DEFINITIONS AND PROCEDURAL AND INTERPRETATIVE REGULATIONS

Fireworks Assortments; Exemption From Labeling Requirements

There has been submitted to the Commissioner of Food and Drugs a request to exempt from the requirements of the Federal Hazardous Substances Labeling Act the outer retail containers of certain fireworks assortments.

The Commissioner has concluded that a general caution statement on the outer retail package of the assortment will serve to alert purchasers and users of such assortments to the fact that the fireworks therein may be hazardous if misused. The Commissioner has concluded that full compliance with the labeling requirements of section 2(p) of the act is not necessary for the adequate protection of the public health and safety. Therefore, pursuant to the provisions of the Federal Hazardous Substances Labeling Act (sec. 3(c), 74 Stat. 374; 15 U.S.C. 1262) and under authority vested in the Secretary of Health, Education, and Welfare and delegated to the Commissioner (21 CFR 2.90), § 191.63(a) is amended by adding thereto a new subparagraph (27), reading as follows:

§ 191.63 Exemption for small packages, minor hazards, and special circumstances.

(a) * * *

(27) Packaged fireworks assortments intended for retail distribution are exempt from section 2(p)(1) of the act: *Provided*, That:

(i) The package contains only fireworks devices suitable for use by the public and designed primarily to produce visible effects by combustion, except that small devices designed to produce audible effects may also be included if the audible effect is produced by a charge of not more than 2 grains of pyrotechnic composition;

(ii) Each individual article in the assortment is fully labeled and in conformance with the requirements of the act and regulations issued thereunder; and

(iii) The outer package bears on the main display panel (or panels) within the borders of a rectangle and in the type size specified in § 191.101 the following caution statement: "*WARNING*—This assortment contains items that may be hazardous if misused and should be used only under adult supervision. Important: Read cautions on individual items carefully."

Notice and public procedure and delayed effective date are not necessary prerequisites to the promulgation of this order, and I so find, since the Federal Hazardous Substances Labeling Act contemplates such modification of the labeling requirements under certain conditions.

Effective date. This order shall become effective on the date of its publication in the FEDERAL REGISTER.

(Sec. 3(c), 74 Stat. 374; 15 U.S.C. 1262)

Dated: October 14, 1965.

JOHN L. HARVEY,
Deputy Commissioner of Food and Drugs.

[F.R. Doc. 65-11226; Filed, Oct. 19, 1965; 8:48 a.m.]

Title 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER A—INCOME TAX

[T.D. 6856]

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

SUBCHAPTER F—PROCEDURE AND ADMINISTRATION

PART 301—PROCEDURE AND ADMINISTRATION

Gain From Sale or Exchange of Residence of Individual Who Has Attained Age 65

On August 25, 1965, notice of proposed rule making regarding amendments to conform the Income Tax Regulations (26 CFR Part 1) to the amendments made to the Internal Revenue Code of 1954 by section 206 of the Revenue Act of 1964 (78 Stat. 38) (relating to gain from sale or exchange of residence of individual who has attained age 65) and to conform the Procedure and Administration Regulations (26 CFR Part 301) to the amendments made to such Code by sections 201(d)(14), 206(b)(1) and 301(b)(2) of the Revenue Act of 1964 (78 Stat. 32, 38, 140) was published in the FEDERAL REGISTER (30 F.R. 10988). No objection to the rules proposed having been received during the 30-day period prescribed in the notice, the amendment of the regulations as proposed is hereby adopted.

[SEAL] SHELDON S. COHEN,
Commissioner of Internal Revenue.

Approved: October 14, 1965.

STANLEY S. SURREY,
Assistant Secretary of the Treasury.

In order to conform the Income Tax Regulations (26 CFR Part 1) to the amendments made to the Internal Revenue Code of 1954 by section 206 of the Revenue Act of 1964 (78 Stat. 38), and in order to conform the Procedure and Administration Regulations (26 CFR Part 301) to the amendments made to the Internal Revenue Code of 1954 by sections 201(d)(14), 206(b)(1), and 301(b)(2) of the Revenue Act of 1964 (78 Stat. 32, 38, 140) such regulations are amended as follows:

PARAGRAPH 1. Paragraph (a)(3)(v) and (b)(3) of § 1.61–2 are amended to read as follows:

§ 1.61–2 Compensation for services, including fees, commissions, and similar items.

(a) *In general.* * * *

(3) * * *

(v) Miscellaneous items, see section 122.

(b) *Members of the Armed Forces, Coast and Geodetic Survey, and Public Health Service.* * * *

(3) Miscellaneous items, see section 122.

* * * * *

PAR. 2. Paragraph (b)(3) of § 1.61–11 is amended to read as follows:

§ 1.61–11 Pensions.

* * * * *

(b) *Cross references.* * * *

(3) References to other acts of Congress exempting veterans' pensions and railroad retirement annuities and pensions, section 122.

PAR. 3. Paragraph (b)(5) of § 1.61–14 is amended to read as follows:

§ 1.61–14 Miscellaneous items of gross income.

* * * * *

(b) *Cross references.* * * *

(5) Miscellaneous exemptions under other acts of Congress, see section 122;

* * * * *

PAR. 4. Section 1.121 is redesignated § 1.122, and as so redesignated is amended by redesignating section 121 as section 122, and by revising the historical note. These amended provisions read as follows:

§ 1.122 Statutory provisions; cross references to other acts.

SEC. 122. *Cross references to other acts.* * * *

[Sec. 122 as amended by section 501(t) Servicemen's and Veterans' Survivor Benefits Act (70 Stat. 885); sec. 2201 (25), Veterans' Benefits Act of 1957 (71 Stat. 160); sec. 13(t), Act of Sept. 2, 1958 (Pub. Law 85–857, 72 Stat. 1266); as renumbered by sec. 206(a), Rev. Act 1964 (78 Stat. 38)]

PAR. 5. There are inserted immediately after § 1.120–1 the following new sections:

§ 1.121 Statutory provisions; gain from sale or exchange of residence of individual who has attained age 65.

SEC. 121. *Gain from sale or exchange of residence of individual who has attained age 65*—(a) *General rule.* At the election of the taxpayer, gross income does not include gain from the sale or exchange of property if—

(1) The taxpayer has attained the age of 65 before the date of such sale or exchange, and

(2) During the 8-year period ending on the date of the sale or exchange, such property has been owned and used by the taxpayer as his principal residence for periods aggregating 5 years or more.

(b) *Limitations*—(1) *Where adjusted sales price exceeds $20,000.* If the adjusted sales price of the property sold or exchanged exceeds $20,000, subsection (a) shall apply to that portion of the gain which bears the same ratio to the total amount of such gain as $20,000 bears to such adjusted sales price. For purposes of the preceding sentence, the term "adjusted sales price" has the meaning assigned to such term by section 1034(b)(1) (determined without regard to subsection (d)(7) of this section).

(2) *Application to only one sale or exchange.* Subsection (a) shall not apply to any sale or exchange by the taxpayer if an election by the taxpayer or his spouse under subsection (a) with respect to any other sale or exchange is in effect.

(c) *Election.* An election under subsection (a) may be made or revoked at any time before the expiration of the period for making a claim for credit or refund of the tax imposed by this chapter for the taxable year in which the sale or exchange occurred, and shall be made or revoked in such manner as the Secretary or his delegate shall by regulations prescribe. In the case of a taxpayer who is married, an election under subsection (a) or a revocation thereof may be made only if his spouse joins in such election or revocation.

(d) *Special rules*—(1) *Property held jointly by husband and wife.* For purposes of this section, if—

(A) Property is held by a husband and wife as joint tenants, tenants by the entirety, or community property,

(B) Such husband and wife make a joint return under section 6013 for the taxable year of the sale or exchange, and

(C) One spouse satisfies the age, holding, and use requirements of subsection (a) with respect to such property,

then both husband and wife shall be treated as satisfying the age, holding, and use requirements of subsection (a) with respect to such property.

(2) *Property of deceased spouse.* For purposes of this section, in the case of an unmarried individual whose spouse is deceased on the date of the sale or exchange of property, if—

(A) The deceased spouse (during the 8-year period ending on the date of the sale or exchange) satisfied the holding and use requirements of subsection (a)(2) with respect to such property, and

(B) No election by the deceased spouse under subsection (a) is in effect with respect to a prior sale or exchange,

then such individual shall be treated as satisfying the holding and use requirements of subsection (a)(2) with respect to such property.

(3) *Tenant-stockholder in cooperative housing corporation.* For purposes of this section, if the taxpayer holds stock as a tenant-stockholder (as defined in section 216) in a cooperative housing corporation (as defined in such section), then—

(A) The holding requirements of subsection (a)(2) shall be applied to the holding of such stock, and

(B) The use requirements of subsection (a)(2) shall be applied to the house or apartment which the taxpayer was entitled to occupy as such stockholder.

(4) *Involuntary conversions.* For purposes of this section, the destruction, theft, seizure, requisition, or condemnation of property shall be treated as the sale of such property.

(5) *Property used in part as principal residence.* In the case of property only a portion of which, during the 8-year period ending on the date of the sale or exchange, has been owned and used by the taxpayer as his principal residence for periods aggregating 5 years or more, this section shall apply with respect to so much of the gain from the sale or exchange of such property as is determined, under regulations prescribed by the Secretary or his delegate, to be attributable to the portion of the property so owned and used by the taxpayer.

(6) *Determination of marital status.* In the case of any sale or exchange, for purposes of this section—

(A) The determination of whether an individual is married shall be made as of the date of the sale or exchange; and

(B) An individual legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married.

(7) *Application of sections 1033 and 1034.* In applying sections 1033 (relating to involuntary conversions) and 1034 (relating to sale or exchange of residence), the amount realized from the sale or exchange of property shall be treated as being the amount determined without regard to this section, reduced by the amount of gain not included in gross income pursuant to an election under this section.

[Sec. 121 as added by sec. 206(a), Rev. Act 1964 (78 Stat. 38)]

§ 1.121–1 Gain from sale or exchange of residence of individual who has attained age 65.

(a) *General rule.* Section 121(a) provides that a taxpayer may, under certain circumstances, elect to exclude from gross income gain realized on the sale or exchange of property which was his principal residence. Subject to the other provisions of section 121 and the regulations thereunder, the election may be made only if—

(1) The taxpayer attained the age of 65 before the date of the sale or exchange of his principal residence, and

(2) During the 8-year period ending on the date of the sale or exchange of the property the taxpayer owned and used the property as his principal residence for periods aggregating 5 years or more.

The requirements of ownership and use for periods aggregating 5 years or more may be satisfied by establishing ownership and use for 60 full months or for 1,825 days (365×5). In establishing whether a taxpayer has satisfied the requirement of 5 years of use, short temporary absences such as for vacation or other seasonal absence (although accompanied with rental of the residence) are counted as periods of use.

(b) *Examples.* The provisions of paragraph (a) are illustrated by the following examples:

Example (1). Taxpayer A owned and used his house as his principal residence continuously since 1946. On January 1, 1962, at which time A is over 65, he retires and moves to another State with his wife. A leases his house from such date until July 1, 1964, at which time he sells it. A may make an election under section 121(a) with respect to any gain on such sale since he has owned and used the house as his principal residence for 5 years out of the 8 years preceding the sale.

Example (2). Taxpayer B lived with his son and daughter-in-law in a house owned by his son from 1957 through 1963. On January 1, 1964, he purchased this house and on December 31, 1967, he sold it. Although B used the property as his principal residence for more than 5 years, he is not entitled to make an election under section 121(a) in respect of such sale since he did not own the residence for a period aggregating 5 years during the 8-year period ending on the date of the sale.

Example (3). Taxpayer C, a college professor, purchased and moved into a house on January 1, 1960. He used the house as his principal residence continuously to February 1, 1964, on which date he went abroad for a 1-year sabbatical leave. During a portion of the period of leave the property was unoccupied and it was leased during the balance of the period. On March 1, 1965, 1 month after returning from such leave, he sold the house. Since his leave is not considered to be a short temporary absence for purposes of section 121(a), the period of such leave may not be included in determining whether C used the house as his principal residence for periods aggregating 5 years during the 8-year period ending on the date of the sale. Thus, C is not entitled to make an election under section 121(a) since he did not use the residence for the requisite period.

Example (4). Assume the same facts as in example (1) except that during the years 1956 through 1961, inclusive, A left his residence for a 2-month summer vacation each year. Although, in the 8-year period preceding the date of sale, the total time spent away from his residence on such vacations (12 months) plus the time spent away from such residence from January 1, 1962, to July 1, 1964 (30 months) exceeds 3 years, he may make an election under section 121(a) since the 2-month vacations are counted as periods of use in determining whether A used the residence for the requisite period.

§ 1.121–2 Limitations.

(a) *Where adjusted sales price exceeds $20,000.* (1) When the adjusted sales price (for the meaning of "adjusted sales price" see paragraph (d) of § 1.121–3) of the residence exceeds $20,000, only a portion of the gain realized from the sale or exchange of such residence may be excluded from gross income under section 121(a). The amount of such gain excluded from the taxpayer's gross income (if the taxpayer makes the election under section 121(a)) is that portion of the gain which bears the same ratio to the total amount of such gain as $20,000 bears to the adjusted sales price.

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

Example. Assume that A sells his principal residence for $30,800; that the amount realized is $30,400 (selling price reduced by selling expenses, described in paragraph (b)(4)(i) of § 1.1034–1, of $400); that the adjusted sales price is $30,000 (amount realized reduced by fixing-up expenses described in § 1.1034–1(b)(6) of $400); and that A's gain realized from the sale is $15,000 (amount realized reduced by adjusted basis of $15,400). The portion of the gain which bears the same ratio to the total amount of such gain as $20,000 bears to the adjusted sales price is $10,000 ($20,000/$30,000 × $15,000). Thus, $10,000 is the portion of the gain excludable from gross income pursuant to an election under section 121(a).

(b) *Application to only one sale or exchange.* (1) A taxpayer may not make an election to exclude from gross income gain from the sale or exchange of a principal residence if there is in effect at the time the taxpayer wishes to make such election—

(i) An election made by the taxpayer, under section 121(a), in respect of any other sale or exchange of a residence, or

(ii) An election made by the taxpayer's spouse (such marital status to be determined at the time of the sale or exchange by the taxpayer, see paragraph (f) of § 1.121–5) under the provisions of section 121(a) in respect of any other sale or exchange of a residence (without regard to whether at the time of such sale or exchange such spouse was married to the taxpayer).

If the taxpayer and his spouse, before their marriage each owned and used a separate residence and if (after their marriage) both residences are sold, whether or not in a single transaction, an election under section 121(a) may be made with respect to a sale of either residence (but not with respect to both residences) if, at the time of sale, the age, ownership, and use requirements are met.

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

Example (1). While A and B are married, A sells his separately owned residence and makes an election under section 121(a) in respect of such sale. Pursuant to the requirement of section 121(c), B joins in such election. Subsequently, A and B are divorced and B married C. While B and C are married, C sells his residence. C is not entitled to make an election under section 121(a) since an election by B, his spouse, is in effect. It does not matter that B obtained no personal benefit from her election.

Example (2). The facts are the same as in example (1) except that after the sale of C's residence, A and B, pursuant to the provisions of paragraph (c) of § 1.121–4, revoke their election. B and C, subject to the other provisions of this section, may then make an election with respect to any gain realized on the sale of C's residence.

Example (3). The facts are the same as in example (1) except that C marries B after C sells his residence but before he makes an election under section 121(a) with respect to any gain realized on such sale. C, if there is not in effect an election made by him under section 121(a) with respect to a prior sale, may make an election with respect to his sale since B does not have to join with him in such election. (In the case of a sale of property jointly held by husband and wife, see paragraph (a) of § 1.121–5.)

§ 1.121–3 Definitions.

(a) *Principal residence.* The term "principal residence" has the same meaning as in section 1034 (relating to sale or exchange of residence) and the regulations thereunder (see paragraph (c)(3) of § 1.1034–1).

(b) *Sale or exchange.* A "sale or exchange" of a residence includes the destruction, theft, seizure, requisition, or condemnation of such residence.

(c) *Gain realized.* The term "gain realized" has the same meaning as in paragraph (b)(5) of § 1.1034–1 (determined without regard to section 121(d)(7) and paragraph (g) of § 1.121–5).

(d) *Adjusted sales price.* The term "adjusted sales price" has the meaning assigned to it by section 1034(b) (determined without regard to section 121(d)(7) and paragraph (g) of § 1.121–5). Thus, the term means the amount realized from the sale or exchange less certain expenses for work performed on the residence in order to assist in its sale. Such "fixing-up expenses" are described in paragraph (b)(6) of § 1.1034–1.

§ 1.121–4 Election.

(a) *General rule.* A taxpayer may make an election under section 121(a) in respect of a particular sale (or may revoke any such election) at any time before the expiration of the period for making a claim for credit or refund of Federal income tax for the taxable year in which the sale or exchange occurred. A taxpayer who is married at the time of the sale or exchange—

(1) May not make an election under section 121(a) unless his spouse (at the time of the sale or exchange) joins him in such election, and

(2) May not revoke an election previously made by him unless his spouse (at the time of the sale or exchange) joins him in the revocation.

If the taxpayer's spouse dies after the sale or exchange but before the expiration of the time for making an election under this section (and an election was not made by the husband and wife), the deceased spouse's personal representative (administrator or executor, etc.) must join with the taxpayer in making an election. For purposes of making an election under section 121(a), if no personal representative of the deceased spouse has been appointed at or before the time of making the election, then the surviving spouse shall be considered the personal representative of such deceased spouse. Any election previously made by the taxpayer may be revoked only if the personal representative of the taxpayer's deceased spouse joins in such revocation.

(b) *Manner of making election.* The election under section 121(a) shall be made in a statement signed by the taxpayer and (where required) by his spouse and attached to the taxpayer's income tax return, when filed, for the taxable year during which the sale or exchange of his residence occurs. The statement shall indicate that the taxpayer elects to exclude from his gross income for such year so much of the gain realized on such sale or exchange as may be excluded under section 121. The statement shall also show—

(1) The adjusted basis of the residence as of the date of disposition;

(2) The date of its acquisition;

(3) The date of its disposition;

(4) The adjusted sales price (as defined in paragraph (d) of § 1.121–3) of the residence;

(5) The names and social security numbers of the owners of the residence as of the date of sale, the form of such ownership, and the age and marital status (as determined under paragraph (f) of § 1.121–5) of such owner or owners at the time of the sale;

(6) The duration of any absences (other than vacation or other seasonal absence) by such owner or owners during the 8 years preceding the sale; and

(7) Whether any such owner or owners have previously made an election under section 121(a), the date of such election, the taxable year with respect to which such election was made, the district director with whom such elec-

tion was filed, and, if such election has been revoked, the date of such revocation.

(c) *Manner of revoking election.* The revocation of an election under section 121(a) shall be made by the taxpayer by filing a signed statement showing his name and social security number and indicating that the taxpayer revokes the election he made under section 121(a). The statement shall also show the taxable year of the taxpayer for which such election was made. The statement shall be signed by the taxpayer and (where required) by his spouse or their personal representatives and filed with the district director with whom the election was filed. In addition, if, at the time the statement is filed, the statutory period for assessment of a deficiency for the taxable year for which the election was made will expire within one year, then, the revocation is not effective unless the taxpayer also consents, in writing, that the statutory period for assessment of any deficiency (to the extent that such deficiency is attributable to the revocation of the election) shall not expire before the expiration of one year after the date the statement was filed with the district director. Such consent must be filed prior to the date of the expiration of the statutory period for assessment for the taxable year for which the election was made.

§ 1.121–5 Special rules.

(a) *Property held jointly by husband and wife.* (1) If—

(i) On the date of the sale or exchange of a residence, such residence is held by a husband and wife as joint tenants, tenants by the entirety, or community property,

(ii) A joint return under section 6013 is made by such husband and wife for the taxable year in which the residence is sold or exchanged, and

(iii) One spouse satisfies the age, ownership, and use requirements of section 121(a),

then both the husband and wife are treated as satisfying the age, ownership, and use requirements of section 121(a). Thus, if the above conditions exist and one spouse meets all the requirements of section 121(a), the other spouse will be treated as meeting all such requirements.

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

Example. On January 1, 1964, A and B while married, sell their jointly owned residence which they have owned and used as their principal residence continuously since 1958. At the time of the sale, A is age 66 and B is age 62. If A and B file a joint return for the year of the sale, B will be considered to have satisfied the age, ownership and use requirements of section 121(a) since A has satisfied such requirements.

(b) *Property of deceased spouse.* (1) A taxpayer is treated as satisfying the ownership and use requirements of section 121(a)(2) with respect to property if—

(i) His spouse is deceased on the date of the sale or exchange of such property, and

(ii) Such deceased spouse had, during the 8-year period ending on the date of the sale or exchange of the property, satisfied such ownership and use requirements with respect to such property.

This rule, however, has no application if the surviving spouse is married at the time of the sale or exchange of such property, or if an election made by the deceased spouse under section 121(a) is in effect with respect to any other sale or exchange.

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

Example. H and W become husband and wife on January 1, 1964. On and after such date they use as their principal residence property which H has owned and used as his principal residence since January 1, 1957. H dies on January 1, 1966, and W inherits the property and continues to use the property as her principal residence. W sells the property on December 31, 1967, at which time she is over 65 and not married. H, during the 8-year period ending on the date of the sale (January 1, 1960, through December 31, 1967), satisfied the 5-year use and ownership requirements of section 121(a)(2) with respect to such property by owning and using the property as his principal residence for 6 years (1960 through 1965). Accordingly, W may make an election under section 121(a).

(c) *Tenant-stockholder in cooperative housing corporation.* An individual who holds stock as a "tenant-stockholder" in a "cooperative housing corporation", as those terms are defined in section 216(b), may be eligible to make an election under section 121(a) in respect of the sale or exchange of such stock. In determining whether the taxpayer meets the requirements of section 121(a), the ownership requirements of such section are applied to the holding of such stock and the use requirements of such section are applied to the house or apartment which the individual was entitled to occupy because of such stock ownership.

(d) *Involuntary conversions.* Destruction, theft, seizure, requisition, or condemnation of property shall be treated as the sale of such property for purposes of section 121(a).

(e) *Property used in part as principal residence.* (1) When a taxpayer can satisfy the ownership and use requirements of section 121(a)(2) only with respect to a portion of the property sold, then section 121 shall apply only with respect to so much of the gain from the sale or exchange of the property as is attributable to such portion. Thus, if the residence was used only partially for residential purposes, only that part of the gain allocable to the residential portion is not to be recognized under section 121(a).

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

Example. Taxpayer A, an attorney, uses a portion of the property constituting his principal residence as a law office for a period in excess of 3 years out of the 8 years preceding the sale of such residence. Accordingly, section 121 does not apply with respect to so much of the gain on the sale of the property as is allocable to the portion of the property used as a law office.

(f) *Determination of marital status.* Marital status is to be determined as of the date of the sale or exchange of the residence. An individual who on the date of the sale or exchange is legally separated from his spouse under a decree of divorce or of separate maintenance is not considered as married on such date.

(g) *Application of sections 1033 and 1034.* (1) In applying sections 1033 (relating to involuntary conversions) and 1034 (relating to sale or exchange of residence), the amount realized from the sale or exchange of property used as one's principal residence is treated as being the amount determined without regard to section 121, reduced by the amount of gain excluded from gross income pursuant to an election made under section 121(a). Thus, the amount which must be invested in a new residence in order to fully satisfy the nonrecognition provisions of section 1033 or 1034 is reduced by the amount of gain not included in the taxpayer's gross income because of an election made under section 121(a).

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

Example. Taxpayer A sells his residence for $32,000, incurs $2,000 in fixing-up expenses described in section 1034(b)(2), and has a basis of $23,000 for such residence. Accordingly, $6,000 ($20,000/$30,000 × $9,000) of gain is excluded from his gross income under this section. If he purchases a new residence within one year for $23,000, only $1,000 of his gain is taxable since his adjusted sales price for purposes of section 1034 is $24,000 (($32,000 − $2,000) − ($6,000)).

PAR. 4. Paragraph (b) of § 1.1033(a)–1 is amended to read as follows:

§ 1.1033(a)–1 Involuntary conversions; nonrecognition of gain.

* * * * *

(b) *Special rules.* For rules relating to the application of section 1033 to involuntary conversions of a principal residence with respect to which an election has been made under section 121 (relating to gain from sale or exchange of residence of individual who has attained age 65), see paragraph (g) of § 1.121–5. For rules applicable to involuntary conversions of a principal residence occurring before January 1, 1951, see § 1.1033(b)–1. For rules applicable to involuntary conversions of a principal residence occurring after December 31, 1950, and before January 1, 1954, see paragraph (h)(1) of § 1.1034–1. For rules applicable to involuntary conversions of a personal residence occurring after December 31, 1953, see § 1.1033(b)–1. For special rules relating to the election to have section 1034 apply to certain involuntary conversions of a principal residence occurring after December 31, 1957, see paragraph (h)(2) of § 1.1034–1. For special rules relating to certain involuntary conversions of real property held either for productive use in trade or business or for investment and occurring after December 31, 1957, see § 1.1033(g)–1. See also special rules applicable to involuntary conversions of property sold pursuant to reclamation laws, livestock

destroyed by disease, and livestock sold on account of drought provided in §§ 1.1033(d)–1, 1.1033(e)–1, and 1.1033(f)–1, respectively. For rules relating to basis of property acquired through involuntary conversions, see § 1.1033(c)–1. For determination of the period for which the taxpayer has held property acquired as a result of certain involuntary conversions, see section 1223 and regulations issued thereunder. For treatment of gains from involuntary conversions as capital gains in certain cases, see section 1231(a) and regulations issued thereunder. For portion of war loss recoveries treated as gain on involuntary conversion, see section 1332(b)(3) and regulations issued thereunder.

PAR. 5. Section 1.1033(b)–1 is amended to read as follows:

§ 1.1033(b)–1 Involuntary conversion of principal residence.

Section 1033 shall apply in the case of property used by the taxpayer as his principal residence if the destruction, theft, seizure, requisition, or condemnation of such residence, or the sale or exchange of such residence under threat or imminence thereof, occurs before January 1, 1951, or after December 31, 1953. However, section 1033 shall not apply to the seizure, requisition, or condemnation (but not destruction), or the sale or exchange under threat or imminence thereof, of such residence property if the seizure, requisition, condemnation, sale, or exchange occurs after December 31, 1957, and if the taxpayer properly elects under section 1034(i)(2) to treat the transaction as a sale (see paragraph (h)(2)(ii) of § 1.1034–1). Section 1033 shall not apply in the case of an involuntary conversion of property used by the taxpayer as his principal residence if the destruction, theft, seizure, requisition, or condemnation of such residence, or the sale or exchange of such residence under threat or imminence thereof, occurred after December 31, 1950, and before January 1, 1954. In the case of property disposed of after December 31, 1950, and before January 1, 1954, which is used by the taxpayer partially as a principal residence and partially for other purposes, proper allocation shall be made and § 1.1033(a)–2 and § 1.1033(c)–1 shall apply only with respect to the involuntary conversion of the portion used for such other purposes. See section 121 and paragraphs (d) and (g) of § 1.121–5 for special rules relating to the involuntary conversion of a principal residence of individuals who have attained age 65.

PAR. 6. Section 1.1033(h) is amended by adding at the end of subsection (h) of section 1033 a new paragraph (3) and by revising the historical note. These added and amended provisions read as follows:

§ 1.1033(h) Statutory provisions; involuntary conversions; cross references.

SEC. 1033. *Involuntary conversions.* * * *

(h) *Cross references.* * * *

(3) For exclusion from gross income of certain gain from involuntary conversion of residence of taxpayer who has attained age 65, see section 121.

[Sec. 1033(h) as amended by sec. 46(a), Technical Amendments Act 1958 (72 Stat. 1641); sec. 206(b)(3), Rev. Act 1964 (78 Stat. 40)]

PAR. 7. Section 1.1034 is amended by adding at the end thereof a new subsection (k) and by revising the historical note. These added and amended provisions read as follows:

§ 1.1034 Statutory provisions; sale or exchange of residence.

SEC. 1034. *Sale or exchange of residence.* * * *

(k) *Cross reference.* For exclusion from gross income of certain gain from sale or exchange of residence of taxpayer who has attained age 65, see section 121.

[Sec. 1034 as amended by sec. 46(b), Technical Amendments Act 1958 (72 Stat. 1642); sec. 206(b)(4), Rev. Act 1964 (78 Stat. 40)]

PAR. 8. Paragraph (a) of § 1.1034–1 is amended to read as follows:

§ 1.1034–1 Sale or exchange of residence.

(a) *Nonrecognition of gain; general statement.* Section 1034 provides rules for the nonrecognition of gain in certain cases where a taxpayer sells one residence after December 31, 1953, and buys or builds, and uses as his principal residence, another residence within specific time limits before or after such sale. (For special rules relating to the sale or exchange of a principal residence by a taxpayer who has attained age 65, see section 121 and paragraph (g) of § 1.121–5.) In general, if the taxpayer invests in a new residence an amount at least as large as the adjusted sales price of his old residence, no gain is recognized on the sale of the old residence (see paragraph (b) of this section for definitions of "adjusted sales price", "new residence", and "old residence"). On the other hand, if the new residence costs the taxpayer less than the adjusted sales price of the old residence, gain is recognized to the extent of the difference. Thus, if an amount equal to or greater than the adjusted sales price of an old residence is invested in a new residence, according to the rules stated in section 1034, none of the gain (if any) realized from the sale shall be recognized. If an amount less than such adjusted sales price is so invested, gain shall be recognized, but only to the extent provided in section 1034. If there is no investment in a new residence, section 1034 is inapplicable and all of the gain shall be recognized. Whenever, as a result of the application of section 1034, any or all of the gain realized on the sale of an old residence is not recognized, a corresponding reduction must be made in the basis of the new residence. The provisions of section 1034 are mandatory, so that the taxpayer cannot elect to have gain recognized under circumstances where this section is applicable. Section 1034 applies only to gains; losses are recognized or not recognized without regard to the provisions of this section. Section 1034 affects only the amount of gain recognized, and not the amount of gain realized (see also section 1001 and regulations issued thereunder). Any gain realized upon disposition of other property in exchange for the new residence is not affected by section 1034.

* * * * *

PAR. 9. Section 1.6012 is amended by revising paragraph (c) of section 6012 and by revising the historical note. These amended provisions read as follows:

§ 1.6012 Statutory provisions; persons required to make returns of income.

SEC. 6012. *Persons required to make returns of income.* * * *

(c) *Certain income earned abroad or from sale of residence.* For purposes of this section, gross income shall be computed without regard to the exclusion provided for in section 121 (relating to sale of residence by individual who has attained age 65) and without regard to the exclusion provided for in section 911 (relating to earned income from sources without the United States).

* * * * *

[Sec. 6012 as amended by sec. 72(a), Technical Amendments Act 1958 (72 Stat. 1660); sec. 206(b)(1), Rev. Act 1964 (78 Stat. 40)]

PAR. 10. Paragraph (a)(3) of § 1.6012–1 is amended to read as follows:

§ 1.6012–1 Individuals required to make returns of income.

(a) *Individual citizen or resident.* * * *

(3) *Earned income from without the United States and gain from sale of residence.* For the purpose of determining whether an income tax return must be filed for any taxable year beginning after December 31, 1957, gross income shall be computed without regard to the exclusion provided for in section 911 (relating to earned income from sources without the United States). For the purpose of determining whether an income tax return must be filed for any taxable year ending after December 31, 1963, gross income shall be computed without regard to the exclusion provided for in section 121 (relating to sale of residence by individual who has attained age 65). In the case of an individual claiming an exclusion under section 121, he shall attach Form 2119 to the return required under this paragraph and in the case of an individual claiming an exclusion under section 911, he shall attach Form 2555 to the return required under this paragraph.

* * * * *

PAR. 11. Section 301.6012 is amended by revising paragraph (c) of section 6012 and by revising the historical note. These amended provisions read as follows:

§ 301.6012 Statutory provisions; persons required to make returns of income.

SEC. 6012. *Persons required to make returns of income.* * * *

(c) *Certain income earned abroad or from sale of residence.* For purposes of this section, gross income shall be computed without regard to the exclusion provided for in section 121 (relating to sale of residence by individual who has attained age 65) and without regard to the exclusion provided for

in section 911 (relating to earned income from sources without the United States).

* * * * *

[Sec. 6012 as amended by sec. 72(a), Technical Amendments Act 1958 (72 Stat. 1660); sec. 206(b)(1), Rev. Act 1964 (78 Stat. 40)]

PAR. 12. Section 301.6014 is amended by revising paragraph (a) of section 6014 and by revising the historical note. These amended provisions read as follows:

§ 301.6014 Statutory provisions; income tax return—tax not computed by taxpayer.

SEC. 6014. *Income tax return—tax not computed by taxpayer*—(a) *Election by taxpayer.* An individual entitled to elect to pay the tax imposed by section 3 whose gross income is less than $5,000 and includes no income other than remuneration for services performed by him as an employee, dividends or interest, and whose gross income other than wages, as defined in section 3401(a), does not exceed $100, shall at his election not be required to show on the return the tax imposed by section 1. Such election shall be made by using the form prescribed for purposes of this section and shall constitute an election to pay the tax imposed by section 3. In such case the tax shall be computed by the Secretary or his delegate who shall mail to the taxpayer a notice stating the amount determined as payable. In determining the amount payable, the credit against such tax provided for by section 37 shall not be allowed. In the case of a head of household (as defined in section 1(b)) or a surviving spouse (as defined in section 2(b)) electing the benefits of this subsection, the tax shall be computed by the Secretary or his delegate without regard to the taxpayer's status as a head of household or as a surviving spouse. In the case of a married individual filing a separate return and electing the benefits of this subsection, neither Table V in section 3(a) nor Table V in section 3(b) shall apply.

* * * * *

[Sec. 6014 as amended by secs. 201(d)(14) and 301(b)(2), Rev. Act 1964 (78 Stat. 32, 140)]

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

[F.R. Doc. 65-11211; Filed, Oct. 19, 1965; 8:47 a.m.]

Title 39—POSTAL SERVICE

Chapter I—Post Office Department

PART 31—STAMPS, ENVELOPES, AND POSTAL CARDS

Miscellaneous Amendments

Correction

In F.R. Doc. 65-11010 appearing at page 13214 in the issue for Saturday, October 16, 1965, the following notation should be inserted immediately after the chart in § 31.1(a):

NOTE: The corresponding Postal Manual section is 141.11.

PART 48—UNDELIVERABLE MAIL

The regulations of the Post Office Department in Part 48 are amended and revised to clarify instructions for registered, certified, insured, and COD mail, and to provide that mailers of undeliverable COD mail will be sent a Form 3858. In addition, instructions are clarified as to the disposal of drugs, cosmetics, food, periodicals, and samples of merchandise to institutions. Moreover, § 48.4(b)(3) concerns the retention period of COD mail and makes reference regarding such notice on Form 3849-D.

Part 48 is revised to read as follows:

Sec.
48.1 Description.
48.2 Treatment by classes.
48.3 Return address.
48.4 Retention period.
48.5 Disposal of undeliverable mail.
48.6 Directory service.
48.7 Dead mail.

AUTHORITY: The provisions of this Part 48 issued under R.S. 161, as amended; 5 U.S.C. 22, 39 U.S.C. 501, 4101-4110, 5008.

NOTE: The corresponding Postal Manual citation is Part 158.

HARVEY H. HANNAH,
Acting General Counsel.

§ 48.1 Description.

Mail that cannot be delivered because of incomplete or incorrect address, or the removal of the addressee, or is unclaimed or refused by the addressee, will be treated in accordance with this part at the office where the mail is found to be undeliverable. This includes nixie mail which is mail not transmissible because of illegible or insufficient address. Refused mail is that which is refused at time delivery is attempted; and that returned to the mail unopened by addressee and marked refused. Mail properly delivered and opened by the addressee will not be reaccepted without payment of new postage. Undelivered mail returned to the sender should not again be mailed unless enclosed in a new envelope or wrapper with a correct address and new postage.

§ 48.2 Treatment by classes.

(a) *First-class mail.* First-class mail, except postal and post cards, is returned to the sender, if known, without additional charge. Only postal and post cards that bear the sender's request for return, are returned, and postage at the card rate is collected on delivery to the sender. Mail paid at the drop-letter rate is returned to the sender at the same post office without additional charge. If the sender is at another post office, additional postage for the difference between the amount prepaid and the total postage computed at the first-class rate is collected on delivery. Any postage due because of failure to fully prepay postage at the time of mailing will be collected from the sender when the undeliverable mail is returned.

(b) *Second-class mail*—(1) *Change in local address*—(i) *Delivery for 3 months.* When there has been any kind of a change in the local address, the copies of second-class publications bearing the old local address shall be delivered to the new local address without charge for a period of 3 months even though the copies bear the request of the sender for return. The words "local address" as used in this paragraph mean any address served by the city, rural, or star carriers of any specific post office or a post office box or general delivery address at the post office. Form 3578, Change of Address Notice to Publishers, shall be furnished to the addressee at the new local address, and he shall be requested to use it promptly for furnishing the new local address to the sender. Form 3578 shall not be inserted in the copies but shall be delivered to the addressee separately from the copies.

(ii) *Procedure after 3 months.* When copies bearing the old local address are received after the period of 3 months has expired, the carrier or clerk serving the old address shall write the new local address, including ZIP Code number, on Form 3579, Undeliverable Second Class Matter, which shall then be affixed to the copies, envelopes, or wrappers, near but not over the old address. The copies shall then be delivered to the inquiry section or to the clerk designated by the postmaster to receive them. The portion of the page, envelope, or wrapper which bears both the old address, including ZIP Code number, if any, and Form 3579 shall then be cut or torn from the copies, envelopes, or wrappers, placed in an envelope, and mailed directly to the publisher, news agent, or other sender. The address on the envelope shall always include the name of the publication. Any number of notices may be returned in one envelope. Each envelope shall be rated with postage due at the rate of 10 cents for each notice contained in the envelope. Copies bearing the old address which are received after the mailing of the notice shall be disposed of as waste. When the copies bear the request of the sender for return, the portion of the page, envelope, or wrapper, shall not be detached, and after expiration of the 3 months' period each complete copy shall be returned to the sender marked to show a charge computed at the transient rate (see § 22.1(c) of this chapter) on each individually addressed copy or package of unaddressed copies, or 10 cents, whichever is higher.

(2) *Undeliverable for any reason other than change in local address.* When copies of second-class publications are undeliverable as addressed for any reason other than a change in the local address (see subparagraph (1)(i) of this paragraph), the carrier or clerk serving the old address shall prepare Form 3579 and affix it to the first undeliverable copy, or its envelope or wrapper, near but not over the old address, and then deliver the copy to the inquiry section or to the designated clerk. If a new address has been entered on the form, the ZIP Code number for that address must be shown. If the copies do not bear the request of sender for return, the notice shall be mailed to the sender in the manner prescribed by subparagraph (1)(ii) of this paragraph. Copies bearing the old address which are received after the mailing of the notice shall be disposed of as waste. When the copies bear the request of the sender for return, each complete copy, beginning with the first one undeliverable as addressed, shall be