[Airspace Docket No. 65-WE-77]

PART 73—SPECIAL USE AIRSPACE

Designation of Temporary Time of Use for Restricted Area

The purpose of this amendment to Part 73 of the Federal Aviation Regulations is to designate a temporary time of use for Restricted Area R-6411 at Hanksville, Utah.

On April 8, 1965, a rule designating a temporary restricted area, R-6411, at Hanksville, Utah was published in the FEDERAL REGISTER (30 F.R. 4534). The time of designation for this restricted area was established as follows:

Time of designation: The first time of use shall be from 0530 to 1800 hours m.s.t., May 26, 1965, through June 26, 1965, unless canceled sooner by Notices to Airmen. All subsequent biannual firing periods shall be designated by a rule published in the FEDERAL REGISTER.

Since the precise times when R-6411 will be needed during each year, subsequent to the first designated period, are indefinite and were not capable of predetermination at the time the rule designating the restricted area was published, it was determined, as set forth above, to establish all subsequent biannual firing periods by a rule published in the FEDERAL REGISTER.

Since this amendment is made in accordance with the procedure set forth in a previous rule, notice and public procedure hereon are unnecessary.

Therefore, action is taken herein to amend Part 73 of the Federal Aviation Regulations, effective 0001 e.s.t., September 16, 1965, as hereinafter set forth.

In § 73.64 (29 F.R. 17768, 30 F.R. 4534), the Hanksville, Utah, Restricted Area R-6411 is amended by deleting the present time of designation and substituting the following therefor:

Time of designation: From 0530 to 1800 hours m.s.t., October 6, 1965, to November 6, 1965, unless canceled sooner by Notices to Airmen. All subsequent biannual firing periods will be designated by a rule published in the FEDERAL REGISTER.

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348))

Issued in Washington, D.C., on July 20, 1965.

ARCHIE W. LEAGUE,
Director, Air Traffic Service.

[F.R. Doc. 65-7844; Filed, July 26, 1965; 8:45 a.m.]

Title 18—CONSERVATION OF POWER AND WATER RESOURCES

Chapter I—Federal Power Commission

[Docket No. R-277; Order No. 302]

PART 156—APPLICATIONS FOR ORDERS UNDER SECTION 7(a) OF THE NATURAL GAS ACT

Service of Application

JULY 20, 1965.

Responses by Natural Gas Pipeline Companies to Applications for Orders Under Section 7(a) of the Natural Gas Act, Docket No. R-277.

Section 7(a) of the Natural Gas Act provides that whenever the Commission, after notice and opportunity for hearing, finds such action necessary or desirable in the public interest, it may by order direct a natural gas company, under certain conditions, to establish physical connection with and sell natural gas to a person or municipality engaged in the local distribution of natural gas.

Part 156 of the regulations under the Natural Gas Act sets out the procedures to be followed by a distributing company or municipality in making application for such an order pursuant to section 7 (a) of the Act. Section 156.7 thereof provides that the application shall be served by the Commission's Secretary on the company, denominated as "respondent," against which a section 7(a) order has been requested; that the respondent company shall, within 30 days, file its answer in which it shall state whether it has any objection to the grant of the application; and, if it objects, it shall state the grounds and reasons for its objection.

The effect of the failure of respondents to comply strictly with the 30-day time limitation for the filing of an answer has not been clearly understood and the uncertainty has, in some instances, resulted in unnecessarily delaying the proceedings. In order to clarify the rule for the future, we are amending § 156.7 to provide that if the respondent fails to file a timely response to the application, it shall be deemed to have agreed to the grant thereof.

The Commission finds:

(1) Since the purpose and effect of the amendment herein adopted are interpretive and procedural, the prior notice provisions of section 4 of the Administrative Procedure Act do not apply.

(2) Adoption of this amendment is necessary and appropriate to carry out the provisions of the Natural Gas Act.

The Commission, acting pursuant to the Natural Gas Act, particularly sections 7(a) and 16 thereof (52 Stat. 824, 830; 15 U.S.C. 717f(a) 717o), orders:

(A) Part 156, Subchapter E, Regulations Under the Natural Gas Act, Chapter I, Title 18 of the Code of Federal Regulations, is amended by adding a sentence at the end of § 156.7. As so amended the section will read as follows:

§ 156.7 Service of application.

After an application has been accepted for filing, the Secretary will cause a copy thereof to be served upon the natural gas company (respondent) against which an order pursuant to section 7(a) of the Natural Gas Act has been requested. The natural gas company shall, within 30 days after the date of service of such application file its answer (an original and 7 conformed copies) to such application in which it shall state whether it has any objection to the grant of the application. If the natural gas company objects to the grant of the relief sought by the application, it shall fully state the grounds and reasons for its objections. The answer shall be verified and shall be signed by an executive of the natural gas company. In all other respects, answers shall conform to the applicable requirements of the Commission's rules of practice and procedure, particularly §§ 1.9, 1.15, and 1.16 of this chapter. In the event that the respondent natural gas company fails to file a timely response to the application it shall be deemed to have agreed to the grant thereof.

(Secs. 7(a), 16, 52 Stat. 824, 830; 15 U.S.C. 717f(a), 717o)

(B) This amendment shall become effective August 2, 1965.

(C) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

[SEAL] JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 65-7858; Filed, July 26, 1965; 8:46 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 15—CEREAL FLOURS AND RELATED PRODUCTS

Instant Blending Flours; Order Amending Standard of Identity

In the matter of amending the standard of identity for instant blending flours:

By an order published in the FEDERAL REGISTER of October 31, 1964 (29 F.R. 14845), there was added to the schedule of identity standards for wheat flour products a new section captioned § 15.75 *Instantized flours, instant blending flours, quick-mixing flours* ***. The effective date of this new section was stayed by an order published January 1, 1965 (30 F.R. 6), announcing that objections had been filed.

By a notice of proposed rulemaking published April 21, 1965 (30 F.R. 5643), all interested persons were invited to comment on amendments of § 15.75 as proposed in a petition from the International Milling Co. The only comment filed recommended adoption of the amendments as proposed. On the basis of the relevant information available, it is concluded that honesty and fair dealing in the interest of consumers will be promoted by adopting the amendments. Therefore, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (secs. 401, 701, 52 Stat. 1046, 1055, as amended 70 Stat. 919, 72 Stat. 948; 21 U.S.C. 341, 371) and under authority delegated to the Commissioner of Food and Drugs by the Secretary of Health, Education, and Welfare (21 CFR 2.91), *It is ordered*, That the standard of identity for instant blending flours be amended to read as follows:

§ 15.75 Instantized flours, instant blending flours, quick-mixing flours; identity; label statement of optional ingredients.

(a) Instantized flours, instant blending flours, quick-mixing flours, are the foods each of which conforms to the defi-

nition and standard of identity and is subject to the requirement for label statement of optional ingredients prescribed for the corresponding kind of flour by §§ 15.1, 15.10, 15.20, 15.30, 15.50, 15.60, and 15.70, except that each such flour has been made by one of the optional procedures set forth in paragraph (b) of this section, and is thereby made readily pourable. Such flour will all pass through a No. 20 mesh U.S. standard sieve (840-micron opening), and not more than 20 percent will pass through a No. 200 mesh U.S. standard sieve (74-micron opening).

(b) The optional procedures referred to in paragraph (a) of this section are:

(1) A selective grinding and bolting procedure or other milling procedure, whereby controlled techniques are used to obtain a food too fine to meet the granulation specification prescribed in § 15.130(a) for farina.

(2) An agglomerating procedure, whereby flour that originally meets the granulation specification prescribed in § 15.1(a) has been modified by further processing, so that a number of the individual flour particles have been combined into agglomerates conforming to the granulation specifications set out in paragraph (a) of this section.

(c) The name of each product covered by this section is the name prescribed by the definition and standard of identity for the corresponding kind of flour as referred to in paragraph (a) of this section, preceded immediately and conspicuously by the words "Instantized," "Instant blending," or "Quick-mixing."

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, and such objections must be 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 become effective 60 days from the date of its publication in the FEDERAL REGISTER, and simultaneously therewith the stay of the effective date announced in the FEDERAL REGISTER order of January 1, 1965 (30 F.R. 6) shall end; *Provided, however,* That if objections are filed to the amendment hereby ordered then the stay of the effective date for § 15.75 shall remain in effect. Notice of the filing of objections or lack thereof will be announced by publication in the FEDERAL REGISTER.

(Secs. 401, 701, 52 Stat. 1046, 1055, as amended 70 Stat. 919, 72 Stat. 948; 21 U.S.C. 341, 371)

Dated: July 21, 1965.

GEO. P. LARRICK,
Commissioner of Food and Drugs.

[F.R. Doc. 65-7885; Filed, July 26, 1965; 8:48 a.m.]

PART 45—OLEOMARGARINE, MARGARINE

PART 121—FOOD ADDITIVES

Delta-Decalactone and Delta-Dodecalactone as Optional Ingredients in Oleomargarine and as Regulated Food Additives

Acting upon a proposal filed by Lever Brothers Co., 390 Park Avenue, New York, N.Y., in the matter of amending the definition and standard of identity for oleomargarine to permit the use of delta-decalactone and delta-dodecalactone as optional flavoring ingredients therein, and on a proposal on the initiative of the Commissioner to amend § 121.1144 of the food additive regulations to provide for the above stated uses of these food additives:

In response to the notice of proposed rulemaking in the above-identified matter published in the FEDERAL REGISTER of October 17, 1964 (29 F.R. 14367), objections were filed by the National Milk Producers Federation and a State official, on the grounds that the proposed use of artificial flavors would be deceptive by making margarine better simulate the taste of butter and result in an unfavorable impact on the livestock and dairy industries. These comments did not consider the fact that the standard now permits the use of other artificial flavorings which impart a butter-like flavor and they did not demonstrate that permitting the use of the proposed artificial flavorings would not be in the interest of consumers.

Two comments were received from margarine manufacturers. Both firms requested that the proposed amendment be broadened to permit other flavoring ingredients. These comments failed to show that the published proposal furnished adequate notice for the changes they advocated and failed to supply factual data to support the use of additional flavoring ingredients in margarine.

With respect to the proposed rulemaking to amend § 121.1144, no comments were received relative to the food-additive status of the two flavors.

Subsequent to the issuance of § 121.1144 and subsequent to the issuance of the proposal to amend § 121.1144, there appeared in the FEDERAL REGISTER of October 27, 1964, a new section (§ 121.1164) of the food additive regulations prescribing the use of synthetic flavoring substances. This section provided for the use in food of the two flavors now proposed for use in oleomargarine. The Commissioner has concluded that § 121.1144 should be deleted from the regulations, and that the food additive use of delta-decalactone and delta-dodecalactone in oleomargarine should be prescribed in § 121.1164.

On the basis of relevant information available, taking into consideration the comments filed and the information submitted by the petitioner, it is concluded that it will promote honesty and fair dealing in the interest of consumers to adopt the proposed amendment to the standard of identity for oleomargarine. Therefore, pursuant to the authority contained in the Federal Food, Drug, and Cosmetic Act (secs. 401, 409, 701, 52 Stat. 1046, 1055 as amended; 72 Stat. 1786; 21 U.S.C. 341, 348, 371), which has been delegated to the Commissioner of Food and Drugs by the Secretary of Health, Education, and Welfare (21 CFR 2.90), parts 45 and 121 are amended as indicated below:

1. Section 45.1 is amended by redesignating the text of paragraph (a)(3)(iv) as (a)(3)(iv)(*a*), and by adding thereto a new paragraph designated as (a)(3)(iv)(*b*). As amended the affected portions read as follows:

§ 45.1 Oleomargarine, margarine; identity; label statement of optional ingredients.

* * * * *

(a) * * *

(3) * * *

(iv) (*a*) The artificial flavoring diacetyl added as such or as starter distillate or produced during the preparation of the product as a result of the addition of citric acid or harmless citrates.

(*b*) The artificial flavorings δ-decalactone or δ-dodecalactone used in accordance with the provisions of § 121.1164 of this chapter. These artificial flavorings are added separately or in combination in amounts such that the finished oleomargarine contains not more than 10 parts per million of δ-decalactone and not more than 20 parts per million of δ-dodecalactone.

* * * * *

§ 121.1144 [Revoked]

2. Section 121.1144 is revoked.

3. Section 121.1164 is amended by the addition of a new paragraph (c), reading as follows:

§ 121.1164 Synthetic flavoring substances and adjuvants.

* * * * *

(c) δ-Decalactone and δ-dodecalactone when used separately or in combination in oleomargarine are used at levels not to exceed 10 parts per million and 20 parts per million, respectively, in accordance with § 45.1 of this chapter.

Any person who will be adversely affected by the foregoing order may 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, and such objections must be 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 become effective 45 days from the date of its publication in the FEDERAL REGISTER, except as to any provisions that may be stayed by the filing of proper objections. Notice of the filing of objections or lack thereof will be announced by publication in the FEDERAL REGISTER.

(Secs. 401, 409, 701, 52 Stat. 1046, 1055 as amended; 72 Stat. 1786; 21 U.S.C. 341, 348, 371)

Dated: July 21, 1965.

GEO. P. LARRICK,
Commissioner of Food and Drugs.

[F.R. Doc. 65-7886; Filed, July 26, 1965; 8:48 a.m.]

Title 22—FOREIGN RELATIONS

Chapter II—Agency for International Development, Department of State

[A.I.D. Reg. 7]

PART 207—LIMITATION ON THE EMPLOYMENT OF THIRD COUNTRY NATIONALS FOR CONSTRUCTION WORK FINANCED FROM UNITED STATES FOREIGN ASSISTANCE FUNDS

Miscellaneous Amendments

Part 207 of Chapter II, Title 22 (A.I.D. Regulation 7) is amended as follows:

§ 207.1 [Amended]

1. In § 207.1 paragraph (j), delete the word "nationals" which appears within the quote and substitute the word "national".

§ 207.2 [Amended]

2. In § 207.2 delete the comma which appears after "1964".

§ 207.4 [Amended]

3. In § 207.4, subparagraph (1) of paragraph (d) insert a comma after the word "delegate".

4. Section 207.5 is amended as follows:

(a) In paragraph (a) delete all that follows after the word "Authority" where it first appears and substitute the following, and in paragraph (b) amend the first paragraph to read as follows. As amended, paragraph (a) and the introductory text of paragraph (b) read as follows:

§ 207.5 Waiver in the national interest.

(a) *Authority.* (1) The Regional Assistant Administrator may waive the applicability of this regulation to a specific country or to several countries within a regional association as being important to the national interest of the United States:

(i) When it is illegal under the laws of the recipient country to exclude any third country nationals from equal employment with nationals of the recipient country, or

(ii) When the nationals of such associated countries are mutually or reciprocally granted rights of equal employment with nationals of the recipient country.

(2) The Regional Assistant Administrator may waive the applicability of this regulation in any specific case, i.e., contract, loan, etc. in which he determines that it is important to the national interest of the United States that the direct costs of construction work performed by third country nationals be financed out of funds made available by the Act.

(3) The authority set forth in subparagraphs (1) and (2) of this paragraph may be delegated to the principal deputy of the Regional Assistant Administrator but may not be further redelegated.

Guidelines. In making any determination pursuant to paragraph (a)(2) of this section, the Regional Assistant Administrator shall be guided by all relevant considerations including one or more of the following:

* * * * *

(b) In paragraph (b), strike out all of subparagraph (3).

5. These amendments shall be effective as of April 29, 1964.

Dated: July 16, 1965.

WILLIAM S. GAUD,
Deputy Administrator.

[F.R. Doc. 65-7890; Filed, July 26, 1965; 8:49 a.m.]

Title 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER A—INCOME TAX

[T.D. 6841]

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

Disposal of Coal or Domestic Iron Ore With a Retained Economic Interest; Percentage Depletion Rate for Ores of Beryllium

On April 8, 1965, notice of proposed rule making to conform the Income Tax Regulations (26 CFR Part 1) to the amendments made by section 227 of the Revenue Act of 1964 (78 Stat. 97), relating to treatment of certain iron ore royalties, and to the amendments made by section 6 of the Act of September 2, 1964 (Public Law 88-571, 78 Stat. 860), relating to the percentage depletion rate for ores of beryllium, was published in the FEDERAL REGISTER (30 F.R. 4548). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the amendment of the regulations as proposed is hereby adopted, subject to the changes set forth below:

1. Section 1.631-3, as set forth in paragraph 12 of the notice of proposed rule making is changed by revising paragraph (e)(5).

2. There is added immediately after paragraph 24 a new paragraph 25, amending paragraph (b) of § 1.1441-2.

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

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

Approved: July 22, 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 by section 227 of the Revenue Act of 1964 (78 Stat. 97), relating to treatment of certain iron ore royalties, and to the amendments made by section 6 of the Act of September 2, 1964 (Public Law 88-571, 78 Stat. 860), relating to the percentage depletion rate for ores of beryllium, these regulations are amended as follows:

PARAGRAPH 1. Section 1.272 is amended by amending the heading and revising section 272 and by adding a historical note. These amended provisions read as follows:

§ 1.272 Statutory provisions; disposal of coal or domestic iron ore.

SEC. 272. *Disposal of coal or domestic iron ore.* Where the disposal of coal or iron ore is covered by section 631, no deduction shall be allowed for expenditures attributable to the making and administering of the contract under which such disposition occurs and to the preservation of the economic interest retained under such contract, except that if in any taxable year such expenditures plus the adjusted depletion basis of the coal or iron ore disposed of in such taxable year exceed the amount realized under such contract, such excess, to the extent not availed of as a reduction of gain under section 1231, shall be a loss deductible under section 165(a). This section shall not apply to any taxable year during which there is no income under the contract.

[Sec. 272 as amended by sec. 227, Rev. Act 1964 (78 Stat. 97)]

PAR. 2. Section 1.272-1 is amended to read as follows:

§ 1.272-1 Expenditures relating to disposal of coal or domestic iron ore.

(a) *Introduction.* Section 272 provides special treatment for certain expenditures paid or incurred by a taxpayer in connection with a contract (hereafter sometimes referred to as a "coal royalty contract" or "iron ore royalty contract") for the disposal of coal or iron ore the gain or loss from which is treated under section 631(c) as a section 1231 gain or loss on the sale of coal or iron ore. See paragraph (e) of § 1.631-3 for special rules relating to iron ore. The expenditures covered by section 272 are those which are attributable to the making and administering of such a contract or to the preservation of the economic interest retained under the contract. For examples of such expenditures, see paragraph (d) of this section. For a taxable year in which gross royalty income is realized under the contract of disposal, such expenditures shall not be allowed as a deduction. Instead, they are to be added to the adjusted depletion basis of the coal or iron ore disposed of in the taxable year in computing gain or loss under section

631(c). However, where no gross royalty income is realized under the contract of disposal in a particular taxable year, such expenditure shall be treated without regard to section 272.

(b) *In general.* (1) Where the disposal of coal or iron ore is covered by section 631(c), the provisions of section 272 and this section shall be applicable for a taxable year in which there is income under the contract of disposal. (For purposes of section 272 and this section, the term "income" means gross amounts received or accrued which are royalties or bonuses in connection with a contract to which section 631(c) applies.) All expenditures paid or incurred by the taxpayer during the taxable year which are attributable to the making and administering of the contract disposing of the coal or iron ore and all expenditures paid or incurred during the taxable year in order to preserve the owner's economic interest retained under the contract shall be disallowed as deductions in computing taxable income for the taxable year. The sum of such expenditures and the adjusted depletion basis of the coal or iron ore disposed of in the taxable year shall be used in determining the amount of gain or loss with respect to the disposal. See § 1.631–3. For special rule in case of loss, see paragraph (c) of this section. Section 272 and this section do not apply to capital expenditures, and such expenditures are not taken into account in computing gain or loss under section 631(c) except to the extent they are properly part of the depletable basis of the coal or iron ore.

(2) The expenditures covered under section 272 and this section are disallowed as a deduction only with respect to a taxable year in which income is realized under the coal royalty contract (or iron ore royalty contract) to which such expenditures are attributable. Where no income is realized under the contract in a taxable year, these expenditures shall be deducted as expenses for the production of income, or as a business expense, or they may be treated under section 266 (relating to taxes and carrying charges) if applicable.

(3) The provisions of section 272 and this section apply to a taxable year in which income from the disposal by the owner of coal or iron ore held by him for more than 6 months is subject to the provisions of section 631(c) even though the actual mining of coal or iron ore under the coal royalty contract (or iron ore royalty contract) does not take place during the taxable year. Where the right under the contract to mine coal or iron ore for which advance payment has been made expires, terminates, or is abandoned before the coal or iron ore is mined, and paragraph (c) of § 1.631–3 requires the owner to recompute his tax with respect to such payment, the recomputation must be made without applying the provisions of section 272 and this section.

(c) *Losses.* If, in any taxable year, the expenditures referred to in section 272 and this section plus the adjusted depletion basis (as defined in paragraph (b)(2) of § 1.631–3) of the coal or iron ore disposed of during the taxable year exceed the amount realized under the contract which is subject to section 631(c) during the taxable year, such excess shall be considered under section 1231 as a loss from the sale of property used in the trade or business and, to the extent not availed of as a reduction of gain under that section, shall be a loss deductible under section 165(a) (relating to the deduction of losses generally).

(d) *Examples of expenditures.* (1) The expenditures referred to in section 272 include, but are not limited to, the following items, if such items are attributable to the making or administering of the contract or preserving the economic interest therein: Ad valorem taxes imposed by State or local authorities, costs of fire protection, costs of insurance (other than liability insurance), costs incurred in administering the contract (including costs of bookkeeping and technical supervision), interest on loans, expenses of flood control, legal and technical expenses, and expenses of measuring and checking quantities of coal or iron ore disposed of under the contract. Whether the interest on loans is attributable to the making or administering of the contract or preserving the economic interest therein will depend upon the use to which the borrowed monies are put.

(2) Any expenditure referred to in this section which is applicable to more than one coal royalty contract or iron ore royalty contract shall be reasonably apportioned to each of such contracts. Furthermore, if an expenditure applies only in part to the making or administering of the contract or the preservation of the economic interest, then only such part shall be treated under section 272. The apportionment of the expenditure shall be made on a reasonable basis. For example, where a taxpayer has other income (such as income from oil or gas royalties, rentals, right of way fees, interest, or dividends) as well as income under section 631(c), and where the salaries of some of its employees or other expenses relate to both classes of income, such expenses shall be allocated reasonably between the income subject to section 631(c) and the other income. Where a taxpayer has more than one coal royalty contract or iron ore royalty contract, expenditures under this section relating to a contract from which no income has been received in the taxable year may not be allocated to income from another contract from which income has been received in the taxable year.

(3) The taxpayer may have expenses which are not attributable even partly to making and administering a coal royalty contract or iron ore royalty contract or to the preservation of the economic interest retained under the contract and, accordingly, are not included in the expenditures described in section 272. These include such items as ad valorem taxes imposed by State or local authorities on property not covered by the contract, salaries, wages, or other expenses entirely incident to the ownership and protection of such property and depreciation of improvements thereon, fire insurance on such property, charitable contributions, and similar expenses unrelated to the making or to the administering of coal royalty contracts or iron ore royalty contracts or preserving the taxpayer's economic interest retained therein.

(e) *Nonapplication of section.* For purposes of section 543, the provisions of section 272 shall have no application. For example, the taxpayer may, for the purposes of section 543(a)(3)(C) or the corresponding provisions of prior income tax laws, include in the sum of the deductions which are allowable under section 162 an amount paid to an attorney as compensation for legal services rendered in connection with the making of a coal royalty contract or iron ore royalty contract (assuming the expenditure otherwise qualifies under section 162 as an ordinary and necessary expense incurred in the taxpayer's trade or business), even though such expenditure is disallowed as a deduction under section 272.

PAR. 3. Paragraph (f)(3) of § 1.535–2 is amended to read as follows:

§ 1.535–2 Adjustments to taxable income.

* * * * *

(f) *Long-term capital gains.* * * *

(3) Section 631(c) (relating to gain or loss in the case of disposal of coal or domestic iron ore) shall have no application in determining the amount of the deduction allowable under section 535(b)(6).

* * * * *

PAR. 4. Paragraph (e)(2) of § 1.545–2 is amended to read as follows:

§ 1.545–2 Adjustments to taxable income.

* * * * *

(e) *Long-term capital gains.* * * *

(2) Section 631(c) (relating to gain or loss in the case of disposal of coal or domestic iron ore) shall have no application.

* * * * *

PAR. 5. Paragraph (b)(2) of § 1.611–1 is amended to read as follows:

§ 1.611–1 Allowance of deduction for depletion.

* * * * *

(b) *Economic interest.* * * *

(2) No depletion deduction shall be allowed the owner with respect to any timber, coal, or domestic iron ore that such owner has disposed of under any form of contract by virtue of which he retains an economic interest in such timber, coal, or iron ore, if such disposal is considered a sale of timber, coal, or domestic iron ore under section 631 (b) or (c).

* * * * *

PAR. 6. Paragraphs (b)(3) and (e) of § 1.612–3 are amended to read as follows:

§ 1.612–3 Depletion; treatment of bonus and advanced royalty.

* * * * *

(b) *Advanced royalties.* * * *

(3) The payor, at his option, may treat the advanced royalties so paid or accrued in connection with mineral property as follows:

(i) As deductions from gross income for the year the advanced royalties are paid or accrued, or

(ii) As deductions from gross income for the year the mineral product, in respect of which the advanced royalties were paid, is sold.

For an exception to this treatment when the payor is a sublessor of coal or domestic iron ore, see paragraph (b)(3) of § 1.631–3. Every taxpayer must make an election as to the treatment of all such advanced royalties in his return for the first taxable year in which such amounts are paid or accrued. A taxpayer will be considered to have made an election in accordance with the manner in which such items are treated in the return. A failure to deduct any such items for the year paid or accrued will constitute an election to have all such items treated in accordance with subdivision (ii) of this subparagraph. An election made under this section is binding for the taxable year for which made and for all subsequent years, and the taxpayer must treat all advanced royalties paid or accrued in all subsequent years in the same manner. This paragraph does not grant a new election. Any taxpayer who made an election under Regulations 118, § 39.23(m)–10(e) (1939 Code), or corresponding provisions of prior regulations is, by such election, bound with respect to treatment of such advanced royalties whether paid or accrued before or after December 31, 1953. See section 7807(b)(2). For additional rules relating to elections in the case of partners and partnerships see section 703(b) and the regulations thereunder.

* * * * *

(e) *Cross reference.* In the case of bonuses and advanced royalties received in connection with a contract of disposal of timber covered by section 631(b) or coal or iron ore covered by section 631(c), see that section and the regulations thereunder.

PAR. 7. Section 1.613 is amended by revising sections 613(b)(2)(B) and 613(b)(6) and adding to the historical note. The amended provisions read as follows:

§ 1.613 Statutory provisions; percentage depletion.

SEC. 613. *Percentage depletion.* * * *

(b) *Percentage depletion rates.* The mines, wells, and other natural deposits, and the percentages, referred to in subsection (a) are as follows:

* * * * *

(2) 23 percent—

* * * * *

(B) If from deposits in the United States—anorthosite (to the extent that alumina and aluminum compounds are extracted therefrom), asbestos, bauxite, celestite, chromite, corundum, fluorspar, graphite, ilmenite, kyanite, mica, olivine, quartz crystals (radio grade), rutile, block steatite talc, and zircon, and ores of the following metals: antimony, beryllium, bismuth, cadmium, cobalt, columbium, lead, lithium, manganese, mercury, nickel, platinum and platinum group metals, tantalum, thorium, tin, titanium, tungsten, vanadium, and zinc.

* * * * *

(6) 15 percent—all other minerals (including, but not limited to, aplite, barite, borax, calcium carbonates, diatomaceous earth, dolomite, feldspar, fullers earth, garnet, gilsonite, granite, limestone, magnesite, magnesium carbonates, marble, phosphate rock, potash, quartzite, slate, soapstone, stone (used or sold for use by the mine owner or operator as dimension stone or ornamental stone), thenardite, tripoli, trona, and (if paragraph (2)(B) does not apply) bauxite, flake graphite, fluorspar, lepidolite, mica, spodumene, and talc, including pyrophyllite), except that, unless sold on bid in direct competition with a bona fide bid to sell a mineral listed in paragraph (3), the percentage shall be 5 percent for any such other mineral when used, or sold for use, by the mine owner or operator as rip rap, ballast, road material, rubble, concrete aggregates, or for similar purposes. For purposes of this paragraph, the term "all other minerals" does not include—

(A) Soil, sod, dirt, turf, water, or mosses; or

(B) Minerals from sea water, the air, or similar inexhaustible sources.

* * * * *

[Sec. 613 as amended by sec. 36, Technical Amendments Act 1958 (72 Stat. 1633); sec. 6, Act of Sept. 2, 1964 (Public Law 88–571, 78 Stat. 860)]

PAR. 8. Subparagraphs (a)(2), (a)(3), and (c)(4) of § 1.613–2 are amended to read as follows:

§ 1.613–2 Percentage depletion rates.

(a) *In general.* * * *

(2) *Production from United States deposits.* A rate of 23 percent is applicable to the minerals listed in this subparagraph if produced from deposits within the United States:

Anorthosite.[2]	Ilmenite.
Asbestos.	Kyanite.
Bauxite.	Mica.
Beryl.[3]	Olivine.
Celestite.	Quartz crystals (radio grade).
Chromite.	Rutile.
Corundum.	Block steatite talc.
Fluorspar.	Zircon.
Graphite.	

Ores of the following metals—

Antimony.	Platinum.
Beryllium.[4]	Platinum group metals.
Bismuth.	Tantalum.
Cadmium.	Thorium.
Cobalt.	Tin.
Columbium.	Titanium.
Lead.	Tungsten.
Lithium.	Vanadium.
Manganese.	Zinc.
Mercury.	
Nickel.	

(3) *Other minerals.* A rate of 15 percent is applicable to the minerals listed in this subparagraph regardless of the situs of the deposits from which the minerals are produced, provided the minerals are not used or sold for use by the mine owner or operator as rip rap, ballast, road material, rubble, concrete aggregates, or for similar purposes. If, however, such minerals are sold or used for the purposes described in the preceding sentence, a rate of 5 percent is applicable to any of such minerals unless sold on bid in direct competition with a bona fide bid to sell any of the minerals listed in subdivision (iii) of subparagraph (1) of this paragraph, in which case the rate is 15 percent. In addition, the provisions of this subparagraph are not applicable with respect to any of the minerals listed herein if the rate prescribed in subparagraph (2) of this paragraph is applicable.

Aplite.	Magnesite.
Barite.	Magnesium carbonates.
Bauxite.	Marble.
Beryl.[3]	Mica.
Borax.	Phosphate rock.
Calcium carbonates.	Potash.
Clay, refractory and fire.[6]	Quartzite.
Diatomaceous earth.	Slate.
Dolomite.	Soapstone.
Feldspar.	Spodumene.
Flake Graphite.	Stone (dimension or ornamental).[7]
Fluorspar.	Talc (including pyrophyllite).
Fullers earth.	Thenardite.
Garnet.	Tripoli.
Gilsonite.	Trona.
Granite.	All other minerals.
Lepidolite.	
Limestone.	

* * * * *

(c) *Rules for application of paragraph (a) of this section.* * * *

(4) Percentage depletion is not allowable with respect to the income from a disposal of coal (including lignite) or domestic iron ore (as defined in paragraph (e) of § 1.631–3) with a retained economic interest to the extent that such income is treated as from a sale of coal or iron ore under section 631(c) and § 1.631–3. Rents or royalties paid or incurred by a taxpayer with respect to coal (including lignite) or domestic iron ore shall be excluded by such taxpayer in determining "gross income from the property" without regard to the treatment under section 631(c) of such rents and royalties in the hands of the recipient.

* * * * *

PAR. 9. Paragraph (c)(2) of § 1.615–3 is amended to read as follows:

§ 1.615–3 Election to defer exploration expenditures.

* * * * *

(c) *Expenditures made by the owner who retains a nonoperating mineral interest.* * * *

(2) Where a taxpayer receives an amount, in addition to retaining an economic interest, which amount is treated as from the sale or exchange of a capital asset or property treated under section 1231 (except coal or iron ore to which section 631(c) applies), the deferred exploration expenditures shall be allocated between the interest sold and the interest retained in proportion to the fair market values of each interest as of the date of sale. The amount allocated to the interest sold may not be deducted, but shall be a part of the basis of such interest.

* * * * *

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[2] The rate prescribed in this subparagraph does not apply except to the extent that alumina and aluminum compounds are extracted therefrom.

[3] Applicable only for taxable years beginning before January 1, 1964.

[4] Applicable only for taxable years beginning after December 31, 1963.

[6] Applicable only for taxable years beginning before January 1, 1964.

[7] Not applicable for taxable years beginning after December 31, 1960.

[7] The 15-percent rate is applicable only to stone used or sold for use by the mine owner or operator as dimension stone or ornamental stone.

PAR. 10. Paragraph (c)(2) of § 1.616–2 is amended to read as follows:

§ 1.616–2 **Election to defer.**

* * * * *

(c) *Expenditures made by the owner who retains a nonoperating interest.* * * *

(2) Where a taxpayer receives an amount, in addition to retaining an economic interest, which amount is treated as from the sale or exchange of a capital asset or property treated under section 1231 (except coal or iron ore to which section 631(c) applies), the deferred development expenditures shall be allocated between the interest sold and the interest retained in proportion to the fair market value of each interest as of the date of sale. The amount allocated to the interest sold may not be deducted, but shall be a part of the basis of such interest for the purpose of determining gain or loss upon the sale thereof.

* * * * *

PAR. 11. Section 1.631 is amended by revising the heading and section 631(c) and by adding a historical note. The amended provisions read as follows:

§ 1.631 **Statutory provisions; gain or loss in the case of timber, coal, or domestic iron ore.**

SEC. 631. *Gain or loss in the case of timber, coal, or domestic iron ore.* * * *

(c) *Disposal of coal or domestic iron ore with a retained economic interest.* In the case of the disposal of coal (including lignite), or iron ore mined in the United States, held for more than 6 months before such disposal, by the owner thereof under any form of contract by virtue of which such owner retains an economic interest in such coal or iron ore, the difference between the amount realized from the disposal of such coal or iron ore and the adjusted depletion basis thereof plus the deductions disallowed for the taxable year under section 272 shall be considered as though it were a gain or loss, as the case may be, on the sale of such coal or iron ore. Such owner shall not be entitled to the allowance for percentage depletion provided in section 613 with respect to such coal or iron ore. This subsection shall not apply to income realized by any owner as a co-adventurer, partner, or principal in the mining of such coal or iron ore, and the word "owner" means any person who owns an economic interest in coal or iron ore in place, including a sublessor. The date of disposal of such coal or iron ore shall be deemed to be the date such coal or iron ore is mined. In determining the gross income, the adjusted gross income, or the taxable income of the lessee, the deductions allowable with respect to rents and royalties shall be determined without regard to the provisions of this subsection. This subsection shall have no application, for purposes of applying subchapter G, relating to corporations used to avoid income tax on shareholders (including the determinations of the amount of the deductions under section 535(b)(6) or section 545(b)(5)). This subsection shall not apply to any disposal of iron ore—

(1) To a person whose relationship to the person disposing of such iron ore would result in the disallowance of losses under section 267 or 707(b), or

(2) To a person owned or controlled directly or indirectly by the same interests which own or control the person disposing of such iron ore.

[Sec. 631 as amended by sec. 227, Rev. Act 1964 (78 Stat. 97)]

PAR. 12. Section 1.631–3 is amended to read as follows:

§ 1.631–3 **Gain or loss upon the disposal of coal or domestic iron ore with a retained economic interest.**

(a) *In general.* (1) The provisions of section 631(c) apply to an owner who disposes of coal (including lignite), or iron ore mined in the United States, held for more than 6 months before such disposal under any form or type of contract whereby he retains an economic interest in such coal or iron ore. The difference between the amount realized from disposal of the coal or iron ore in any taxable year, and the adjusted depletion basis thereof plus the deductions disallowed for the taxable year under section 272, shall be gain or loss upon the sale of the coal or iron ore. See paragraph (b)(4) of this section for the definition of "owner." See paragraph (e) of this section for special rules relating to iron ore.

(2) In the case of such a disposal, the provisions of section 1231 apply, and the coal or iron ore shall be considered to be property used in the trade or business for the taxable year in which it is considered to have been sold, along with other property of the taxpayer used in the trade or business as defined in section 1231(b), regardless of whether the coal or iron ore is property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business. Whether gain or loss resulting from the disposition of the coal or iron ore which is considered to have been sold will be deemed to be gain or loss resulting from a sale of a capital asset held for more than 6 months will depend on the application of section 1231 to the taxpayer for the taxable year; *i.e.*, if the gains do not exceed the losses, they shall not be considered as gains and losses from sales or exchanges of capital assets but shall be treated as ordinary gains and losses.

(b) *Rules for application of section.* (1) For purposes of section 631(c) and this section, the date of disposal of the coal or iron ore shall be deemed to be the date the coal or iron ore is mined. If the coal or iron ore has been held for more than 6 months on the date it is mined, it is immaterial that it had not been held for more than 6 months on the date of the contract. There shall be no allowance for percentage depletion provided in section 613 with respect to amounts which are considered to be realized from the sale of coal or iron ore under section 631(c).

(2) The term "adjusted depletion basis" as used in section 631(c) and this section means the basis for allowance of cost depletion provided in section 612 and the regulations thereunder. Such "adjusted depletion basis" shall include exploration or development expenditures treated as deferred expenses under section 615(b) or 616(b), or corresponding provisions of prior income tax laws, and be reduced by adjustments under section 1016(a)(9) and (10), or corresponding provisions of prior income tax laws, relating to deductions of deferred expenses for exploration or development expenditures in the taxable year or any prior taxable years. The depletion unit of the coal or iron ore disposed of shall be determined under the rules provided in the regulations under section 611, relating to cost depletion.

(3)(i) In determining the gross income, the adjusted gross income, or the taxable income of the lessee, the deductions allowable with respect to rents and royalties (except rents and royalties paid by a lessee with respect to coal or iron ore disposed of by the lessee as an "owner" under section 631(c)) shall be determined without regard to the provisions of section 631(c). Thus, the amounts of rents and royalties paid or incurred by a lessee with respect to coal or iron ore shall be excluded from the lessee's gross income from the property for the purpose of determining his percentage depletion without regard to the treatment of such rents or royalties in the hands of the recipient under this section. See section 613 and the regulations thereunder.

(ii) (*a*) However, a lessee who is also a sublessor may dispose of coal or iron ore as an "owner" under section 631(c). Rents and royalties paid with respect to coal or iron ore disposed of by such a lessee under section 631(c) shall increase the adjusted depletion basis of the coal or iron ore and are not otherwise deductible.

(*b*) The provisions of this subdivision may be illustrated by the following example:

Example. B is a sublessor of a coal lease; A is the lessor; and C is the sublessee. B pays A a royalty of 50 cents per ton. C pays B a royalty of 60 cents per ton. The amount realized by B under section 631(c) is 60 cents per ton and will be reduced by the adjusted depletion basis of 50 cents per ton, leaving a gain of 10 cents per ton taxable under section 631(c).

(4) (i) The provisions of this section apply only to an owner who has disposed of coal or iron ore and retained an economic interest. For the purposes of section 631(c) and this section, the word "owner" means any person who owns an economic interest in coal or iron ore in place, including a sublessor thereof. A person who merely acquires an economic interest and has not disposed of coal or iron ore under a contract retaining an economic interest does not qualify under section 631(c). A successor to the interest of a person who has disposed of coal or iron ore under a contract by virtue of which he retained an economic interest in such coal or iron ore is also entitled to the benefits of this section. Section 631(c) and this section shall not apply with respect to any income realized by any owner as co-adventurer, partner, or principal in the mining of such coal or iron ore.

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

Example (1). A owns a tract of coal land in fee. A leases to B the right to mine all the coal in this tract in return for a royalty of 30 cents per ton. B subleases his right to mine coal in this tract to C, who agrees to pay A 30 cents per ton and to pay to B an additional royalty of 10 cents per ton. Section 631(c) applies to the royalties of both A and B, if the other requisites of the section have been met.

Example (2). Assume the same facts as in example (1), except that A dies leaving his royalty interest to D. D has an economic

interest in the coal in place and qualifies for section 631(c) treatment with respect to his share of the royalties since he is a successor in title to A.

Example (3). Assume the same facts as in example (1), except that E agrees to pay a sum of money to C in return for 10 cents per ton on the coal mined by C. E has an economic interest, since he must look solely to the extraction of the coal for the return of his investment. However, E has not made a disposal of coal under a contract wherein he retains an economic interest, and, therefore, does not qualify under section 631(c). E is entitled to depletion on his royalties.

(c) *Payments received in advance of mining.* (1) (i) Where the conditions of paragraph (a) of this section are met, amounts received or accrued prior to mining shall be treated under section 631(c) as received from the sale of coal or iron ore if the contract of disposal provides that such amounts are to be applied as payment for coal or iron ore subsequently mined. For example, advance royalty payments or minimum royalty payments received by an owner of coal or iron ore qualify under section 631(c) where the contract of disposal grants the lessee the right to apply such royalties in payment of coal or iron ore mined at a later time.

(ii) The provisions of this subparagraph may be illustrated by the following example:

Example. A acquires coal rights on January 1. On January 30, A enters into a contract of disposal providing that mining shall begin July 2, and mining actually begins no earlier. Any advance payments which A receives qualify under section 631(c).

(2) However, if the right to mine coal or iron ore under the contract expires, terminates, or is abandoned before the coal or iron ore which had been paid for is mined, the taxpayer shall treat payments attributable to the unmined coal or iron ore as ordinary income and not as received from the sale of coal or iron ore under section 631(c). Accordingly, the taxpayer shall recompute his tax liability for the taxable year in which such payments were received. The recomputation shall be made in the form of an amended return where necessary.

(3) Bonuses received or accrued by an owner in connection with the grant of a contract of disposal shall be treated under section 631(c) as received from the sale of coal or iron ore to the extent attributable to coal or iron ore held for more than 6 months. The rules contained in paragraph (d) of § 1.631–2 relating to bonuses in the case of contracts for the disposal of timber shall be equally applicable in the case of bonuses received for the grant of a contract of disposal of coal or iron ore under this section.

(d) *Nonapplication of section.* Section 631(c) shall not affect the application of the provisions of subchapter G, chapter 1 of the Code, relating to corporations used to avoid income tax on shareholders. For example, for the purposes of applying section 543 (relating to personal holding companies), the amounts received from a disposal of coal or iron ore subject to section 631(c) shall be considered as mineral royalties. The determination of whether an amount received under a contract to which section 631(c) applies is "personal holding company income" shall be made in accordance with section 543 and the regulations thereunder, without regard to section 631(c) or this section. See also paragraph (e) of § 1.272–1.

(e) *Special rules with regard to iron ore.* (1) With regard to iron ore, section 631(c) and this section apply only to amounts received or accrued in taxable years beginning after December 31, 1963, attributable to iron ore mined in such taxable years.

(2) Section 631(c) and this section apply only to disposals of iron ore mined in the United States.

(3) For the purposes of section 631(c) and this section, iron ore is any ore which is used as a source of iron, including but not limited to taconite and jaspilite.

(4) Section 631(c) shall not apply to any disposal of iron ore to a person whose relationship to the person disposing of such iron ore would result in the disallowance of losses under section 267 or 707(b).

(5) Section 631(c)(2) results in the denial of section 631(c) treatment in the case of a contract for disposal of iron ore entered into with a person owned or controlled, directly or indirectly, by the same interests which own or control the person disposing of the iron ore, even though section 631(c) treatment would not be denied under the provisions of section 631(c)(1). For example, section 631(c) treatment is denied in the case of a contract for disposal of iron ore entered into between two "brother and sister" corporations, or a parent corporation and its subsidiary. The presence or absence of control shall be determined by applying the same standards as are applied under section 482 (relating to the allocation of income and deductions between taxpayers).

PAR. 13. Paragraph (b) of § 1.817–2 is amended by revising subparagraphs (1)(ii) and (3)(iii). The amended provisions read as follows:

§ 1.817–2 Treatment of capital gains and losses.

* * * * *

(b) *Modification of sections 1221 and 1231.* (1) In the case of a life insurance company, section 817(a)(1) provides that for purposes of applying section 1231(a) (relating to property used in the trade or business and involuntary conversions), the term "property used in the trade or business" shall be treated as including only—

* * * * *

(ii) The cutting or disposal of timber, or the disposal of coal or iron ore, to the extent considered arising from a sale or exchange by reason of the provisions of section 631 and the regulations thereunder.

* * * * *

(3) Section 1231(a), as modified by section 817(a)(1) and subparagraph (1) of this paragraph, shall apply to recognized gains and losses from the following:

* * * * *

(iii) The cutting or disposal of timber, or the disposal of coal or iron ore, to the extent considered arising from a sale or exchange by reason of the provisions of section 631 and the regulations thereunder.

* * * * *

PAR. 14. Paragraph (c) of § 1.856–3 is amended to read as follows:

§ 1.856–3 Definitions.

* * * * *

(c) *Interests in real property.* The term "interests in real property" includes fee ownership and co-ownership of land or improvements thereon and leaseholds of land or improvements thereon. Such term does not, however, include mineral, oil, or gas royalty interests, as, for example, a retained economic interest in coal or iron ore with respect to which the special provisions of section 631(c) apply.

* * * * *

PAR. 15. Paragraph (b)(3)(i) of § 1.871–7 is amended to read as follows:

§ 1.871–7 Tax on nonresident alien individuals.

* * * * *

(b) *No United States business; gross income of more than $15,400.* * * *

(3) *Amounts considered to be capital gains*—(i) *Items subject to tax.* The tax of 30 percent also applies, pursuant to the provisions of section 871(a)(1), to amounts received during the taxable year from sources within the United States which are described in section 402(a)(2) (determined with the application of section 402(a)(4)), section 631(b) and (c), section 1235, and for taxable years ending after September 2, 1958, section 403(a)(2) and are considered to be gains from the sale or exchange of capital assets. Thus, the tax applies to gain recognized on certain distributions by an exempt employees' trust where the total distributions, with respect to any employee, are paid to the distributee within one taxable year; to the gain recognized on certain payments under annuity contracts purchased by an employer for an employee under certain qualified annuity plans where the total payments are paid to the payee within one taxable year; to gain recognized under specified circumstances on the disposal of timber, coal, and domestic iron ore and considered in accordance with section 1231 to be gain from the sale or exchange of a capital asset; and to gain recognized on certain transfers of patent rights by an individual.

* * * * *

PAR. 16. Paragraph (c) of § 1.881–2 is amended to read as follows:

§ 1.881–2 Tax on nonresident foreign corporations.

* * * * *

(c) *Amounts considered to be capital gains.* The tax of 30 percent also applies, pursuant to the provisions of section 881(a), to amounts received during the taxable year from sources within the United States which are described in section 631 (b) and (c) and are considered to be gains from the sale or exchange of capital assets. Thus, the tax applies to gain recognized under speci-

fied circumstances on the disposal of timber, coal, and domestic iron ore and considered in accordance with section 1231 to be a gain from the sale or exchange of a capital asset.

* * * * *

PAR. 17. Section 1.1016 is amended by revising section 1016(a)(15) and adding to the historical note. The amended provisions read as follows:

§ 1.1016 Statutory provisions; adjustments to basis.

SEC. 1016. *Adjustments to basis*—(a) *General rule.* Proper adjustment in respect of the property shall in all cases be made—

* * * * *

(15) For deductions to the extent disallowed under section 272 (relating to disposal of coal or domestic iron ore), notwithstanding the provisions of any other paragraph of this subsection;

* * * * *

[Sec. 1016 as amended by sec. 4(c), Act of June 29, 1956 (Pub. Law 629, 84th Cong., 70 Stat. 407); sec. 3(d) (1) and (2), Life Insurance Company Income Tax Act 1959 (73 Stat. 139); sec. 8(g)(2), Rev. Act 1962 (76 Stat. 998); sec. 227(b)(5), Rev. Act 1964 (78 Stat. 98)]

PAR. 18. Paragraph (k) of § 1.1016–5 is amended to read as follows:

§ 1.1016–5 Miscellaneous adjustments to basis.

* * * * *

(k) *Deductions disallowed in connection with disposal of coal or domestic iron ore.* Basis shall be adjusted by the amount of the deductions disallowed under section 272 with respect to the disposal of coal or domestic iron ore covered by section 631.

* * * * *

PAR. 19. Section 1.1231 is amended by revising section 1231(b)(2) and adding to the historical note. The amended provisions read as follows:

§ 1.1231 Statutory provisions; property used in trade or business and involuntary conversions.

SEC. 1231. *Property used in the trade or business and involuntary conversions.* * * *

(b) *Definition of property used in the trade or business.* For purpose of this section—

* * * * *

(2) *Timber, coal, or domestic iron ore.* Such term includes timber, coal, and iron ore with respect to which section 631 applies.

* * * * *

[Sec. 1231 as amended by sec. 49, Technical Amendments Act 1958 (72 Stat. 1642); sec. 227, Rev. Act 1964 (78 Stat. 97)]

PAR. 20. Paragraph (a) and (c)(3) of § 1.1231–1 are amended to read as follows:

§ 1.1231–1 Gains and losses from the sale or exchange of certain property used in the trade or business.

(a) *In general.* Section 1231 provides that a taxpayer's gains and losses from the disposition (including involuntary conversion) of assets described in that section as "property used in the trade or business" and from the involuntary conversion of capital assets held for more than 6 months shall be treated as long-term capital gains and losses if the total gains exceed the total losses. If the total gains do not exceed the total losses, all such gains and losses are treated as ordinary gains and losses. Therefore, if the taxpayer has no gains subject to section 1231, a recognized loss from the condemnation (or from a sale or exchange under threat of condemnation) of even a capital asset held for more than 6 months is an ordinary loss. Capital assets subject to section 1231 treatment include only capital assets involuntarily converted. The noncapital assets subject to section 1231 treatment are (1) depreciable business property and business real property held for more than 6 months, other than stock in trade and certain copyrights and artistic property; (2) timber, coal, and iron ore, but only to the extent that section 631 applies thereto; and (3) certain livestock and unharvested crops. See paragraph (c) of this section.

* * * * *

(c) *Transactions to which section applies.* Section 1231 applies to recognized gains and losses from the following:

* * * * *

(3) The cutting or disposal of timber, or the disposal of coal or iron ore, to the extent considered arising from a sale or exchange by reason of the provisions of section 631 and the regulations thereunder.

* * * * *

PAR. 21. Paragraph (g)(1)(ii) of § 1.1244(c)–1 is amended to read as follows:

§ 1.1244(c)–1 Section 1244 stock defined.

* * * * *

(g) *Gross receipts.* (1) * * *

(ii) The term "royalties" as used in subdivision (i) of this subparagraph means all royalties, including mineral, oil, and gas royalties (whether or not the aggregate amount of such royalties constitutes 50 percent or more of the gross income of the corporation for the taxable year), and amounts received for the privilege of using patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other like property. The term "royalties" does not include amounts received upon the disposal of timber, coal, or domestic iron ore with a retained economic interest to which the special rules of section 631 (b) and (c) apply or amounts received from the transfer of patent rights to which section 1235 applies. For the definition of "mineral, oil, or gas royalties", see paragraph (b)(11)(ii) and (iii) of § 1.543–1. For purposes of this subdivision, the gross amount of royalties shall not be reduced by any part of the cost of the rights under which they are received or by any amount allowable as a deduction in computing taxable income.

* * * * *

PAR. 22. Paragraph (b)(5)(iii) of § 1.1372–4 is amended to read as follows:

§ 1.1372–4 Termination of election.

* * * * *

(b) *Methods of termination.*

(5) *Personal holding company income.* * * *

(iii) *Royalties.* The term "royalties" as used in section 1372(e)(5) means all royalties, including mineral, oil, and gas royalties (whether or not the aggregate amount of such royalties constitutes 50 percent or more of the gross income of the corporation for the taxable year), and amounts received for the privilege of using patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other like property. The term "royalties" does not include amounts received upon disposal of timber, coal, or domestic iron ore with a retained economic interest with respect to which the special rules of section 631 (b) and (c) apply or amounts received from the transfer of patent rights to which section 1235 applies. For the definition of "mineral, oil, or gas royalties," see paragraph (b)(11)(iii) of § 1.543–1. For purposes of this subdivision, the gross amount of royalties shall not be reduced by any part of the cost of the rights under which they are received or by any amount allowable as a deduction in computing taxable income.

* * * * *

PAR. 23. Section 1.1402(a) is amended by revising section 1402(a)(3)(B) and adding to the historical note. The amended provisions read as follows:

§ 1.1402(a) Statutory provisions; definitions; net earnings from self-employment.

SEC. 1402. *Definitions*—(a) *Net earnings from self-employment.* * * *

(3) There shall be excluded any gain or loss—

* * * * *

(B) From the cutting of timber, or the disposal of timber, coal, or iron ore, if section 631 applies to such gain or loss, or

* * * * *

[Sec. 1402(a) as amended by sec. 201(a) and (c)(4), Social Security Amendments 1954 (68 Stat. 1067, 1089); sec. 201 (e)(2), (g), and (i), Social Security Amendments 1956 (70 Stat. 840–842); sec. 5(b), Act of Aug. 30, 1957 (Pub. Law 85–239, 71 Stat. 523); sec. 103(k), Social Security Amendments 1960 (74 Stat. 938); sec. 227, Rev. Act 1964 (78 Stat. 97)]

PAR. 24. Paragraph (a)(2) of § 1.1402(a)–6 is amended to read as follows:

§ 1.1402(a)–6 Gain or loss from disposition of property.

(a) There is excluded any gain or loss:

* * * * *

(2) From the cutting of timber or the disposal of timber, coal, or iron ore, even though held primarily for sale to customers, if section 631 is applicable to such gain or loss; and

* * * * *

PAR. 25. Paragraph (b) of § 1.1441–2 is amended to read as follows:

§ 1.1441–2 Income subject to withholding.

* * * * *

(b) *Amounts considered to be gains from the sale or exchange of capital assets.* Withholding is also required on the gross amount of the items described in section 402(a)(2), relating to treatment of total distributions from certain

employees' trusts; in section 631 (b) and (c), relating to treatment of gain on disposal of timber, coal, or domestic iron ore with a retained economic interest; in section 1235, relating to treatment of gain on sale or exchange of patents; and after September 2, 1958, in section 403 (a)(2), relating to treatment of payments under certain employee annuities, each of which items is considered to be gain from the sale or exchange of capital assets.

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

[F.R. Doc. 65-7889; Filed, July 26, 1965; 8:49 a.m.]

SUBCHAPTER E—ALCOHOL, TOBACCO, AND OTHER EXCISE TAXES

[T.D. 6840]

PART 270—MANUFACTURE OF TOBACCO PRODUCTS

Miscellaneous Amendments

On August 6, 1964, a notice of proposed rule making with respect to regulations designated as Part 270 of Title 26 of the Code of Federal Regulations was published in the FEDERAL REGISTER (29 F.R. 11377). The purposes of the proposal were to (1) improve and clarify certain provisions relating to the mark on packages of tobacco products, the furnishing of tax-exempt tobacco products to employees for personal consumption, and the treatment of tax determined tobacco products returned to the factory; (2) incorporate provisions relating to the keeping of records in support of transfers of tobacco products in bond, repackaging of tobacco products, and the treatment of shortages and overages of tobacco products disclosed by a physical inventory; (3) liberalize present requirements relating to records maintained by manufacturers of tobacco products; (4) delete obsolete provisions relating to the redemption of stamps; and (5) make miscellaneous clarifying and conforming changes of a minor nature.

After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the regulations so published are hereby adopted subject to the changes set forth below:

PARAGRAPH 1. Paragraph 19 is changed to extend the term "employee," in § 270.231, to include those persons whose duties relate to the manufacture, distribution, or sale of tobacco products and to provide that tobacco products for off-factory consumption must be furnished the employee within the factory.

PAR. 2. Paragraph 21 is changed to clarify, in § 270.255, the provisions concerning overages and shortages of tobacco products by kind as required to be recorded and reported, and also the provisions concerning payment of tax on any shortage.

PAR. 3. Paragraph 24 is changed to clarify provisions relating to the filing of a claim for refund.

This Treasury decision shall be effective on the first day of the first month which begins not less than 30 days following the date of publication in the FEDERAL REGISTER.

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

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

Approved: July 21, 1965.

STANLEY S. SURREY,
Assistant Secretary of the Treasury.

1. Section 270.11 is amended by adding, in alphabetical sequence, the definition as follows:

§ 270.11 Meaning of terms.

* * * * *

Permit number. The combination of (1) the letters indicating the kind of permit, (2) the identifying number, and (3) the name or abbreviation of the State (or the District of Columbia) in which the factory is located, as assigned to the permit by the assistant regional commissioner; for example, "TP-999-Utah".

* * * * *

2. Section 270.47 is amended to include the procedure for submitting applications for authorization to engage in another business within the factory. As amended, § 270.47 reads as follows:

§ 270.47 Other businesses within factory.

The Director may authorize such other businesses within the factory as he finds will not jeopardize the revenue, will not hinder the effective administration of this part, and will not be contrary to law. Where a manufacturer desires to engage in another business within the factory he shall submit a written application to do so, in triplicate, to the assistant regional commissioner for the region in which the factory is located, for his transmittal to the Director. A manufacturer shall not engage in such other business until the application is approved by the Director. The manufacturer shall retain, as part of his records, any authorization of the Director under this section.

3. Section 270.63 is amended to include provisions, formerly in § 270.68, relating to authority of corporate officials to represent a corporate manufacturer. As amended, § 270.63 reads as follows:

§ 270.63 Corporate documents.

Every corporation, before commencing business as a manufacturer of tobacco products, shall furnish with its application for permit, required by § 270.62, a true copy of the corporate charter or a certificate of corporate existence or incorporation executed by the appropriate officer of the State in which incorporated. The corporation shall likewise furnish duly authenticated extracts of the stockholders' meetings, bylaws, or directors' meetings, listing the offices the incumbents of which are authorized to sign documents or otherwise act in behalf of the corporation in matters relating to Chapter 52, I.R.C., and regulations issued thereunder. The corporation shall also furnish evidence, in duplicate, of the identity of the officers and directors and each person who holds more than ten percent of the stock of such corporation. Where any of the information required by this section has previously been filed with the same assistant regional commissioner and such information is currently complete and accurate, a written statement to that effect, in duplicate, will be sufficient for the purpose of this section.

(72 Stat. 1421; 26 U.S.C. 5712)

4. Section 270.68 is amended to clarify the requirements relating to the filing of a power of attorney and to eliminate provisions concerning corporate documents which are now included in § 270.63. As amended, § 270.68 reads as follows:

§ 270.68 Power of attorney.

If the application for permit or any report, return, notice, schedule, or other document required to be executed is to be signed by an individual (including one of the partners for a partnership or one of the members of an association) as an attorney in fact for any person, or if an individual is to otherwise officially represent such person, power of attorney on Form 1534 shall be furnished to the assistant regional commissioner. (For power of attorney in connection with conference and practice requirements see Subpart E, Part 601 of this chapter.) Such power of attorney is not required for persons whose authority is furnished with the corporate documents as required by § 270.63. Form 1534 does not have to be filed again with an assistant regional commissioner where such form has previously been submitted to that assistant regional commissioner and is still in effect.

5. Section 270.69 is amended to require a factory diagram under certain circumstances in addition to those previously required. As amended, § 270.69 reads as follows:

§ 270.69 Factory premises.

The premises to be used by a manufacturer of tobacco products as his factory may consist of more than one building, or portions of buildings, which need not be contiguous but must be located in the same city, town, or village: Except that, where the assistant regional commissioner determines that a building or portion of a building which is not within the city, town, or village, is so conveniently and closely situated to the general factory premises as to present no jeopardy to the revenue and as to offer no hindrance to the administration of this part, he may authorize the inclusion of such building or portion of building as part of the factory. The buildings or portions of buildings shall be described in the application for permit and the bond by number, street, and city, town, or village, and State. If any of the following conditions exist a diagram shall also be furnished, in duplicate, showing the information indicated: