(1) The agreement amending the marketing agreement regulating the handling of avocados grown in south Florida, upon which the aforesaid public hearing was held, has been signed by handlers (excluding cooperative associations of producers who were not engaged in processing, distributing, or shipping the avocados covered by this order) who, during the period beginning April 1, 1963, through March 31, 1964, handled more than 50 percent of the volume of avocados covered by the said order, as hereby amended;

(2) The issuance of this order, amending the aforesaid order, is favored or approved by at least two-thirds of the producers who participated in a referendum on the question of its approval and who, during the determined representative period (April 1, 1963, through March 31, 1964), were engaged in the production area, in the production of avocados for market; such producers having also produced for market at least two-thirds of the volume of avocados represented in such referendum.

It is, therefore, ordered, That, on and after the effective date hereof, all handling of avocados grown in the production area shall be in conformity to, and in compliance with, the terms and conditions of the said order, as amended, and as hereby amended as follows:

In § 915.20, the second and fourth sentences are revised to read as follows: "Five of the members and their respective alternates shall be growers who shall not be handlers of avocados produced by others or employees of such handlers. * * * The five members of the committee who shall be growers who shall not be handlers of avocados produced by others or employees of such handlers are referred to as 'grower' members of the committee; and the four members who shall be handlers or employees of handlers are referred to as 'handler' members of the committee."

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated, January 26, 1965, to become effective February 1, 1965.

CHARLES S. MURPHY,
Under Secretary.

[F.R. Doc. 65-966; Filed, Jan. 28, 1965; 8:48 a.m.]

Chapter X—Agricultural Marketing Service (Marketing Agreements and Orders; Milk), Department of Agriculture

[Milk Order 135]

PART 1135—MILK IN COLORADO SPRINGS-PUEBLO MARKETING AREA

Order Amending Order

§ 1135.0 Findings and determinations.

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Colorado Springs-Pueblo marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) *Additional findings.* It is necessary in the public interest to make this order amending the order effective not later than February 1, 1965. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the marketing area.

The provisions of the said order are known to handlers. The recommended decision of the Deputy Administrator, Agricultural Marketing Service, was issued December 21, 1964, and the decision of the Acting Secretary containing all amendment provisions of this order, was issued January 12, 1965. The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the order effective February 1, 1965, and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the FEDERAL REGISTER. (Sec. 4(c), Administrative Procedure Act, 5 U.S.C. 1001–1011.)

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order, amending the order, is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as herein amended; and

(3) The issuance of the order amending the order is approved or favored by at least two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing area.

Order relative to handling. It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Colorado Springs-Pueblo marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended and as hereby amended, as follows:

In § 1135.51(a), delete the following: "During the period of August 1, 1963, through January 31, 1965, the Class I price shall be".

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Effective date: February 1, 1965.

Signed at Washington, D.C., on January 26, 1965.

CHARLES S. MURPHY,
Under Secretary.

[F.R. Doc. 65-967; Filed, Jan. 28, 1965; 8:48 a.m.]

[Milk Order 137]

PART 1137—MILK IN EASTERN COLORADO MARKETING AREA

Order Amending Order

§ 1137.0 Findings and determinations.

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Eastern Colorado marketing

area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) *Additional findings.* It is necessary in the public interest to make this order amending the order effective not later than February 1, 1965. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the marketing area.

The provisions of the said order are known to handlers. The recommended decision of the Deputy Administrator, Agricultural Marketing Service, was issued December 21, 1964, and the decision of the Acting Secretary containing all amendment provisions of this order, was issued January 12, 1965. The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the order effective February 1, 1965, and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the FEDERAL REGISTER. (Sec. 4(c), Administrative Procedure Act, 5 U.S.C. 1001-1011.)

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order, amending the order, is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as herein amended; and

(3) The issuance of the order amending the order is approved or favored by at least two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing area.

Order relative to handling. It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Eastern Colorado marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended and as hereby amended, as follows:

In § 1137.51(a), delete the following: "During the period of August 1, 1963, through January 31, 1965, the Class I price shall be".

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Effective date: February 1, 1965.

Signed at Washington, D.C., on January 26, 1965.

CHARLES S. MURPHY,
Under Secretary.

[F.R. Doc. 65-968; Filed, Jan. 28, 1965; 8:48 a.m.]

Chapter XIV—Commodity Credit Corporation, Department of Agriculture

SUBCHAPTER B—LOANS, PURCHASES, AND OTHER OPERATIONS

[CCC Grain Price Support Regs., 1964 Crop Flaxseed Supp., Amdt. 2]

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

Subpart—1964 Crop Flaxseed Loan and Purchase Program

MATURITY OF LOANS

The regulations issued by the Commodity Credit Corporation published in 29 F.R. 9320 and 13136 and containing the specific requirements of the 1964 crop flaxseed loan and purchase program are hereby amended as follows:

Section 1421.3029 is amended to allow a later maturity date for farm-storage loans so that the amended section reads as follows:

§ 1421.3029 **Maturity of loans.**

Loans mature on demand but not later that January 31, 1965, on flaxseed stored in Arizona and California, and not later than March 31, 1965, on flaxseed stored in all other States, except by written agreements with producers, CCC may establish June 30, 1965 as the maturity date applicable to their farm-storage loans or purchases. In the case of warehouse-storage loans, the final date for repayment is June 30, 1965, and title to the unredeemed collateral shall vest in CCC on July 1, 1965.

(Sec. 4, 62 Stat. 1070, as amended; sec. 5, 62 Stat. 1072; secs. 301, 401, 63 Stat. 1054; 15 U.S.C. 714 b and c, 7 U.S.C., 1447, 1421)

Effective date: Upon publication in the FEDERAL REGISTER.

Signed at Washington, D.C., on January 26, 1965.

H. D. GODFREY,
Executive Vice President, Commodity Credit Corporation.

[F.R. Doc. 65-970; Filed, Jan. 28, 1965; 8:49 a.m.]

Title 8—ALIENS AND NATIONALITY

Chapter I—Immigration and Naturalization Service, Department of Justice

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS

PART 214—NONIMMIGRANT CLASSES

Approval of Schools

Reference is made to the notice of proposed rule making which was published in the FEDERAL REGISTER of November 28, 1964 (29 F.R. 15926), pursuant to section 4 of the Administrative Procedure Act (60 Stat. 238; 5 U.S.C. 1003) and in which there were set out in full the terms of the proposed rule pertaining to the approval of schools for attendance by nonimmigrant students. No representations were received concerning the proposed rule. The published rule has been amended in several respects. The sixth sentence of § 214.3(b) has been amended to provide that a school catalogue is not required in connection with a petition submitted by a school or school system owned and operated as a public educational institution or system by the United States or a state or political subdivision thereof; the penultimate sentence of § 214.3(e) has been repositioned as the last sentence in § 214.3(b); and § 214.3(h) has been amended to provide for the review at least once every 3 years of school approvals heretofore accorded, for the submission of Form I-17 as a petition for continuation of approval only when required by the district director, and for notification by the district director of continued approval only when Form I-17 was submitted as a petition for continuation of approval. In addition, § 103.7(c) has been amended to exempt from the filing fee for school approval any school or school system owned or operated as a public educational institution or system by the United States or a state or political subdivision thereof. The amendatory regulations, as set out below, are hereby adopted.

1. The 16th item of paragraph (c) of § 103.7 is amended so that when taken with the introductory material it will read as follows:

§ 103.7 **Records and fees.**

* * * * *

(c) *Additional fees.* In addition to the fees enumerated in sections 281 and 344 of the Act, the following fees and charges are prescribed:

* * * * *

For filing application for school approval, except in the case of a school or school system owned or operated as a public educational institution or system by the United States or a state or political subdivision thereof $25.00

* * * * *

2. Section 214.3 is amended to read as follows:

§ 214.3 Petitions for approval of schools.

(a) *Filing of petition.* A school seeking approval for the attendance by nonimmigrant students under section 101 (a)(15)(F) of the Act shall file petition Form I-17 with the district director having jurisdiction over the place in which the school is located.

(b) *Supporting documents.* A petitioning school or school system owned and operated as a public educational institution or system by the United States or a state or political subdivision thereof shall submit a certification to that effect signed by the appropriate public official who shall certify that he is authorized to do so. A petitioning private or parochial elementary or secondary school system shall submit a certification signed by the appropriate public official who shall certify that he is authorized to do so to the effect that it meets the requirements of the state or local public educational system. Any other petitioning school shall submit a certification by the appropriate licensing, approving, or accrediting official who shall certify that he is authorized to do so to the effect that it is licensed, approved, or accredited. In lieu of such certification a school which is recognized by a state approving agency as an "educational institution" for study for veterans under the provisions of P.L. 550 (82d Congress) may submit a statement of recognition signed by the appropriate official of the state approving agency who shall certify that he is authorized to do so. A charter shall not be considered a license, approval, or accreditation. Except in connection with a petition submitted by a school or school system owned and operated as a public educational institution or system by the United States or a state or political subdivision thereof, a school catalogue, if one is issued, shall also be submitted with each petition. If not included in the catalogue, or if a catalogue is not issued, the school shall furnish a written statement containing information concerning the: (1) Size of its physical plant; (2) nature of its facilities for study and training; (3) educational, vocational, or professional qualifications of the teaching staff; (4) salaries of the teachers; (5) attendance and scholastic grading policy; (6) amount and character of supervisory and consultative services available to students and trainees; and (7) finances (including a certified copy of accountant's last statement of school's net worth, income, and expenses). If the petitioner is a vocational school, business school, or American institution of research recognized as such by the Attorney General, it must establish that its courses of study are accepted as fulfilling the requirements for the attainment of an educational, professional, or vocational objective, and are not avocational or recreational in character.

(c) *Consultation with United States Office of Education.* Before a decision is made on the petition, the United States Office of Education shall be consulted by the district director to determine whether the petitioner is an established institution of learning or other recognized place of study, is operating a bona fide school, and has the necessary facilities, personnel, and finances to conduct instruction in recognized courses, unless that office has advised the district director that the school should be so considered and is within one of the following categories: (1) Any school or school system owned or operated as a public educational institution by the United States or a state or political subdivision thereof; (2) any school listed in the current United States Office of Education publication, "Accredited Higher Institutions," or "Education Directory, Part 3, Higher Education;" or (3) any secondary school operated by or as part of an institution of higher learning listed in the current United States Office of Education publication, "Accredited Higher Institutions," or "Education Directory, Part 3, Higher Education."

(d) *Interview of petitioner.* An authorized representative of the petitioner shall appear in person before an immigration officer prior to the adjudication of the petition to be interviewed under oath concerning the eligibility of the school for approval. An interview may be waived by the district director if the school is within category (1), (2), or (3) of paragraph (c) of this section.

(e) *Approval of petition.* To be eligible for approval the petitioner must establish that it is a bona fide school, that it is an established institution of learning or other recognized place of study, that it possesses the necessary facilities, personnel, and finances to conduct instruction in recognized courses, and that it is in fact engaged in instruction in those courses. If the petitioner is an institution of higher education and is not within category (1) or (2) of paragraph (c) of this section, it must establish that it confers upon its graduates recognized bachelor, master, doctor, professional, or divinity degrees, or if it does not confer such degrees that its credits have been and are accepted unconditionally by at least three institutions of higher learning within category (1) or (2) of paragraph (c) of this section. If the petitioner is an elementary or secondary school and is not within category (1) or (3) of paragraph (c) of this section, it must establish that attendance at the petitioning institution satisfies the compulsory attendance requirements of the state in which it is located and that the petitioning school qualifies graduates for acceptance by schools of higher educational level within category (1), (2), or (3) of paragraph (c) of this section. Upon approval of a petition, the petitioner shall be notified on Form I-17.

(f) *Denial of petition.* If the petition is denied, the petitioner shall be notified of the reasons therefor and of his right to appeal in accordance with the provisions of Part 103 of this chapter.

(g) *Reporting requirements.* Each approved school, upon receiving Service notification of arrival in the United States of a nonimmigrant student destined to that school, or Service notification of permission to attend the school, shall submit immediately to the office of the Service having jurisdiction over the area in which the institution is located a report, in writing, if the student fails to register personally at the school within 60 days of the time he was expected to do so. An immediate report shall also be made in the case of each nonimmigrant student who fails to carry a full course of study, fails to attend classes to the extent normally required, or terminates his attendance at the institution. The report shall be made on Form I-20B.

(h) *Review of school approvals.* The district director shall review at least once every 3 years the approval accorded to schools in his district. The review shall be made to determine whether the school meets the eligibility requirements of paragraph (e) of this section and has complied with the reporting requirements of paragraph (g) of this section. Each school whose approval is reviewed may be required to furnish a currently executed Form I-17 as a petition for continuation of approval without fee together with the supporting documents specified in paragraph (b) of this section. The review may include interview of the school's authorized representative and consultation with the United States Office of Education. If upon completion of the review the district director finds that the approval should be continued, he shall so notify the school when Form I-17 was submitted as a petition for continuation of approval; otherwise, he shall institute proceedings to withdraw its approval in accordance with paragraph (j) of this section.

(i) *Advertising.* In any advertisement, catalogue, brochure, pamphlet, literature, or other material hereafter printed or reprinted by or for an approved school, any statement which may appear in such material concerning approval for attendance by nonimmigrant students shall be limited solely to the following: This school is authorized under Federal law to enroll nonimmigrant alien students.

(j) *Withdrawal of approval.* The approval of a school shall be withdrawn if it is no longer entitled to approval under section 101(a)(15)(F) of the Act, or under this part, for any reason including, but not limited to, the following: (1) Failure to submit reports required by paragraph (g) of this section; (2) issuance of Certificates of Eligibility, Forms I-20, to students lacking scholastic, financial, or language requirements; (3) failure to operate as a bona fide institution of learning; (4) failure to maintain a sound financial condition; (5) failure to employ qualified professional personnel, or (6) failure to maintain proper facilities for instruction. Whenever a district director has reason to believe that an approved school in his district is no longer entitled to approval, he shall send it a notice of intention to withdraw the approval. The notice shall inform the school of the grounds upon which it is intended to withdraw its approval, and also shall inform the school that it may, within 30 days of the date of service of the notice, submit written representations under oath supported by documentary evidence setting forth reasons why the approval should not be withdrawn. After consideration of any representations submitted within such 30-day period, or any authorized extension thereof,

the district director at the request of the school or at his own instance may require that an authorized representative of the school appear for interview before an immigration officer. Prior to making his decision, the district director, in his discretion, may consult the United States Office of Education. The school shall be notified in writing of the decision. If the decision is to withdraw the approval previously granted, the school shall be notified of the reasons therefor and of its right to appeal in accordance with the provisions of Part 103 of this chapter.

(Sec. 103, 66 Stat. 173; 8 U.S.C. 1103)

The basis and purpose of the above-prescribed rules are to exempt from the filing fee any public school or public school system, to require the interview of authorized school representatives in certain instances; to provide for review of school approvals periodically; and to insure the uniformity of advertisements concerning approval.

This order shall become effective 30 days after the date of its publication in the FEDERAL REGISTER.

Dated: January 26, 1965.

RAYMOND F. FARRELL,
Commissioner of Immigration and Naturalization.

[F.R. Doc. 65-959; Filed, Jan. 28, 1965; 8:48 a.m.]

Title 9—ANIMALS AND ANIMAL PRODUCTS

Chapter I—Agricultural Research Service, Department of Agriculture

SUBCHAPTER E—VIRUSES, SERUMS, TOXINS, AND ANALOGOUS PRODUCTS; ORGANISMS AND VECTORS

MISCELLANEOUS AMENDMENTS

A notice of proposed rule making concerning proposed amendments to Parts 101, 102, 112, 114, 116, 117, 118, 119, 120, and 121, was published in the FEDERAL REGISTER of September 19, 1964 (29 F.R. 13106). The notice afforded all interested parties an opportunity to submit data, views and arguments on the proposal. Views and recommendations were received from a number of interested parties suggesting minor changes and objecting to the elimination of the use of live hog-cholera virus in approved feed lots. The new amendments make no change in Part 120 regarding feed lots. Other minor changes have been made.

After consideration of all relevant matters presented, including the proposal set forth in the aforesaid notice, Parts 101, 102, 112, 114, 116, 117, 118, 119 and 121 are hereby amended pursuant to the authority contained in the Virus-Serum-Toxin Act (21 U.S.C. 151 et seq.), as follows:

PART 101—GENERAL PROVISIONS

1. Amend § 101.1(ff) and add (mm) and (oo) to read as follows:

§ 101.1 Definitions.

* * * * *

(ff) *Released product.* A finished product released by the firm after all requirements which show the product to be satisfactory for marketing are completed.

* * * * *

(mm) *Completed product.* A biological product in bulk or final container produced in compliance with the regulations to final form and composition, to which a serial number has been assigned.

(oo) *Finished product.* A completed product which has been bottled, sealed, packaged, and labeled as required by the regulations.

PART 102—LICENSES AND PERMITS TO IMPORT BIOLOGICAL PRODUCTS

2. Amend § 102.77 to read as follows:

§ 102.77 Facilities.

When required by the Director or the Inspector in charge, the following facilities, and such others as may be essential to efficient conduct of inspection, shall be provided in each licensed establishment.

(a) Satisfactory pens, equipment, and assistance for conducting tests required in accordance with the regulations in this subchapter;

(b) The following special facilities in establishments producing anti-hog-cholera serum and hog-cholera virus:

(1) Separate laboratory rooms for serum and virus.

(2) A separate room in which animals shall be washed and cleaned.

(3) A separate room in which animals shall be finally prepared for bleeding or hyperimmunizing.

(4) A separate room or adequate facilities for conducting autopsies.

(5) A separate room for preparation and mixing of biological products.

(6) A separate room for washing and sterilizing equipment.

(7) Clean cloths, which shall be kept damp when in use, to be used for covering virus pigs and final bleeders during all operations incident to the collection of blood, and

(8) Dust screens for all outside doors, openings, and unsealed windows;

(c) Suitable containers satisfactorily equipped for thoroughly mixing batches of all biological products; and

(d) Automatic recording thermometers or gages and other thermometers which will register temperatures accurately and satisfactorily for use as required by the regulations.

PART 112—LABELS AND SAMPLES

3. Amend § 112.1(b) to read as follows:

§ 112.1 Containers.

* * * * *

(b) No container of any biological product may be labeled until it has been tested and found to be not worthless, contaminated, dangerous, or harmful. The Director may permit labeling in advance if in his opinion adequate precautions to prevent marketing of untested products are taken by the licensee.

* * * * *

4. Amend § 112.26 to read as follows:

SAMPLES

§ 112.26 Collection, marking and handling of samples.

(a) Samples of any biological product may be purchased in the open market, and the marks, brands, or tags upon the package or wrapper thereof shall be noted. The collector shall note the names of the vendor and agent of the vendor who made the sale, together with the date of purchase. The collector shall select representative samples.

(b) All samples or parts of samples shall be sealed by the collector and marked for identification and future reference.

5. Amend § 112.27 to read as follows:

§ 112.27 Selection for laboratory testing.

(a) Representative samples of each batch of a biological product shall be forwarded to the National Animal Disease Laboratory as specified by the Director. Such samples shall be selected at random from packages finished for marketing. The samples may be selected by designated laboratory employees unless otherwise specified by the Director.

(b) The licensee may retain at least as many duplicate samples of the product as required under the provisions of paragraph (a) of this section. Such duplicate samples should be retained by the licensee for a period of not less than 6 months after the expiration date stated on the label of the product.

PART 114—MISCELLANEOUS REQUIRMENTS FOR LICENSED ESTABLISHMENTS

§ 114.2 [Amended]

6. Amend § 114.2(b) by changing § 118.3 to § 118.2.

7. Amend § 114.5 to read as follows:

§ 114.5 Market containers for living vaccines.

Vaccines composed of living microorganisms shall be marketed only in glass containers specified as Type I (U.S.P.).

8. Amend Part 116 to read as follows:

PART 116—RECORDS AND REPORTS

RECORDS

Sec.
116.1 Maintenance of records.
116.2 Special record requirements.
116.3 Completion and retention of records.

REPORTS

116.10 Inspection.
116.11 Licensees to furnish information.
116.12 Charts.

AUTHORITY: The provisions of this Part 116 issued under 37 Stat. 832-833; 21 U.S.C. 151-158.

RECORDS

§ 116.1 Maintenance of records.

Detailed records of the results of tests for purity and potency and of the methods of preservation of each batch of biological products shall be kept by each licensee. Biological products prepared in foreign countries shall be eligible for importation into the United States only if the foreign manufacturer of such products also maintains such records. Detailed records in form satisfactory to the Director shall be maintained by each licensee, each distributor, and each importer, showing the sale, shipment, or other disposition made of the biological products handled by such person.

§ 116.2 Special record requirements.

Licensees preparing anti-hog-cholera serum and hog-cholera virus shall observe the following requirements:

(a) *Work sheets*—(1) *Virus pigs.* Work sheets for virus pigs shall show the tag number, date of admission to the premises, date of inoculation, and serial number and dose of virus used. Such work sheets shall show the temperature and physical condition of each pig when this is required by the regulations. They shall also show whether the virus collected from each pig was used in hyperimmunizing virus, simultaneous virus, or inoculating virus, or was destroyed.

(2) *Hyperimmunization of immune hogs.* Work sheets for hyperimmunization of immune hogs shall show the temperature and the tag number of each animal, actual weight at time of hyperimmunization, and the serial number and dose of virus injected. The net quantity injected into each group of animals and the number of the group to which each animal belongs also shall be recorded.

(3) *Bleeding of hyperimmune hogs.* Work sheets for bleeding of hyperimmunized hogs shall show the group number of the hogs, the temperature and tag number of each animal, and the class of bleeding. The temperature of each animal shall be recorded on the work sheet. The employee shall indicate on the work sheet those animals that are rejected.

(4) *Serum preparation.* Work sheets for the clarification of anti-hog-cholera serum shall show the number of the group to which the hogs belong, and the class and total number of bleedings involved, with the information required in this subparagraph relating to each working unit, as defined in § 119.23(a) (3) of this chapter. The information relating to the working unit shall include the total quantity of whole or defibrinated blood used and the total quantity of clarifying solutions. The quantity of each clarifying solution shall be recorded separately. The quantity of serum recovered (gross), the total quantity of preserving solution used, and the total quantity of preserved serum shall be recorded separately for each group. The quantity of preserved serum contained in each storage container and the number of the container shall be shown on the work sheet.

(5) *Work sheets, specimens.* A sample form of the work sheets used in licensed establishments in connection with virus pigs, the hyperimmunization of immune hogs, the bleeding of hyperimmune hogs, and the preparation of anti-hog-cholera serum shall be filed with the Division. A statement shall accompany each form showing in detail the manner in which it will be prepared and used.

(b) *Other records.* (1) Licensees shall maintain production records in ink or the equivalent. These records shall include a record of all pigs used to produce hog-cholera virus. The information on the production record shall be substantially the same as that shown on the work sheets as provided in paragraph (a) of this section, and in addition it shall include the date on which each pig was killed and the serial number of the batch of virus produced. Such records shall contain information as to the total quantity in each batch of hyperimmunizing, simultaneous, or inoculating virus produced. All such records shall clearly show the particular animal or group of animals from which each batch of the product is derived. The quantity of product collected and the total quantity of product after phenolization shall be separately recorded.

(2) Records showing the hyperimmunization of immune hogs and the bleeding of hyperimmune hogs shall be maintained.

(3) Charts of the automatic temperature-recording thermometers used in connection with the heating and cooling of anti-hog-cholera serum shall be filed as a part of the licensee's records.

(4) Complete records of the preparation and mixing of all virus and serum into batches and the bottling, testing, and labeling thereof shall be maintained.

(5) Work sheets shall be filed by licensed establishments for reference, and if they are made in ink or the equivalent and otherwise are satisfactory, they will be acceptable for purposes of the recordkeeping requirements of this section.

§ 116.3 Completion and retention of records.

All records required by this part (other than disposition records) must be completed by the licensee before any portion of a batch of any product may be marketed. All records required by this part shall be retained for a period of two years after the expiration date of the product involved and for such longer period as may be required by the Director in specific cases.

REPORTS

§ 116.10 Inspection.

Reports of the work in licensed establishments shall be prepared and forwarded to the inspector in charge in such form and manner as may be required by the Director.

§ 116.11 Licensees to furnish information.

Each licensee shall furnish inspectors with accurate information needed by them for making their reports and shall also submit such reports as may be required by the Director.

§ 116.12 Charts.

Each licensee shall furnish the Division, through the inspector in charge, copies of charts of all tests required by the Director before any of the batch is marketed.

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9. Amend Part 117 to read as follows:

PART 117—ANIMALS

Sec.
117.1 Opportunity to range in contact.
117.2 Contact pens.
117.3 Contact calves.
117.4 Time held in contact.
117.5 Contact calves; holding and removal.
117.6 Certificates.
117.7 Examination and identification.
117.8 Treatment.
117.9 Hyperimmune hogs; time range with contact calves.
117.10 Removal of animals.
117.11 Swine: treatment prior to removal.
117.12 Disinfection of animals and trucks.
117.13 Other requirements.

AUTHORITY: The provisions of this Part 117 issued under 37 Stat. 832–833; 21 U.S.C. 151–158.

§ 117.1 Opportunity to range in contact.

All cattle, hogs, sheep, and goats, except animals admitted by certificate as provided in § 117.6, offered for admission to the premises of licensed establishments shall be afforded opportunity to range in contact with other animals as prescribed in Parts 101 to 122 of this subchapter.

§ 117.2 Contact pens.

Licensees shall provide suitable pens to be known as contact pens through which all hogs, cattle, sheep, and goats shall pass before they shall be admitted to other parts of the premises of a licensed establishment, except that animals admitted under certificate as provided in § 117.6 need not pass through such pens.

§ 117.3 Contact calves.

(a) Licensees shall provide healthy calves in thrifty condition, ranging from 3 to 12 months of age, and weighing less than 650 pounds for use as contact animals in contact pens. They shall be referred to as contact calves.

(b) Each contact calf shall have its left ear pierced with a hole not less than three-fourths inch in diameter and shall have a serially numbered metal tag attached to its right ear.

§ 117.4 Time held in contact.

(a) Except as otherwise provided in § 117.6, each group of 200 or less sheep or goats and each group of 20 or less cattle at licensed establishments shall be held in the contact pens for at least 2 days in contact with not less than 2 contact calves, and each animal shall be allowed free range and contact with said contact calves and the other animals in the group.

(b) Except as otherwise provided in § 117.6, each group of hogs which arrives at a licensed establishment in the same conveyance shall be held in the contact pens for at least 1 day in contact with not less than 2 contact calves, except that in the case of pigs used in testing the potency and purity of anti-hog-cholera serum, 6 hours will be sufficient. More than 1 group of such animals may be placed in the same contact pen providing the total number of hogs in the pen does not exceed 200. Each animal

shall be allowed free range and contact with said contact calves and the other animals in the group. Hogs immune to hog cholera may be removed from the contact pens for hyperimmunization at any time while being held as aforesaid: *Provided*, They are returned to said pens immediately after this operation.

§ 117.5 Contact calves; holding and removal.

(a) All surviving contact calves shall be held in the contact pens of licensed establishments for at least 1 month from date of admission to contact pens as contact calves.

(b) Removal of contact calves from contact pens shall be so arranged that one animal of each group of 2 will be replaced at the expiration of 1 month and the other at the expiration of 2 months.

(c) Removal of contact calves from contact pens shall be so accomplished that the animals furnished for the purpose may be used for the maximum time permitted by the preceding paragraphs of this section. A contact calf shall not be used as such more than once, but may be used for testing simultaneous virus after release as a contact animal. Contact calves shall be segregated from incoming animals for 14 days immediately before removal from the premises, and shall be released only for immediate slaughter, or as permitted by the Director.

(d) Contact calves shall be examined as frequently as may be practicable in order to detect evidence of vesicular disease or other diseases. Whenever any animals on the premises show evidence of being affected with vesicular disease, rinderpest, or any other highly communicable disease, immediate and proper steps shall be taken by the licensee and the inspector in charge to prevent further dissemination of disease and to notify the Director of the situation. In these circumstances the pen group or section group of animals shall be regarded as a unit for disposal and no attempt made to separate such group in any way unless and until a positive diagnosis is made and a definite plan of disposal agreed upon. Whenever presence of any of these conditions is suspected, removal of animal products shall be suspended and full report made to the Division by telephone, telegram, or air mail.

§ 117.6 Certificates.

(a) Animals admitted to the premises of any licensed establishment which produces anti-hog-cholera serum and hog-cholera virus and which procures no animals from public stockyards, abattoir pens, or similar places need not be held in contact with contact calves as provided in § 117.2 if (1) the animals are for use in the production of anti-hog-cholera serum or hog-cholera virus, and (2) the licensee obtains a certificate as provided for in paragraph (c) of this section.

(b) Pigs for special tests authorized by the Director admitted to the premises of any licensed establishment need not be held in contact with contact calves as provided in § 117.2 if the pigs are handled as prescribed by the Director and if the licensee furnishes to the inspector in charge a certificate as provided for in paragraph (c) of this section.

(c) Each certificate provided for in paragraphs (a) and (b) shall be signed by an authorized representative of the licensed establishment, and shall be in the following form:

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This is to certify that ---------------- (Specify number and kind of animals) ---------------- which are offered for admission to the licensed establishment of the ---------------------------- Co. are from the farm or premises of ---------------, in the State of ---------, County of ---------, Township of ----------------, and to the best of our knowledge and belief were on said farm or premises at least 21 days prior to this date, and were not exposed to any infectious, contagious, or communicable disease, and no new stock was brought onto said farm or premises during that time. The said animals have not been in or transported through any public stockyards, abattoir pens, or similar places, nor have they been exposed to any infectious, contagious, or communicable disease since their removal from said farm or premises.

(Signed) ------------------------ Co.,
Per ------------------------

§ 117.7 Examination and identification.

(a) All animals presented for admission to the premises of establishments licensed to prepare anti-hog-cholera serum or hog-cholera virus shall be examined by the licensee as soon as practicable after they are received in order to determine their physical condition. No such animal shall be removed from contact pens for production purposes unless they are well.

(b) After examination as provided in paragraph (a) of this section, if the animals are permitted to remain upon the premises of the licensed establishment and to enter the holding pens of the establishment, they shall be given serially numbered metal tags, either prior to or at the time of inoculation or hyperimmunization.

(c) All tags or other methods used for the identification of animals receiving virulent virus shall be applied in such a manner that permanent identification may be maintained. The tags shall be of a distinctive design or color so as to differentiate them from tags used for official vaccinates under the Hog-Cholera Eradication Program.

(d) All methods of identification shall be provided and applied by the licensee.

(e) The left ear of each animal used in testing the purity and potency of biological products shall, if of sufficient size, be pierced, when the test is begun, with a hole of not less than three-fourths inch in diameter, except that when pigs or calves are used in testing hog-cholera virus for purity as prescribed in Parts 101 to 122 of this subchapter, their right ears shall be pierced as aforesaid. Animals bearing marks of the above-prescribed character shall not be presented for use in testing the purity and potency of biological products, except that contact calves and serum-treated pigs in anti-hog-cholera serum tests, after release as prescribed in the regulations, may be used, once for testing hog-cholera virus for purity, provided they are healthy and their right ears then are pierced as aforesaid. Furthermore, animals with either ear removed or so mutilated as to prevent the detection of these identifying marks shall not be used in any test, if the missing or mutilated ears are needed to determine the suitability of the animals for test purposes as described in this subchapter.

§ 117.8 Treatment.

(a) Animals used in the production or testing of biological products at licensed establishments shall not be treated with biological products other than those which are incidental to the preparation and testing of the products prepared from or tested on said animals, except with the approval of and in such manner as may be prescribed by the Director.

(b) Contact calves shall not be immunized against diseases to which they are susceptible, with the exception of hemorrhagic septicemia. Such calves, if permitted by the inspectors in charge, may be treated with hemorrhagic-septicemia bacterin and anti-hemorrhagic-septicemia serum.

§ 117.9 Hyperimmune hogs; time range with contact calves.

(a) If in any specific case hyperimmune hogs are the only production animals held upon the premises of a licensed establishment, they shall be caused to range in contact with calves in the manner prescribed in § 117.2 for a period of at least 10 days prior to their being subjected to carotid or final bleeding. All animals with which hyperimmune hogs have been held in contact as provided in this section shall be held on the premises of the licensed establishment for at least 14 days after the hyperimmune hogs have been killed.

(b) If at any time hyperimmune hogs are subjected to tail bleeding only, those surviving shall be held for at least 14 days after the last tail bleeding, but subsequently shall be killed and subjected to post mortem examination as provided by Parts 101 to 122 of this subchapter.

§ 117.10 Removal of animals.

Hogs, cattle, sheep, or goats shall not be removed from the premises of establishments licensed to produce anti-hog-cholera serum or hog-cholera virus without the written permission of the inspector in charge. Removal of animals from the premises of licensed establishments will be permitted under the following conditions, provided it is accomplished in such a manner as will preclude the dissemination of disease:

(a) Thirty or more days after receiving hog-cholera virus, hyperimmunes that are not in a healthy condition except when affected with a communicable disease, may be removed from licensed establishments for immediate slaughter in an abattoir operated under Federal inspection pursuant to the Meat Inspection Act (21 U.S.C. and Sup. 71 et seq.) if they are transported thereto by truck, wagon, or similar means, and not by rail: *Provided*, They are properly marked for identification and the inspector in charge of meat inspection is

given due notice in advance. If such an abattoir is not accessible, the slaughter of said animals may be conducted in any convenient nonfederally inspected establishment provided the licensee signifies willingness in writing to dispose of the carcasses in compliance with the Meat Inspection Act and under the provisions of the meat inspection regulations (Subchapter A of this chapter) as directed by the inspector in charge. Other animals shall not be removed from licensed establishments unless they are in a healthy condition.

(b) Swine that are in a healthy condition may be removed from licensed establishments only to an approved feed lot or for immediate slaughter provided they are not transported by rail or driven over public highways which are traversed by animals from the stockyards or similar places. When swine are removed to approved feed lots, the licensee shall obtain a certificate from the consignee of the animals showing their receipt.

(c) Calves that are in a healthy condition may be removed from licensed establishments after disinfection as described in § 117.12(a). When removed to an abattoir without passing through stockyards or over public highways which are not traversed by animals from public stockyards or similar places, the animals need not be so disinfected, provided the licensee furnishes the inspector in charge a statement from the consignee of the animals certifying that the animals will be slaughtered in an abattoir named in the certificate.

(d) Pigs which survive inoculation and exposure to hog-cholera virus for the production of hog-cholera virus, surviving control pigs in tests of anti-hog-cholera serum or hog-cholera vaccine, and other surviving pigs from tests of anti-hog-cholera serum, hog-cholera virus, or hog-cholera vaccine may be removed from licensed establishments only to approved feed lots not earlier than 14 days subsequent to the time of inoculation and exposure aforesaid, provided they are healthy. Surviving production pigs shall have the left ear pierced in accordance with the procedure set forth in § 117.7(e) before release from the premises.

(e) Hyperimmune hogs if healthy may be removed from licensed establishments for immediate slaughter not earlier than 11 days subsequent to the time of hyperimmunization, and need not be disinfected.

(f) All animals on the premises shall be disposed of in accordance with the provisions of these regulations and where specific provision is not made therefor shall be disposed of as required by the Director.

§ 117.11 Swine; treatment prior to removal.

All swine which require treatment or vaccination against hog cholera shall be treated as follows:

(a) When serum alone is used it shall have been prepared and released for marketing at an establishment holding a license from the Secretary.

(b) When the simultaneous-inoculation method is used both the serum and virulent virus used shall have been prepared and the serum released for marketing at an establishment holding a license from the Secretary. After receiving virulent virus, they shall be held on the premises for a period of not less than 14 days.

(c) When modified live virus vaccine is used alone or with anti-hog-cholera serum, the products shall have been prepared and released for marketing at an establishment holding a license from the Secretary. After vaccination they shall be held on the premises for a period of not less than 14 days.

§ 117.12 Disinfection of animals and trucks.

All animals and trucks which require disinfection shall be treated as follows:

(a) The feet, legs, and soiled portions of the body of calves to be removed from the licensed establishments shall be cleaned and disinfected with a 2 percent aqueous solution of cresol compound, U.S.P., or a substitute therefor approved by the Director, and the animals shall then be held in noninfectious pens on the premises of the establishment until they are dry before being loaded for transportation.

(b) Hogs when disinfection is required shall be disinfected in a 2 percent aqueous solution of cresol compound, U.S.P., or a substitute therefor approved by the Director, and shall be held in noninfectious pens on the premises before being loaded for transportation, and after disinfection they shall not be exposed to infectious pens, chutes, and the like. Hogs transported in trucks, wagons, or by similar means may be removed as soon after disinfection as they are dry.

(c)(1) All trucks carrying live animals which have been exposed to hog cholera and which enter a designated hog cholera contaminated area at a licensed establishment or an approved feed lot shall be cleaned and disinfected with a permitted disinfectant as provided in Title 9, Code of Federal Regulations, §§ 76.31(e) and 76.33(c).

(2) When more than one consecutive trip is required, such disinfection shall be made when the last load of hogs has been delivered and before the truck leaves the licensed premises or approved feed lot.

(3) When leaving a designated hog cholera contaminated area of a licensed establishment all other vehicles shall have the tires of such vehicles sprayed with a permitted disinfectant.

(4) Special disinfection procedures may be approved by the Director for trucks owned by licensees or operators of approved feed lots or others when used only under specified conditions, or for special purposes.

§ 117.13 Other requirements.

All animals used in licensed establishments in the preparation or testing of veterinary biological products shall meet such requirements consistent with the regulations in this subchapter as may be prescribed by the Director to prevent the preparation and sale of any worthless, contaminated, dangerous, or harmful biological products.

10. Amend Part 118 to read as follows:

PART 118—HOG-CHOLERA VIRUS

GENERAL REQUIREMENTS

Sec.
118.1 Temperatures and inspection.
118.2 Virus for inoculating purposes.
118.3 Bleeding.
118.4 Post mortem examinations.
118.5 Recording of symptoms.
118.6 Autopsies.
118.7 Early visible sickness; disposition.
118.8 Defibrination and chilling.
118.9 Disposition of virus when condition unsatisfactory.
118.10 Removal of hog-cholera virus.

HYPERIMMUNIZING VIRUS

118.25 Inoculations of hyperimmunizing virus.
118.26 Requirements for hyperimmunizing virus.

SIMULTANEOUS VIRUS

118.30 Inoculations of simultaneous virus.
118.31 Sickness and records thereof.
118.32 Requirements for simultaneous virus, etc.
118.33 Samples of simultaneous virus.
118.34 Phenolization.
118.35 Denaturing of carcasses.
118.36 Disposition of samples of simultaneous virus.
118.37 Test animals.
118.38 Purity test of simultaneous virus.
118.39 Holding test animals.
118.40 Test and retest.
118.41 Swine erysipelas.
118.42 Marking "U.S. Released."
118.43 Expiration date.
118.44 Minimum dosage and use.
118.45 Applicability of regulations.

AUTHORITY: The provisions of this Part 118 issued under 37 Stat. 832–833; 21 U.S. 151–158.

GENERAL REQUIREMENTS

§ 118.1 Temperatures and inspection.

Pigs which are used in the production of hog-cholera virus at a licensed establishment shall be healthy, and the temperature of each animal shall be accurately taken and permanently recorded immediately before inoculation when this is necessary to determine the health of the animals. Temperatures of all pigs shall be accurately taken and recorded each day subsequent to the fourth day after inoculation and at such other times as the inspector in charge may require. The temperatures of pigs that are slow or visibly sick on any working day shall be taken and recorded in like manner.

§ 118.2 Virus for inoculating purposes.

(a) Except as provided in paragraph (b) of this section, no hog-cholera virus shall be used for inoculating pigs, or as seed in other methods of propagation, for the production of inoculating virus, hyperimmunizing virus or simultaneous virus, unless it has been produced, processed, tested and held by a licensee in accordance with an outline acceptable to the Director. Pigs for the production of inoculating virus at a licensed establishment shall weigh not less than 40 pounds nor more than 125 pounds each and shall be inoculated only with highly virulent hog-cholera virus.

(b) Hog-cholera virus obtained from the Animal Disease and Parasite Research Division of the Department, and hog-cholera virus from outbreaks on

farms which is admitted to a licensed establishment and passed through pigs as provided in § 121.3 of this subchapter, may be prepared thereafter in accordance with an acceptable outline as provided in paragraph (a) of this section and may then be used for the purposes specified in paragraph (a) of this section. The virus produced in the course of passage through pigs inoculated with the virus except that needed for further passage to meet the requirements of an outline under paragraph (a) of this section may be used as hyperimmunizing virus, if the pigs so inoculated reacted as prescribed in § 118.3.

(c) Virus for inoculating purposes under paragraph (a) of this section must be held in containers acceptable to the Director. When glass containers are used, they shall be of borosilicate type of high resistance and low alkalinity, shall meet the tests developed by the Division for determining these qualities, shall be properly marked for identification, and shall be guaranteed by the manufacturer to be acceptable to the Division.

(d) Hog-cholera virus at a licensed establishment shall not be released except for use on the premises of a licensed establishment or and approved feed lot, or for export, or for experimental purposes. The Director shall issue the permit for the release of such virus for experimental purposes.

§ 118.3 Bleeding.

Pigs from which blood is to be collected for the production of hog-cholera virus at a licensed establishment shall be bled only after they have manifested well-marked and increasingly grave symptoms of hog-cholera only, attended with progressively abnormal temperatures common to the acute type of this disease.

§ 118.4 Post mortem examinations.

All pigs from which virus is derived at licensed establishments shall be subjected to post mortem inspection.

§ 118.5 Recording of symptoms.

A properly applied and recorded "slow" mark on a day preceding a Sunday or holiday may be regarded as equivalent to visible sickness provided the temperature of each slow pig is taken and recorded and provided the temperature is markedly abnormal. In other circumstances the slow mark should not be regarded as equivalent to visible sickness, but should be regarded as a mark applicable to that transitional stage between normal behavior and distinct visible sickness.

§ 118.6 Autopsies.

Autopsies shall be conducted at licensed establishments on a sufficient number of virus pigs that succumb to obtain all possible information as to the cause of death.

§ 118.7 Early visible sickness; disposition.

Pigs that become visibly sick within 3 days after they have been examined for admission to the premises of a licensed establishment as prescribed by § 117.7 of this subchapter, or within 4 days when the third day falls on a Sunday or holiday, must be rejected and either shall be destroyed or handled as prescribed by § 117.10 of this subchapter.

§ 118.8 Defibrination and chilling.

All virus shall be defibrinated promptly after collection at a licensed establishment and immediately thereafter chilled and maintained at a temperature of not to exceed 45° F.

§ 118.9 Disposition of virus when condition unsatisfactory.

(a) Virus derived from pigs which on post mortem examination do not show lesions sufficient to make a positive diagnosis of hog cholera, when considered with the ante mortem behavior of the animal, or from pigs which are found to be affected with any other infectious, contagious, or communicable disease or in such condition as to render the virus contaminated, shall be destroyed as provided in § 108.16 of this subchapter.

(b) Virus derived from pigs which are found to be affected with tuberculosis shall not be marketed but shall be destroyed, as provided in § 108.16 of this subchapter, unless the lesions are slight or localized and are calcified or encapsulated.

(c) Samples of blood from pigs which on post mortem examination show evidence of concurrent affection with other disease, except highly communicable diseases referred to in § 117.5 of this subchapter, together with well-defined lesions of hog cholera, may be utilized by the licensee for bacteriological examination. Blood free from highly communicable diseases as aforesaid which is deemed satisfactory by the licensee after bacteriological examination may be used for hyperimmunizating purposes.

§ 118.10 Removal of hog-cholera virus.

Hog-cholera virus shall not be removed from the premises of a licensed establishment unless the virus has been prepared and handled in accordance with the provisions of Parts 101 to 122 of this subchapter.

HYPERIMMUNIZING VIRUS

§ 118.25 Inoculations for hyperimmunizing virus.

For use in the production of hyperimmunizing virus, licensees shall inoculate healthy young pigs weighing not more than 160 pounds each with at least 2 cc. of highly virulent hog-cholera virus: *Provided*, That when hog cholera from pen infection is manifested by the animals after the fourth day subsequent to admission to the premises of the licensed establishment, they need not be so inoculated.

§ 118.26 Requirements for hyperimmunizing virus.

Hyperimmunizing virus shall be collected at licensed establishments only from pigs which are observed to be visibly sick with hog cholera and which manifest well-marked and increasingly grave symptoms thereof attended with progressively abnormal temperatures common to the acute type of this disease.

SIMULTANEOUS VIRUS

§ 118.30 Inoculations for simultaneous virus.

(a) For use in the production of simultaneous virus, licensees shall inoculate young healthy pigs of good quality with at least 2 cc. each of highly virulent virus. Such pigs when inoculated shall weigh not less than 40 pounds nor more than 125 pounds.

(b) Pigs which are eligible only for the production of hyperimmunizing virus shall be inoculated and held in separate pens from those to be used for simultaneous virus. Such separation shall be made on or before the third day after inoculation and such pigs held thereafter in separate pens.

§ 118.31 Sickness and records thereof.

Simultaneous virus shall not be collected at licensed establishments from pigs which become visibly sick on or before the third day, or subsequent to the seventh day after the time of inoculation. The physical condition of all pigs from which simultaneous virus is to be collected shall be recorded daily on and after the third day subsequent to inoculation. The observations required by the regulations in this part to be made on the third day may be made on the fourth day if the third day falls on Sunday or a holiday.

§ 118.32 Requirements for simultaneous virus, etc.

(a) Simultaneous virus and other hog-cholera virus intended for the inoculation of pigs for any purpose shall be collected at licensed establishments only from pigs which are visibly sick with hog cholera within 7 days after the time of inoculation and which manifest well-marked and increasingly grave symptoms of hog cholera attended with progressively abnormal temperatures common to the acute type of this disease.

(b) Simultaneous virus shall be prepared in licensed establishments in batches of not to exceed 50,000 cc. The defibrinated blood in each batch shall not exceed 45,000 cc. and shall be mixed thoroughly in a single container before phenolization. All simultaneous virus shall be constantly agitated during the bottling operation.

§ 118.33 Samples of simultaneous virus.

The following representative samples of simultaneous virus shall be taken at licensed establishments and properly identified by an employee of the licensee: (a) At time of mixing but before phenolization, (1) "purity test sample" of not less than 30 cc. in a single container, (2) "test sample A" of not less than 5 cc. in a single container; (b) After mixing and phenolization, (1) "phenol test sample" of not less than 30 cc. in one container, (2) one reserve sample of 30 cc. to be forwarded to the Division in event the pigeon or mouse test is unsatisfactory, (3) "test sample B" of not less than 5 cc. in a single container; (c) At time of bottling, a "stock sample" of at least 30 cc. in one container. All "A" and "B" test samples shall be held at approximately 75° F. until used.

§ 118.34 Phenolization.

Simultaneous virus blood which has been thoroughly mixed after withdrawal of the purity test sample and test sample A shall have added to it a sufficient quantity of a 5-percent solution of phenol so that the virus will contain one-half of 1-percent phenol by volume. This phenolization must be accomplished with accuracy and in a manner which will prevent undesirable changes in the product.

§ 118.35 Denaturing of carcasses.

Virus pig carcasses before removal shall be slashed in such a manner that muscles of all primal cuts are exposed. Crude carbolic acid or kerosene shall be applied into the cut muscles so exposed.

§ 118.36 Disposition of samples of simultaneous virus.

At least one container of the stock sample of simultaneous virus shall be held at the licensed establishment unopened for at least 3 months after the latest expiration date shown upon the labels affixed to the immediate or true containers of the product corresponding to the sample.

§ 118.37 Test animals.

Two healthy calves, with mouths free from abrasions, as described in § 117.3 of this subchapter, or three healthy pigs immunized by the simultaneous treatment against hog cholera for at least 14 days, shall be furnished for intravenous injection with the purity test sample. These animals shall be examined immediately before the test is begun. All animals used for the testing of simultaneous virus shall be marked as provided in Parts 101 to 122 of this subchapter. All test animals shall be examined daily during the test period to determine whether any symptoms or lesions of a vesicular or other disease develop.

§ 118.38 Purity test of simultaneous virus.

Each of the animals selected for testing the purity of simultaneous virus at licensed establishments shall be injected with 15 cc. of the purity-test sample into either the auricular or the jugular vein within 1 day after the first virus in the batch is collected.

§ 118.39 Holding test animals.

Animals inoculated for the purpose of determining the purity of simultaneous virus at licensed establishments as provided in § 118.38 shall be held at least 7 days. Should foot-and-mouth disease appear in the United States the said animals shall be held for at least 10 days.

§ 118.40 Test and retest.

If none of the animals which are treated with hog-cholera virus as prescribed in § 118.38 manifests symptoms of any infectious, contagious, or communicable disease, or if only one animal develops hog cholera, the test will be declared "satisfactory for purity," and the product released for marketing: *Provided*, It is otherwise satisfactory under the provisions of the regulations. Should any of the animals in the test succumb or should more than one develop hog cholera, another test may be made as in the first instance, except that not less than 15 cc. of the phenolized virus shall be used for the inoculation of each animal.

§ 118.41 Swine erysipelas.

Representative samples of each batch or serial of simultaneous virus shall be tested at licensed establishments in the following manner to determine its freedom from swine erysipelas (Erysipelothrix rhusiopathiae):

(a) Within 1 day after the first virus in a batch is collected, at least 1 cc. of test sample A shall be injected intramuscularly into each of three or more young pigeons or 0.2 cc. of such sample shall be injected subcutaneously into each of three or more suitable mice susceptible to swine erysipelas. These test animals and birds shall be held for 10 or more days after being injected with the virus under test.

(b) Three or more days after phenolization of the batch of virus, at least 1 cc. of test sample B shall be injected intra-muscularly into each of three or more young pigeons or 0.2 cc. of such sample shall be injected subcutaneously into each of three or more suitable mice susceptible to swine erysipelas. These test animals and birds shall be held for 7 or more days after being injected with the virus under test.

(c) If all test animals or birds injected with test sample A survive for 10 days or more, and all test animals or birds injected with test sample B survive for 7 days or more, after injection, the batch or serial represented by the samples may be marketed if it otherwise conforms to the requirements of Parts 101 to 122 of this subchapter.

(d) Should any of the inoculated animals or birds die during the test, the product shall not be released for marketing and the reserve 30-cc. sample shall be forwarded to the Division.

(e) All animals or birds, after being once used in the tests provided in this section, shall be killed and their carcasses destroyed by incineration or tanking as provided in § 108.16 of this subchapter. Also all virus blood and simultaneous virus which are contaminated with erysipelothrix rhusiopathiae shall be destroyed in like manner.

§ 118.42 Release of virus.

No simultaneous virus shall be released for marketing unless and until all information required by the regulations has been affixed to the containers thereof. All simultaneous virus on which the expiration date has expired shall be destroyed as prescribed in § 108.16 of this subchapter.

§ 118.43 Expiration date.

The expiration date placed on the label of each immediate or true container of simultaneous virus produced at licensed establishments shall be one of the following:

(a) A date within 90 days after the first blood in the batch was collected: *Provided*, That the simultaneous virus is stored and marketed in containers acceptable to the Division;

(b) A date within 120 days after the first blood in the batch was collected when the product is marketed in containers described in § 118.2 and is to be exported to a foreign country and the containers thereof are labeled distinctively.

§ 118.44 Minimum dosage and use.

Labels affixed to or used in connection with each immediate or true container of simultaneous virus produced at licensed establishments shall bear a dosage table in which the doses recommended are not less than those appearing in the following table:

Weight:	*Minimum dose* (cc.)
Pigs weighing 45 pounds or less	1
Pigs weighing more than 45 pounds	2

Each label shall bear instructions to use the virus only with anti-hog-cholera serum.

§ 118.45 Applicability of regulations.

The regulations in this part shall apply to hog-cholera virus, inoculating virus and hyperimmunizing virus, except as otherwise permitted by the Director, in licensees' outlines submitted as provided in § 114.2 of this subchapter.

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11. Amend Part 119 to read as follows:

PART 119—ANTI-HOG-CHOLERA SERUM

GENERAL REQUIREMENTS

Sec.
119.1 Applicability of regulations.

HYPERIMMUNE HOGS

119.2 Required period of immunity.
119.3 Health, weight, when hyperimmunized.
119.4 Dosage of virus.
119.5 Temperatures before bleeding.
119.6 Inspection before bleeding.
119.7 Bleeding and examination.
119.8 Constitutional symptoms.
119.9 Post mortem examination.

ANTI-HOG-CHOLERA SERUM PREPARATION PROCEDURE

119.20 Heating; time and conditions.
119.21 Heating containers.
119.22 Heating and cooling; instructions.
119.23 Instructions for preparation of anti-hog-cholera serum.
119.24 Batches; determination of quantity.
119.25 Preservatives.
119.26 Mixing and holding.
119.27 Samples.
119.28 Disposition of samples.

TESTING ANTI-HOG-CHOLERA SERUM

119.50 Tests required.
119.51 Test pigs.
119.52 Dosage in tests.
119.53 Handling test pigs.
119.54 Observation and holding period; test pigs.
119.55 Temperatures; test pigs.
119.56 Virus required.
119.57 Principle for judging results of tests.
119.58 Rules for judging results of tests.
119.59 Retests when serum found "unsatisfactory for potency".
119.60 Tests for purity.
119.61 Retests for purity.
119.62 Purity test animals; holding period.
119.63 Minimum dosage.
119.64 Marking anti-hog-cholera serum "U.S. Released".
119.65 Expiration date.
119.66 Extension of expiration date.

Sec.
119.67 Requirements for filling and labeling.
119.68 Conditions for release and removal.

AUTHORITY: The provisions of this Part 119 issued under 37 Stat. 832–833; 21 U.S.C. 151–158.

GENERAL REQUIREMENTS

§ 119.1 Applicability of regulations.

The regulations in this part shall apply to anti-hog-cholera serum and hog-cholera antibody-concentrate, except as otherwise permitted by the Director, in licensees' outlines submitted as provided in § 114.2 of this subchapter.

HYPERIMMUNE HOGS

§ 119.2 Required period of immunity.

Anti-hog-cholera serum shall be derived at licensed establishments only from hyperimmune hogs which have been immune to hog cholera for at least 60 days prior to hyperimmunization.

§ 119.3 Health and weight when hyperimmunized.

Hogs which are used to produce anti-hog-cholera serum at licensed establishments shall be healthy at the time of hyperimmunization. The weight of each animal in a given group shall be determined and recorded accurately by the licensee before hyperimmunization of the group.

§ 119.4 Dosage of virus.

All hogs which are used to produce anti-hog-cholera serum at licensed establishments shall receive, for hyperimmunization, a single intravenous injection of at least 5 cc. of hog-cholera virus for each pound of the animal's weight when injected.

§ 119.5 Temperatures before bleeding.

The temperatures of the hogs in each group or lot used to produce anti-hog-cholera serum at licensed establishments shall be determined under normal handling conditions and recorded accurately by the licensee either on the afternoon before, or on the day of, bleeding. There shall be provided clean, light quarters equipped with a satisfactory chute and all other facilities for expediting temperature taking and veterinary inspection.

§ 119.6 Inspection before bleeding.

All hogs which are used to produce anti-hog-cholera serum at licensed establishments shall be examined before each bleeding. Groups containing any hogs that are lame or otherwise suspected of being affected with a vesicular disease shall be given special examination for vesicles and the like after thorough cleansing of their feet, including examination of the coronary bands, snouts, and lips. Only those hogs which are found to have a temperature of less than 104° F. and are free from any infectious, contagious, or communicable diseases or other abnormal conditions shall be bled for serum. No hyperimmune hog in a lot or group of like origin having a significant number of high temperatures or showing other abnormalities indicative of an infectious or communicable disease shall be subjected to bleeding until such conditions of the lot or group as a whole no longer exist.

§ 119.7 Bleeding and examination.

(a) Anti-hog-cholera serum shall be derived at licensed establishments only from hyperimmune hogs which have been subjected to not more than four successive bleedings, except that additional bleedings may be authorized by the Director in emergencies. The first bleeding shall take place not earlier than the eleventh day after hyperimmunization; subsequent bleedings shall not take place more frequently than once in 7 days; and the last bleeding shall be made on a date not later than 40 days after hyperimmunization: *Provided*, That, in emergencies, final bleeding may be deferred when specifically authorized by the Director.

(b) Autopsies shall be performed at licensed establishments on hyperimmune hogs that succumb in order to obtain, if possible, information as to the cause of death.

(c) Anti-hog-cholera serum derived at licensed establishments from final bleedings shall be kept separate from other serum until it has been determined by post mortem examination that the hog from which the serum is derived was not so affected with any infectious, contagious, or communicable disease or in such condition as to render the serum worthless, contaminated, dangerous, or harmful.

§ 119.8 Constitutional symptoms.

Anti-hog-cholera serum derived at licensed establishments from hogs which, after hyperimmunization, manifest symptoms indicative of an affection of a constitutional character other than those usually observed immediately following hyperimmunization shall not be mixed with other serum, unless after due consideration of the prevailing conditions, this action is permitted by the inspector in charge. Such serum, if collected only from hogs as prescribed in § 119.7, may be prepared separately and tested as prescribed in Parts 101 to 122 of this subchapter and if, as a result of these tests, the product is found satisfactory, it may be marketed. Otherwise, the serum shall be destroyed as provided in § 108.16 of this subchapter.

§ 119.9 Post mortem examination.

(a) All hogs from which anti-hog-cholera serum is derived at licensed establishments shall be subjected, after final bleeding, to a thorough post mortem examination. If, as a result of such examination it is found that any hog is so affected with any infectious, contagious, or communicable disease or is in such condition as to render the serum worthless, contaminated, dangerous, or harmful, the serum collected from such hog shall be destroyed by the licensee, as provided in § 108.16 of this chapter.

(b) If serum-producing hogs at a licensed establishment become exhausted as a result of tail bleeding, dressing of the animals may be permitted provided the animals bleed properly upon throat bleeding. The carcasses of such hogs may be dressed for food if disposition thereof is made in accordance with the meat inspection regulations (Subchapter A of this chapter). The blood of such animals may be used for serum if the tail and throat bleeding operations are such that no more time elapses between tail bleeding and throat bleeding than is necessary for removing the animals from the tail-bleeding station and restraining them at a regular throat-bleeding station.

ANTI-HOG-CHOLERA SERUM PREPARATION PROCEDURE

§ 119.20 Heating; time and conditions.

All anti-hog-cholera serum produced at licensed establishments shall be heated in such a manner as to subject the product and the entire container thereof to a temperature of 58.5° C. for 30 minutes with a tolerance of 0.5° above and below that temperature, by methods prescribed by the Director.

§ 119.21 Heating containers.

Metal containers of a capacity not to exceed 50 liters shall be used in heating anti-hog-cholera serum at licensed establishments. Such containers shall be equipped with satisfactory agitators, and facilities for cooling and preserving the product shall also be provided. All serum shall be handled prior to heating so that practically all "foam" is eliminated before beginning the heating process and shall be properly agitated while being heated, cooled, and preserved. Each container of serum at time of heating shall be so submerged that the water line in the bath will be at least 2 inches above the upper surface of the lid. No container or other equipment intended for heating, cooling, preserving, and storing serum shall be used unless it is acceptable to the inspector in charge.

§ 119.22 Heating and cooling; instructions.

The temperature of the bath in which serum is heated at licensed establishments shall not be permitted to exceed 62° C. The temperature of the serum shall be reduced as rapidly as possible to 15° C. or lower after heating. The temperatures of the serum and the water in the bath shall be accurately determined and recorded by the use of automatic recording thermometers. A separate recording thermometer shall be used for each container of serum during the heating and cooling operations. Bulbs and other parts of thermometers which are placed within the serum container shall be submerged in a 5-percent phenol solution, or substitute permitted by the Director, at all times when not in use for taking temperatures.

§ 119.23 Instructions for preparation of anti-hog-cholera serum.

(a) *Definitions*. When used in this section, the following terms shall be construed to have the meanings hereby assigned.

(1) *Group number*. The number used to identify a group of hyperimmune hogs not in excess of 175, the blood of which is clarified and identified as one lot or as a fraction of a lot.

(2) *Class of bleeding*. The bleedings of hyperimmune hogs. First, second, third, and throat or carotid bleedings

shall be identified by the letters A, B, C, and D, respectively.

(3) *Working unit*. The net quantity of hyperimmune blood in each container used as a basis of clarification.

(4) *Preserved serum*. True serum and permitted clarifying solutions recovered in the centrifugation of hyperimmune blood, preserved in compliance with the regulations.

(5) *Completed serum*. A combination of the different classes of preserved serum mixed in batches in such proportions as will equalize the potency of said classes.

(6) *Finished serum*. Completed serum which is bottled, tested, and fully labeled for marketing.

(7) *Number*. The number of hyperimmunes in any group, subjected to bleeding, to supply blood of a given class.

(8) *Weight*. The total weight, at the time of hyperimmunization, of all the hogs in the group that are bled in each class.

(9) *Lot number*. The identification number of the preserved serum produced from blood collected from one or more groups consisting of a total of not more than 175 hyperimmune hogs.

(10) *Batch*. Preserved serum mixed in a single container as required by the regulations.

(11) *Division rate*. The proportion which the total quantity of preserved serum of each class of bleedings bears to the total quantity in a lot.

(12) *Remainder*. The unused preserved serum of all classes remaining after one or more batches have been prepared from a lot.

(b) *General provisions*. (1) The composition of each lot of anti-hog-cholera serum shall be recorded by the licensee on a form acceptable to the Director.

(2) The average yield of blood per pound for each class of bleedings shall be entered in the hyperimmune record in connection with the weight for the class.

(3) The quantity of blood treated with clarifying solutions in a single container shall not exceed 25,000 cc. All clarifying solutions shall be added to the working unit.

(4) All of the preserved anti-hog-cholera serum produced from the blood collected from a given group of hogs shall be placed in the same lot.

(5) The completed anti-hog-cholera serum shall consist of not less than 88 percent of true serum and not more than 12 percent of such solutions as are required for clarification of the blood and preservation of the serum, and shall represent not more than 83 percent of the defibrinated hyperimmune blood or not more than 80.51 percent of the whole hyperimmune blood used in its preparation.

(c) *Rules and factors for computing yields of anti-hog-cholera serum*. The following rules and factors shall be used by licensed establishments in computing yields of anti-hog-cholera serum. When defibrinated hyperimmune blood is used, the total quantities in the lot shall constitute the basis for making the following computations.

No. 19——3

(1) To find the quantity of true serum in the lot, subtract the sum of the quantities of clarifying solutions and preserving solution from the total quantity of preserved serum.

(2) To find the percentage of true serum recovered from the defibrinated blood, divide the total quantity of true serum by the total quantity of defibrinated blood used.

(3) To find the maximum production permissible when the true serum recovered represents 73.04 percent or less of the defibrinated blood used, divide the total quantity of true serum by 0.88.

(4) To find the maximum production permissible when the true serum recovered represents more than 73.04 percent of the defibrinated blood, multiply the total quantity of defibrinated blood used by 0.83. In determining the concentration of phenol solution to be selected in preserving "Serum recovered (gross)" prepared from defibrinated blood, the following table shall be used:

Serum recovered (gross) compared with defibrinated blood	True serum recovered compared with defibrinated blood	Preserving solutions (phenol) required
Percent	*Percent*	*Percent*
77.4066	73.4066	7.5
78.85	74.85	10
82.0459	73.0459	50

The figures in such table show the maximum yields that may be preserved with the different solutions without exceeding 83 percent of the defibrinated blood used, provided the clarifying solutions are exactly 4 percent of this blood. The figures for "Serum recovered (gross)" will vary as the clarifying solutions are permitted to vary from 4 percent.

(5) To find the division rates for the different classes of bleedings, divide the preserved serum in each class by the total quantity of preserved serum in the lot. Each rate shall be expressed as a decimal fraction and contain either three or six figures. A division rate of three figures may only be used, provided the last three of six figures are regarded as 1 and added to the third figure when they represent 501, or more and disregarded when they represent 500, or less. For example, 0.195501 shall be recorded and used as 0.196 and 0.184500 shall be recorded and used as 0.184.

(6) To find the percentage of true serum in the completed serum of a lot, divide the total net quantity of true serum used by the total quantity of preserved serum mixed.

(7) To find the percentage of completed serum as compared with the total quantity of defibrinated blood, divide the total quantity of completed serum by the total quantity of defibrinated blood used.

(8) To find the total weight of hyperimmune hogs used or bled, find the combined weights taken at the time of hyperimmunization for the hogs actually bled for each class of bleedings.

(9) To find the yield of defibrinated blood per pound of hyperimmune hogs, divide the total quantity of defibrinated blood collected from each class of bleedings of hyperimmune hogs by the total weight of the animals bled. The sum of these results for all bleedings combined will represent the yield of defibrinated blood per pound.

(10) To find the yield of completed serum per pound of hyperimmune hogs, divide the total quantity of completed serum by the total pounds of hyperimmune hogs used.

(d) *Preparing batches*. The following instructions shall be observed by licensed establishments in preparing batches of anti-hog-cholera serum:

(1) When not more than one batch of completed serum is to be prepared from the lot: Determine the net quantity of preserved serum mixed and the loss in handling.

(2) When two or more batches not to exceed 300,000 cc. each of completed serum equal or approximately equal in size are to be prepared from the lot: Divide the quantity of preserved serum of each class of bleedings in the lot by the number of batches that are to be prepared. The quotient will show the quantity of preserved serum of each class required for each batch. Proceed in the preparation of each batch as outlined in this section.

(3) When one or more batches of completed serum and a remainder are to be prepared from the lot: Determine the quantity of preserved serum of each class of bleedings required to make a batch of approximately 300,000 cc. of completed serum, and multiply the total quantity of preserved serum required by the division rate for each class. The results will show the quantity of preserved serum of each class required. Proceed with the preparation of the batch as outlined in this section. Proceed with the preparation of as many additional batches approximating 300,000 cc. each as may be possible from the lot as outlined in this section. The unused portions of a lot when they aggregate less than 300,000 cc. may be mixed together and tested and marketed as a batch, or shall be identified as "Remainder of Lot No. ____" and be made a part of the next batch mixed.

(4) When more than one batch of completed serum is to be prepared from the lot and a remainder is to be used: Determine the quantity of preserved serum of each class required to make a fraction of a batch of completed serum which, when added to the remainder, will approximate 300,000 cc. by subtracting from 300,000 cc. the quantity of preserved serum derived from the remainder. The difference will show the theoretical quantity of preserved serum that may be added to the remainder to make a batch of approximately 300,000 cc. of completed serum. Proceed with the preparation of the fraction of the batch as outlined in this section. Add the remainder to the completed fraction of the batch to find the quantity of completed serum in the batch. Proceed with the preparation of as many additional batches approximating 300,000 cc. each as may be possible from the lot as outlined in this section.

(5) When only one batch of completed serum is to be prepared from the lot and a remainder is to be used: Prepare the fractional part of the batch as outlined

in this section. Add the remainder to the fraction to find the quantity of completed serum in the batch.

(6) Batches larger than 300,000 cc.: Such batches shall be prepared by mixing in a single container all preserved serum derived from one or more properly identified whole groups totaling not more than 175 hogs.

§ 119.24 Batches; determination of quantity.

Anti-hog-cholera serum which is to constitute a batch or portion thereof may be strained into a single container, after which the quantity should be accurately determined.

§ 119.25 Preservatives.

(a) Anti-hog-cholera serum produced at licensed establishments shall have added thereto a sufficient quantity of a 7½ percent solution of phenol to make the completed serum consist one-half of 1 percent of phenol by volume: *Provided*, That either a 10 percent phenol solution or a solution containing equal parts by weight of phenol and ether may be used when yields or methods require this as a means to keep the total quantity of serum produced from a given quantity of blood within requirements of the regulations. When a 10 percent phenol solution is used, at least 10 percent of its volume shall be glycerin.

(b) To preserve serum properly, the following procedure shall be observed:

(1) When a 7.5 percent solution is used, divide the quantity of serum by 14.

(2) When a 10 percent solution is used, divide the quantity of serum by 19.

(3) When the phenol-ether solution, mentioned above, is used, divide the quantity of serum by 86.

(c) Phenolization of anti-hog-cholera serum must be accomplished with accuracy, and in a manner which will prevent occurrence of undersirable changes in the product.

(d) Merthiolate may also be added to anti-hog-cholera serum in a solution in such proportions that the merthiolate will equal a 1–10,000 concentration of the serum recovered gross. Such addition must be compensated for by using a higher concentration of phenol solution as prescribed in this section. The quantity of product obtained by the addition of phenol solution plus the merthiolate shall not exceed the maximum amount permissible by the use of seven and one-half percent phenol solution alone or 83 percent of the defibrinated blood, whichever is less.

(e) In every case the concentration and quantity of each solution used in preserving the serum shall be recorded by the licensee.

§ 119.26 Mixing and holding.

Anti-hog-cholera serum, prior to testing, at licensed establishments shall be thoroughly mixed in a single container into batches of not more than 300,000 cc. composed of proper proportions of the different classes of bleedings as provided in the regulations: *Provided, however*, That larger batches may be prepared by mixing in a single container all serum derived from one or more properly identified whole groups of hypermimune hogs totaling not more than 175 hogs.

§ 119.27 Samples.

After a batch of anti-hog-cholera serum is thoroughly mixed in a single container at a licensed establishment, a representative sample consisting of at least 300 cc. shall be collected in three containers of not less than 100 cc. each, to be known as the "serum test sample." This sample shall be taken, properly labeled, marked by an employee of the licensee and held under refrigeration. One of the three containers shall be held by the licensee for at least 6 months after the latest expiration date shown on the labels affixed to the immediate or true containers of the serum of which this sample is a part.

§ 119.28 Disposition of samples.

Unused samples of anti-hog-cholera serum prepared at licensed establishments on which the expiration date has passed 6 months previously may be labeled and marked in the regular manner provided this procedure is approved by the inspector in charge and the serum is at that time tested and found satisfactory for potency and purity, and such labeling and marking is done within 3 years after the oldest serum in the batch is collected. When these conditions are not met, and it is desired to market the serum, the samples shall be mixed and assigned a serial number. This mixture may be tested alone or it may be mixed with other untested serum and tested as prescribed in the regulations: *Provided*, That the samples shall not constitute more than 50 percent of the serum contained in the final mixture. The expiration date to be affixed to the containers of mixtures of unused samples shall not exceed 1 year from the date of conclusion of a satisfactory test for potency.

TESTING ANTI-HOG-CHOLERA SERUM

§ 119.50 Tests required.

All anti-hog-cholera serum produced at licensed establishments shall be tested for purity and potency as prescribed by Parts 101 to 122 of this subchapter. Special tests may be authorized by the Director under § 114.2 of this subchapter.

§ 119.51 Test pigs.

Licensees shall furnish all pigs used in testing anti-hog-cholera serum. Eight healthy pigs, susceptible to hog cholera and weighing not less than 40 pounds nor more than 115 pounds each, shall be used for testing each batch of serum consisting of 300,000 cc. or less. Batches consisting of more than 300,000 cc. shall be tested on 11 such pigs instead of 8. Pigs which receive virus only should be representative of the other pigs which receive virus and anti-hog-cholera serum.

§ 119.52 Dosage in tests.

Each pig for testing anti-hog-cholera serum shall be injected with 2 cc. of hog-cholera virus. Three pigs in each test shall receive no serum and shall serve as controls. The remaining pigs in the test shall receive 15 cc. each of the serum to be tested, except that pigs weighing more than 90 pounds may receive 20 cc. The virus and serum injections shall be made simultaneously, the virus being injected in the left axillary space, and the serum in the right. Each of the pigs in the test shall be injected with virus of the same serial number.

§ 119.53 Handling test pigs.

All surviving pigs used for testing a batch of serum at a licensed establishment shall be subjected to the same conditions throughout the test period and shall be held in a single pen or inclosure throughout this period, except that when it is evident that a particular serum test will be declared "no test" or "unsatisfactory for potency," the test pigs may be removed from the original test pen and placed with other pigs of the same class in a common pen for the purpose of releasing pen space for other tests.

§ 119.54 Observation and holding period; test pigs.

The period for holding surviving pigs at licensed establishments, while being used for testing the potency and purity of anti-hog-cholera serum as described in the regulations, shall be not less than 14 days immediately following their inoculation for this purpose and as much longer as the inspector in charge deems necessary to render proper judgment on the results of the tests. Such pigs shall not be removed from the test unless and until they have served their purpose in the prescribed tests.

§ 119.55 Temperatures; test pigs.

The temperature of each pig used in a test of anti-hog-cholera serum at licensed establishments shall be taken and recorded shortly before such test is started. Temperatures of control pigs and "slow" or sick serum-treated pigs in serum tests, except known "unsatisfactory tests" and "no tests," shall be taken and recorded daily throughout the test period on regular work days and such other days as the inspector in charge may direct when it appears desirable for proper disposition of the test. When pigs in tests do not manifest "slowness" or symptoms of sickness, their temperatures need not be taken except when required by the inspector in charge to determine more accurately the physical condition of the animals under observation.

§ 119.56 Virus required.

Simultaneous virus or its equivalent, as described in § 118.3 of this subchapter shall be used for inoculating pigs in serum tests. Hog-cholera virus furnished by the Division shall be used in inoculating pigs in tests whenever the inspector in charge deems this procedure advisable, and whenever conditions in previous tests of any batch of serum have indicated some deficiency in either the virus or serum used.

§ 119.57 Principle for judging results of tests.

(a) The following principle and the rules in § 119.58 are to be used as guides in judging the results of serum tests at licensed establishments:

(i) It is practically impossible in many cases to differentiate accurately between hog cholera, pneumonia, and other conditions affecting hogs without the aid of an autopsy as well as laboratory techniques and experiments to determine the causative agent responsible for the condition. Therefore, when healthy pigs are selected for testing anti-hog-cholera serum any abnormal condition in the pigs subsequent to their inoculation shall be regarded as due either to the virus used or, in serum-treated pigs, to the fact that the serum does not protect, unless the condition is definitely known or can be shown to be due to some other cause.

§ 119.58 Rules for judging results of test.

The following rules shall apply at licensed establishments in judging anti-hog-cholera serum tests described in the regulations.

(a) *Control pigs.* The purpose of control pigs in serum tests is to furnish information as to the virulence of the virus used for inoculating the animals and to indicate whether the pigs furnished are susceptible to hog cholera. As an aid in determining the fulfillment of this purpose the following conditions shall obtain:

(1) At least two of the control pigs shall become visibly sick of hog cholera subsequent to the third day of the test period or the fourth day, if the third day falls on a Sunday or holiday, and within 7 days after the test is begun.

(2) At least two of the control pigs which become sick as described in subparagraph (1) of this paragraph shall manifest well-marked and increasingly grave symptoms of hog cholera attended with progressively abnormal temperatures common to the acute type of this disease.

(3) At least two of the control pigs which become sick as described in subparagraphs (1) and (2) of this paragraph shall show lesions upon post mortem examination sufficient to make a positive diagnosis of hog cholera, when considered with the ante mortem behavior of these animals.

(b) *Test; conditions under which serum to be declared "satisfactory for potency."* Serum will be declared "satisfactory for potency" when at least two of the control pigs react as described in paragraph (a) of this section and either of the following conditions obtains:

(1) All the serum-treated pigs remain well throughout the test period.

(2) One or more of the serum-treated pigs become visibly sick after the time of inoculation and all fully recover before the test animals are released. Such sick pigs, however, will not be regarded as fully recovered until they have been in an apparently normal condition for at least 3 consecutive days.

(c) *Test; conditions under which serum to be declared "unsatisfactory for potency."* Serum will be declared "unsatisfactory for potency" when at least two of the control pigs react as described in paragraph (a) of this section and the following condition obtains:

(1) One or more of the serum-treated pigs become visibly sick subsequent to the third day after the time of inoculation, or the fourth day, if the third day falls on a Sunday or holiday, and fail to recover fully before the test animals are released.

(d) *Test; conditions under which serum to be declared "no test for potency."* Serum will be declared "no test for potency" when any one of the following conditions obtains, but such action will not prevent a retest under the provisions of the regulations:

(1) One or more of the serum-treated pigs become visibly sick on or before the third day after the time of inoculation, or the fourth day, if the third day falls on a Sunday or holiday, and fail to recover within the test period.

(2) Two or more of the control pigs become visibly sick on or before the third day after the time of inoculation, or the fourth day, if the third day falls on a Sunday or holiday.

(3) Two or more of the control pigs do not manifest symptoms of hog cholera as described in paragraph (a) of this section.

(4) Two or more of the control pigs do not show lesions of hog cholera upon post mortem examination as described in paragraph (a) of this section.

(5) Two or more of the control pigs manifest symptoms of hog cholera within 7 days as described in paragraph (a) of this section but do not become sick to the degree described in said paragraph.

(6) Any of the serum-treated pigs develop, during the test period, symptoms of any infectious, contagious, or communicable disease (other than hog cholera) which is not caused by the serum used.

(7) A condition obtains in any of the test pigs which is not otherwise covered in this section.

(e) *Test; when serum to be declared "satisfactory for purity."* Serum will be declared "satisfactory for purity" when the following condition obtains:

(1) Not more than one of the serum-treated pigs in a test develops an abscess at the site of the serum injection and no symptoms of any infectious, contagious, or communicable disease other than hog cholera are manifested by any of the animals in the test.

(f) *Test; conditions under which serum to be declared "unsatisfactory for purity."* Serum will be declared "unsatisfactory for purity" when either of the following conditions obtains:

(1) Abscesses which are not definitely known to be due to causes other than the serum used develop at the sites of the serum injections in more than one of the serum-treated pigs.

(2) During the test period any of the serum-treated test pigs develop symptoms of any infectious, contagious, or communicable disease (other than hog cholera) which is due to the serum used.

(g) *Test; conditions under which serum to be declared "no test for purity."* Serum will be declared "no test for purity" when any one of the following conditions obtains, but such action will not prevent a retest under the provisions of the regulations.

(1) Two or more of the serum-treated pigs succumb within 14 days after the time of inoculation.

(2) Any of the serum-treated pigs develop, during the test period, symptoms of any infectious, contagious, or communicable disease (other than hog cholera) which is not caused by the serum used.

(3) A condition obtains in any of the test pigs which is not otherwise covered in this section.

§ 119.59 Retests when serum found "unsatisfactory for potency."

When a test of anti-hog-cholera serum, prepared at a licensed establishment, has shown it to be "unsatisfactory for potency," the serum may be tested again as prescribed in § 119.51. Should this retest show the serum to be "unsatisfactory for potency" it may be so retested again, and if still found "unsatisfactory for potency" the serum shall be destroyed or otherwise disposed of as prescribed by the Director.

§ 119.60 Tests for purity.

Should abscesses develop at the sites of the serum inoculations in any of the pigs used at licensed establishments for testing serum as provided in this part, the following rules shall apply:

(a) Judgment of the results of tests made on pigs to determine the potency of anti-hog-cholera serum will be rendered irrespective of conditions found which are regarded as an index to the purity of the product.

(b) If anti-hog cholera serum upon testing is declared "satisfactory for purity," and it is found necessary to subject the batch of serum to a retest to determine its potency, judgment concerning the purity of the product shall be based on the first test unless evidence is found subsequent to such test which indicates that the serum is contaminated.

§ 119.61 Retests for purity.

(a) When anti-hog-cholera serum prepared at a licensed establishment has once been found "unsatisfactory for purity," as defined in § 119.58, it may be tested again for purity on eight pigs, provided each pig receives a single injection, in the axillary space, of at least 20 cc. of the product.

(b) When anti-hog-cholera serum produced at a licensed establishment has twice been found "unsatisfactory for purity," as defined in § 119.58, but is "satisfactory for potency," as provided in § 119.58, it may be tested again to ascertain whether it is contaminated with pus-producing organisms by treating 50 hogs on the premises of the licensed establishment. Each hog treated shall receive a single injection, in the axillary space, of not less than 25 cc. of the product to be tested. Serum tested as provided in this paragraph shall be destroyed or otherwise disposed of or used as prescribed by the Director.

§ 119.62 Purity test animals; holding period.

Animals used for testing serum as provided in § 119.61 at licensed establishments shall be held for at least 14 days, and be carefully examined at the sites of

inoculations to determine whether the serum has caused abscess formation.

§ 119.63 Minimum dosage.

Anti-hog-cholera serum or hog cholera antibody-concentrate may be marketed if, upon testing, as provided in Parts 101 to 122 of this subchapter, it is found "satisfactory for potency" and "satisfactory for purity," provided the label on the true container thereof contains recommendations for use as specified in this section:

(a) For use in preventive vaccination, the minimum dose shall be 10 cc or more of anti-hog-cholera serum or 5 cc or more of hog cholera antibody-concentrate when used with modified live virus hog-cholera vaccine, plus the following statement: "If immediate protection against hog cholera is desired or movement of the animals from the premises is anticipated within 21 days following immunization, 15 cc or more of anti-hog-cholera serum or 7½ cc or more of hog cholera antibody-concentrate should be administered simultaneously with the vaccine."

(b) Export labels only may contain recommendations for use with simultaneous virus in doses not less than those appearing in the following table:

Weight	Anti-hog-cholera serum minimum dose (c.c.)	Antibody-concentrate minimum dose (c.c.)
Suckling pigs	20	10
Pigs 20 to 40 lbs	30	15
Pigs 40 to 90 lbs	35	17.5
Pigs 90 to 120 lbs	45	22.5
Hogs 120 to 150 lbs	55	27.5
Hogs 150 to 180 lbs	65	32.5
Hogs 180 lbs. and over	75	37.5

§ 119.64 Expiration date.

The expiration date shown on labels of anti-hog-cholera serum produced at licensed establishments shall not exceed 3 years from the date on which the first serum of the batch is collected, except as provided in § 119.66.

§ 119.65 Extension of expiration date.

Should the expiration date of any batch of anti-hog-cholera serum produced at licensed establishments expire before the serum is used, the serum may be retested, and if found "satisfactory for potency" and "satisfactory for purity," as defined in § 119.58 (b) and (e), the expiration date may be extended for 1 year from the date of conclusion of the retest for potency. Should a batch of anti-hog-cholera serum not be found "satisfactory for potency" or "satisfactory for purity" before the expiration of 3 years from the date of collection of the oldest serum in the batch, or should it not be so found in time to allow it to be used before the expiration of said 3 years, the expiration date will be limited to 6 months from the date of conclusion of a satisfactory test for potency.

§ 119.66 Conditions for removal.

Anti-hog-cholera serum shall not be removed from the premises of a licensed establishment unless it has been prepared as required by Parts 101 to 122 of this subchapter and no such serum shall be released for marketing unless and until all the information required by Parts 101 to 122 of this subchapter has been affixed to the containers thereof.

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12. Amend Part 121 to read as follows:

PART 121—ADMISSION OF BIOLOGICAL PRODUCTS AND MATERIALS TO LICENSED ESTABLISHMENTS

Sec.
121.1 Requirements re admission of biological products, etc., to licensed establishments.
121.2 Division virus and serum.
121.3 Virus from outbreaks.
121.4 Transportation between licensed establishments.

AUTHORITY: The provisions of this Part 121 issued under 37 Stat. 832-833; 21 U.S.C. 151-158.

§ 121.1 Requirements re admission of biological products, etc., to licensed establishments.

Except as specifically authorized by Parts 101 to 122 of this subchapter, no biological product which has not been prepared, handled, stored, and marked in accordance with Parts 101 to 122 of this subchapter and no biological product which is worthless, contaminated, dangerous, or harmful shall be brought onto the premises of any licensed establishment.

§ 121.2 Division virus and serum.

Hog-cholera virus and anti-hog-cholera serum prepared by the Division will be admitted to licensed establishments for use as prescribed in Parts 101 to 122 of this subchapter or as may be approved by the Director.

§ 121.3 Virus from outbreaks.

Hog-cholera virus procured from outbreaks of hog cholera on farms that are free from other communicable diseases will be admitted to licensed establishments by the inspector in charge when requested by the licensee for use in propagating a new strain of virus for inoculating purposes. Before such virus is used in the production of simultaneous virus or hyperimmunizing virus, it shall be injected into pigs weighing from 40 to 90 pounds to determine whether the purity and virulence of the product are satisfactory. The virus shall be passed through pigs as provided in Parts 101 to 122 of this subchapter until its virulence and purity are satisfactory; otherwise, the product shall be destroyed as provided in § 108.16 of this subchapter.

§ 121.4 Transportation between licensed establishments.

Anti-hog-cholera serum and hog-cholera virus, spleens, and other organs, collected in licensed establishments, and suitable for use under Parts 101 to 122 of this subchapter, may be transported from one licensed establishment to another or between units of the same establishment provided these products are properly packed. Such products and materials must be packed or iced so that a proper temperature will be maintained during transportation.

This amendment shall become effective 30 days after publication in the FEDERAL REGISTER.

The reporting and/or record-keeping requirements contained herein have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

Done at Washington, D.C., 26th day of January 1965.

B. T. SHAW,
Administrator, Agricultural Research Service.

[F.R. Doc. 65-971; Filed, Jan. 28, 1965; 8:49 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Agency

[Airspace Docket No. 63-AL-29]

PART 75—ESTABLISHMENT OF JET ROUTES

Jet Route; Alteration of Designation

On December 31, 1964, F.R. Doc. 64-13448 was published in the FEDERAL REGISTER (29 F.R. 19185) amending Part 75 of the Federal Aviation Regulations, effective March 4, 1965, by the designation of Jet Route No. 501 in part from Yakutat, Alaska, to Anchorage, Alaska. A flight check has disclosed that this alignment would require a minimum en route altitude (MEA) of FL 390 between Yakutat and Anchorage. In order to reduce the MEA to FL 180, action is taken herein to realign this segment of J-501 via the Hinchinbrook, Alaska, RR. The centerline of the realigned route is presently within controlled airspace and is closely aligned with Amber Federal airway No. 1.

Since this alteration involves only a small amount of airspace which is above 18,000 feet MSL, it would impose no undue burden on any person. Therefore, the Administrator finds that notice and public procedure hereon is unnecessary and the effective date of the document as initially adopted may be retained.

In consideration of the foregoing, F.R. Doc. 64-13448 (29 F.R. 19185) is amended, effective immediately, as hereinafter set forth.

In paragraph (g) the description of Jet Route No. 501 is amended as follows: "Anchorage, Alaska;" is deleted and "Hinchinbrook, Alaska, RR; Anchorage, Alaska;" is substituted therefor.

(Sec. 307(a) and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348 and 1510) and Executive Order 10854 (24 F.R. 9565))

Issued in Washington, D.C., on January 25, 1965.

H. B. HELSTROM,
Acting Chief, Airspace Regulations and Procedures Division.

[F.R. Doc. 65-935; Filed, Jan. 28, 1965; 8:46 a.m.]

Chapter II—Civil Aeronautics Board

SUBCHAPTER A—ECONOMIC REGULATIONS

[Reg. No. ER-426]

PART 288—EXEMPTION OF AIR CARRIERS FOR SHORT-NOTICE MILITARY CONTRACTS AND SUBSTITUTE SERVICE

Reasonable Level of Compensation; Minimum Aircraft Loads

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 25th day of January 1965.

By notice of proposed rule making dated October 1, 1964 (EDR-72, 29 F.R. 13827), the Board proposed to amend Part 288 of the Economic Regulations to establish minimum aircraft load (ACL) requirements with respect to cargo carried on convertible charters (all-cargo in one direction and all-passenger in the other) and on mixed charters (passengers and cargo carried at the same time). The Board noted that, although Part 288 sets forth minimum rates for both convertible and mixed charters, § 288.7(b) does not include minimum ACL requirements in terms of the amount of cargo to be carried on such flights. It was further noted that such omission had resulted in confusion in connection with the application of the proviso to that paragraph relating to traffic deficits.[1] Accordingly, the Board proposed to amend § 288.7(b) to preclude the operation of the proviso unless (1) the cargo load on a convertible flight was less than the number of tons and number of pallets specified for the B-707-320B/C, DC-8F, and CL-44 aircraft, and (2) the traffic carried on a mixed flight was below various combinations of passengers and cargo pallets. The Board also proposed a similar amendment with respect to all-cargo flights to set forth the minimum ACL's in terms of both weight and number of pallets.

The most significant aspect of these proposed amendments related to the convertible flights. It was the Board's understanding that in current convertible operations both the large convertible turbojet aircraft and the CL-44 aircraft have slightly less carrying capacity, in terms of either space available or lift, than in all-cargo service because of the necessity to transport on the cargo segment the equipment needed to carry passengers on the other segment. For the convertible turbojets, therefore, we proposed ACL's of 34 tons and 12 pallets for the cargo segment of a convertible flight as compared with 36.5 tons and 13 pallets for all-cargo flights. For the CL-44, the proposed ACL's were 27 tons and 10 pallets for convertible operations and 29.35 tons and 10 pallets for all-cargo flights. In each instance, no traffic deficit penalty was to be assessed unless the traffic carried was less than both the specified number of tons and pallets.

Nine air carriers and the Military Air Transport Service (MATS) filed comments in response to EDR-72. Except for The Flying Tiger Line Inc. (Flying Tiger), the air carriers either supported or did not oppose the proposed amendment insofar as it related to convertible flights, although three carriers urged that the amendment be made effective retroactively to either July 1, 1964, or the date when the related minimum rates became effective. Two carriers suggested minor revisions of the proposed amendment with respect to mixed flights. Two other carriers objected to the 13-pallet requirement on all-cargo flights. MATS opposed the 12-pallet standard for the convertible turbojet flights on the basis that 13 pallets could in fact be carried on such flights. MATS also noted a problem with the proposed amendment with respect to all-cargo flights with the CL-44 and suggested a revision of the language relating to the mixed flights. Flying Tiger proposed minor revisions of the tonnage ACL for both the turbojet and turboprop aircraft on convertible flights.[2] However, Flying Tiger went beyond the matters raised by EDR-72 and proposed that the current method of stating minimum revenues for convertible flights (i.e., 2.55 cents per passenger-mile for all segments) be modified to provide that a rate of 12.5 cents per ton-mile would apply on cargo segments.

For the reasons set forth below, the Board has determined to take final action at this time on a portion of the amendments proposed by EDR-72 and to defer action on the remainder until a later time. The problems of application of the proviso to § 288.7(b) that had been brought to the Board's attention prior to the issuance of EDR-72 related principally to convertible flights. These problems apparently continue to exist; and, accordingly, it is appropriate to amend Part 288 promptly in order to resolve these matters.

With respect to the mixed and all-cargo flights, however, the Board is not aware of any general problem flowing from the provisions of Part 288 as presently written. It does not appear that the current ACL's for the convertible turbojet aircraft, 36.5 tons, and for the CL-44, 29.35 tons, are unrealistic. Similarly, while Flying Tiger's proposal that the minimum rate for the all-cargo segment of a convertible flight be stated in terms of cents per ton-mile instead of cents per passenger-mile appears to have merit, it is outside the scope of the instant proposal to amend Part 288 and must be the subject of an additional notice of rule making. Subsequent to the issuance of EDR-72, the Board initiated a general review of Part 288, including rate levels, rate structure, and related provisions; and we expect to issue a notice of rule making in the near future. Accordingly, the Board will in that proceeding dispose of the matters raised by EDR-72 relating to the all-cargo and mixed flights as well as the Flying Tiger proposal regarding restatement of the minimum rates for the cargo segment of convertible flights.

With respect to convertible flights, the Board is satisfied that 12 pallets are the maximum that can reasonably be accommodated on the B-707-320B/C and DC-8F aircraft in convertible service today. It is recognized that one additional pallet can be carried on all-cargo flights and that the capacity available to MATS on convertible flights is limited to that extent. However, the need to carry passenger service equipment, seats, galleys, etc., on the cargo segment is inescapable; and it appears to be impossible to carry all such equipment in the belly compartments. Much the same situation obtains on the CL-44, where the presence of galley equipment in the tail section restricts MATS' ability to use that area for bulk loading, although there is no problem with carrying the same number of pallets (10) as on an all-cargo flight. Accordingly, the Board has determined that 12 and 10 pallets represent reasonable minimum ACL's for the convertible turbojet and CL-44 aircraft, respectively, on the all-cargo segment of convertible flights. It follows that no deficit should be imposed so long as the carrier can accommodate 12 or 10, as the case may be, fully loaded pallets on such flights, even though the total weight of such traffic may not be as great as the tonnage ACL specified for all-cargo flights. Therefore, we will amend the proviso of § 288.7(b) to preclude, in effect, the imposition of any penalty for deficit traffic on all-cargo legs of convertible flights as long as the indicated number of pallets can be accommodated.

This provision will be effective on a prospective basis 30 days after the service of this amendment. It has been and remains the Board's policy to make changes in Part 288 on a prospective basis absent compelling circumstances to the contrary, which we do not find to be present here. A policy of prospective rate or rule changes is consistent with the terms of the carriers' contracts with MATS and with normal practice with respect to air transportation rates in general.

Accordingly, the Civil Aeronautics Board hereby amends § 288.7(b) of Part 288 of the Economic Regulations (14 CFR Part 288), effective March 1, 1965, by changing the proviso at the end thereof to read as follows:

§ 288.7 Reasonable level of compensation.

* * * * *

(b) *Minimum aircraft loads.* * * * *Provided*, That, for the purpose of this paragraph (b), compensation equal to the minimum rate applied to the load that actually can be accommodated shall be considered economic whenever a carrier is prevented from accommodating a load equal to the minimum specified above, for reasons other than adverse weather, off-loading by MATS, or the bulk of the cargo supplied by MATS, but in no event less than 90 percent of the

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[1] The proviso to § 288.7(b), in effect, permits a carrier to operate at less than the normal minimum level of compensation when, from time to time, the cargo carried is less than the minimum specified ACL for reasons other than adverse weather, off-loading by MATS, or the bulk of the cargo supplied by MATS.

[2] Flying Tiger proposed an ACL of 28 tons for the CL-44 in lieu of the 27 tons proposed in EDR-72, and 33.7 tons for the turbojets in place of the 34 tons proposed by the Board.

above minimum loads. For purposes of this proviso, failure by the carrier to accommodate more than 12 loaded pallets on the B-707-320B/C and DC-8F aircraft, or 10 loaded pallets on the CL-44 aircraft, irrespective of the total weight thereof, on the all-cargo segment of any convertible charter flight, due to the presence of galley equipment and/or crew facilities on the main deck of the aircraft for use on that convertible charter flight, is deemed to be due to the bulk of the cargo supplied by MATS.

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

Adopted: January 25, 1965.

By the Civil Aeronautics Board.

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

[F.R. Doc. 65-972; Filed, Jan. 28, 1965; 8:49 a.m.]

Title 21—FOOD AND DRUGS

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

SUBCHAPTER C—DRUGS

PART 133—DRUGS; CURRENT GOOD MANUFACTURING PRACTICE IN MANUFACTURE, PROCESSING, PACKING, OR HOLDING

Control of Cross-Contamination by Penicillin; Amendments to Drug Regulations for Current Good Manufacturing Practice

A recent investigation by the Food and Drug Administration revealed that various products from a number of drug firms were contaminated with small amounts of penicillin. Since products that are contaminated with penicillin may trigger allergic reactions when administered to penicillin-sensitized individuals, the Commissioner of Food and Drugs convened an Ad Hoc Advisory Committee on Penicillin Contamination to advise him regarding the health significance of this problem. The following persons, who are experts in the fields of allergy and penicillin therapy, comprised the Committee:

Dr. Leighton Cluff, Associate Professor of Medicine, Johns Hopkins University.
Dr. Maxwell Finland, Associate Professor of Medicine, Harvard School of Medicine.
Dr. Francis Lowell, Assistant Professor of Medicine, Harvard School of Medicine.
Dr. Monroe Romansky, Professor of Medicine, The George Washington University.
Dr. John Sheldon, Professor of Internal Medicine, University of Michigan.
Dr. William Sherman, Associate Clinical Professor of Medicine, Columbia University.
Dr. Bernard Siegel, Associate Attending Physician in Allergy, Jewish Hospital of Brooklyn.

The Advisory Committee submitted its report through the Medical Director of the Food and Drug Administration, who has evaluated and transmitted it to the Commissioner with his concurrence. The findings are as follows:

A. Allergic reactions may range from mild and transient manifestations to fatal anaphylaxis, but all grades of such reactions should be considered potentially dangerous. While exact numbers cannot be stated, it is known that there is a significant segment of the population which is hypersensitive to penicillin. Therefore, the inadvertent exposure of such individuals to penicillin constitutes a public health problem.

B. While it is difficult to state precise values based on the data presently available, the following amounts of penicillin might be allowable as reasonably safe for use by the penicillin-hypersensitive individual:

1. Parenteral drugs: Less than 0.05 unit of penicillin per maximum single dose recommended in the labeling of the drug.

2. Oral drugs: Less than 0.5 unit of penicillin per maximum single dose recommended in the labeling of the drug.

C. The Commissioner of Food and Drugs should explore, with the cooperation of the various manufacturers, the possibility of developing methods of production designed to eliminate all possibilities of penicillin contamination of nonpenicillin products. The Committee recognizes that the risk from penicillin contamination of drugs to the public may be small in contrast to other sources of exposure to this antibiotic; nevertheless, the elimination of contamination of drugs as here recommended, particularly of drugs given parenterally, may reduce the hazard of serious inadvertent penicillin reactions to hypersensitive individuals.

On the basis of the available evidence, including the findings and recommendations of the ad hoc Advisory Committee on Penicillin Contamination, the Commissioner of Food and Drugs has concluded that the regulations for good manufacturing practice in the manufacture, processing, packing, or holding of drugs (21 CFR Part 133) should be amended as hereinafter indicated. Therefore, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (secs. 501(a), 701(a), 52 Stat. 1050 as amended, 76 Stat. 780, 781; 1055; 21 U.S.C. 351, 371) and under the authority delegated to the Commissioner by the Secretary of Health, Education, and Welfare (21 CFR 2.90): *It is ordered*, That Part 133 be amended in the following respects:

1. Section 133.3 is amended by changing the introduction to paragraph (a) and by inserting a parenthetical phrase in paragraph (b). As amended, the affected portions read as follows:

§ 133.3 Buildings.

* * * * *

(a) Provide adequate space for the orderly placement of equipment and materials used in any of the following operations for which it is employed, to minimize any risk of mixups between different drugs, their components, packaging, or labeling, and to control the possibility of cross-contamination of one drug by another drug that is manufactured, stored, or handled on the same premises:

* * * * *

(b) Provide adequate lighting and ventilation, and when necessary for the intended production or control purposes, adequate screening, filtering, dust, humidity, temperature, and bacteriological controls, as for example, to prevent contamination of products by extraneous adulterants (including the prevention of cross-contamination of one product by dust or particles of ingredients arising from the manufacture, storage, or handling of another drug); to prevent the dissemination of micro-organisms from one area to another; to facilitate the sterilization of special work areas, such as those used for production of parenteral preparations; to provide suitable housing for any animals; and to avoid other conditions unfavorable to the safety and integrity of the product.

2. Section 133.6 is amended to read as follows:

§ 133.6 Components.

Components used in the manufacture and processing of drugs, regardless of whether they are intended to appear in the finished product, shall be identified, stored, examined, tested, inventoried, handled, and otherwise controlled in a manner to assure that they conform to appropriate standards of identity, strength, quality, and purity, and are free of contaminants at time of use, and are so stored and handled as to assure that dust or particles resulting from such storage or handling does not contaminate other substances or preparations on the premises, and to provide that appropriate records are maintained of their origin, receipt, examination, testing, disposition, and use in drug manufacture or processing.

3. Section 133.8(d) is amended to read as follows:

§ 133.8 Production and control procedures.

* * * * *

(d) Appropriate procedures to control the hazard of contamination with micro-organisms in the production of parenteral drugs, ophthalmic solutions, and any other drugs purporting to be sterile, and appropriate procedures to control the hazard of cross-contamination of nonpenicillin products by penicillin in those establishments that manufacture, store, or handle penicillin products and nonpenicillin products.

4. Section 133.11 is amended by adding thereto a new paragraph (h) reading as follows:

§ 133.11 Laboratory controls.

* * * * *

(h) Firms that manufacture nonpenicillin products, including certifiable antibiotic products, on the same premises or use the same equipment as that used for manufacturing penicillin products, or that operate under any circumstances that may reasonably be regarded as conducive to contamination of other drugs by penicillin, shall test such nonpenicillin products to determine whether any have become cross-contaminated by penicillin. Such products shall not be marketed if intended for use by man and

the product is contaminated with an amount of penicillin equivalent to 0.05 unit or more of penicillin G per maximum single dose recommended in the labeling of a drug intended for parenteral administration, or an amount of penicillin equivalent to 0.5 unit or more of penicillin G per maximum single dose recommended in the labeling of a drug intended for oral use.

Shipments shown by examination of reserve or other samples to exceed the values recommended by the Committee and as set forth in § 133.11(h) shall be recalled from the market.

The Commissioner, in cooperation with the pharmaceutical industry, will continue to study the penicillin cross-contamination problem, looking towards the development and adoption of manufacturing practices designed to further reduce such contamination.

Notice and public procedure and delayed effective date are not necessary prerequisites to the promulgation of this order, and I so find, since the amendments are interpretative and since it would be contrary to the public interest to delay the initiation of measures to control inadvertent contamination of other drugs with penicillin.

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

(Secs. 501(a), 701(a), 52 Stat. 1050 as amended, 76 Stat. 780, 781, 1055; 21 U.S.C. 351, 371)

Dated: January 25, 1965.

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

[F.R. Doc. 65-991; Filed, Jan. 28, 1965; 8:50 a.m.]

Title 24—HOUSING AND HOUSING CREDIT

Chapter II—Federal Housing Administration, Housing and Home Finance Agency

MISCELLANEOUS AMENDMENTS TO CHAPTER

The following miscellaneous amendments have been made to this chapter:

SUBCHAPTER C—MUTUAL MORTGAGE INSURANCE AND INSURED HOME IMPROVEMENT LOANS

PART 203—MUTUAL MORTGAGE INSURANCE AND INSURED HOME IMPROVEMENT LOANS

Subpart B—Contract Rights and Obligations

Section 203.390 is amended to read as follows:

§ 203.390 Waiver of title—mortgages formerly Commissioner-held.

(a) If the Commissioner sells a mortgage and such mortgage is later reassigned to him in exchange for debentures or the property covered by such mortgage is later conveyed to him in exchange for debentures, the Commissioner will not object to title by reason of any lien or other adverse interest that was senior to the mortgage on the date of the original sale of such mortgage by the Commissioner.

(b) The Commissioner will accept, in exchange for debentures, an assignment of a mortgage previously sold by the Commissioner, where the mortgagee is unable to complete foreclosure because of a defect in the title which existed at the time the mortgage was sold by the Commissioner or a defect in the mortgage instruments or transaction. In such instances, the Commissioner will not object to title by reason of such defect.

(Sec. 211, 52 Stat. 23; 12 U.S.C. 1715b. Interprets or applies sec. 203, 52 Stat. 10, as amended; 12 U.S.C. 1709)

SUBCHAPTER E—COOPERATIVE HOUSING INSURANCE

PART 213—COOPERATIVE HOUSING MORTGAGE INSURANCE

Subpart A—Eligibility Requirements—Projects

Section 213.12 is amended to read as follows:

§ 213.12 Covenant against liens.

The mortgage shall contain a covenant against the creation by the mortgagor of liens against the property superior or inferior to the lien of the mortgage except for such inferior lien as may be required in connection with the insurance of a supplementary loan.

(Sec. 211, 52 Stat. 23; 12 U.S.C. 1715b. Interprets or applies sec. 213, 64 Stat. 54, as amended; 12 U.S.C. 1715e)

SUBCHAPTER G—HOUSING FOR MODERATE INCOME AND DISPLACED FAMILIES

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

Subpart C—Eligibility Requirements—Moderate Income Projects

In § 221.514 paragraph (c) is amended to read as follows:

§ 221.514 Maximum mortgage amounts.

* * * * *

(c) *Increased mortgage amount—high cost areas.* (1) In any geographical area where the Commissioner finds cost levels so require, the Commissioner may increase, by not to exceed 45 percent, the dollar amount limitations set forth in paragraphs (a)(1)(ii) and (b) of this section.

(2) If the Commissioner finds that because of high costs in Alaska, Guam, or Hawaii it is not feasible to construct dwellings without the sacrifice of sound standards of construction, design, and livability within the limitations of maximum mortgage amounts provided in this section, the principal obligation of mortgages may be increased in such amounts as may be necessary to compensate for such costs, but not to exceed in any event the maximum, including high cost area increases, if any, otherwise applicable by more than one-half thereof.

(Sec. 211, 52 Stat. 23; 12 U.S.C. 1715b. Interprets or applies sec. 221, 68 Stat. 599, as amended; 12 U.S.C. 1715l)

SUBCHAPTER J—MORTGAGE INSURANCE FOR NURSING HOMES

PART 232—NURSING HOMES MORTGAGE INSURANCE

Subpart A—Eligibility Requirements

Section 232.80 is amended to read as follows:

§ 232.80 Certification of cost requirements.

(a) Prior to initial endorsement of the mortgage for insurance, the mortgagor, the mortgagee and the Commissioner shall enter into an agreement approved by the Commissioner for the purpose of precluding any excess of mortgage proceeds over 90 percent of the actual cost of the project. Under this agreement the mortgagor shall agree to:

(1) Disclose its relationship with the builder, including any collateral agreement, and with subcontractors and suppliers;

(2) Enter into a construction contract in a form meeting the requirements of § 232.81;

(3) Execute a certificate of actual costs upon completion of the improvements; and

(4) Apply any excess of mortgage proceeds over 90 percent of the actual cost to reduction of the outstanding balance of the principal of the mortgage.

(b) The provisions of paragraphs (a) (1) and (2) of this section shall not apply where the mortgagor is the general contractor.

(Sec. 211, 52 Stat. 23; 12 U.S.C. 1715b. Interprets or applies sec. 232, 73 Stat. 663; 12 U.S.C. 1715w)

Issued at Washington, D.C., January 22, 1965.

PHILIP N. BROWNSTEIN,
Federal Housing Commissioner.

[F.R. Doc. 65-932; Filed, Jan. 28, 1965; 8:46 a.m.]

Title 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER A—INCOME TAX

[T.D. 6795]

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

Controlled Foreign Corporations

On July 10, 1964, notice of proposed rule making was published in the FEDERAL REGISTER (29 F.R. 9440) regarding the amendment of the Income Tax Regulations (26 CFR Part 1) to conform to sections 951, 952, 957(b), and 959 of the Internal Revenue Code of 1954, as added by section 12(a) of the Revenue Act of 1962 (76 Stat. 1006), and to section 12 (b)(1) of such Act. After consideration of all such relevant matter as was presented by interested persons regard-

ing the rules proposed, the amendments of the regulations as proposed are hereby adopted, subject to the changes set forth below. The amendments shall apply with respect to taxable years of foreign corporations beginning after December 31, 1962, and to taxable years of United States shareholders within which or with which such taxable years of such corporations end.

PARAGRAPH 1. The historical note to § 1.901, as set forth in the notice of proposed rule making, is deleted.

PAR. 2. Section 1.951-1, as set forth in the notice of proposed rule making, is revised.

PAR. 3. Section 1.952-1, as set forth in the notice of proposed rule making, is revised.

PAR. 4. Section 1.952-2, as set forth in the notice of proposed rule making, is revised.

PAR. 5. Section 1.955-1(b)(2)(ii), as set forth in the notice of proposed rule making, is revised.

PAR. 6. Section 1.956-1, as set forth in the notice of proposed rule making, is revised.

PAR. 7. Section 1.957-2, as set forth in the notice of proposed rule making, is revised.

PAR. 8. Section 1.959-1, as set forth in the notice of proposed rule making, is revised.

PAR. 9. Section 1.959-2, as set forth in the notice of proposed rule making, is revised.

PAR. 10. Section 1.959-3, as set forth in the notice of proposed rule making, is revised.

PAR. 11. Paragraph (c)(2) of § 1.970-1 is amended by revising subdivision (ii).

PAR. 12. Section 1.1016 is amended by adding paragraphs (19) and (20) to section 1016(a), and by revising the historical note.

PAR. 13. Section 1.1016-5 is amended by adding paragraphs (q) and (r).

[SEAL] BERTRAND M. HARDING,
Acting Commissioner of Internal Revenue.

Approved: January 22, 1965.

STANLEY S. SURREY,
Assistant Secretary of the Treasury.

In order to conform the Income Tax Regulations (26 CFR Part 1) to sections 951, 952, 957(b), and 959 of the Internal Revenue Code of 1954, as added by section 12(a) of the Revenue Act of 1962 (76 Stat. 1006), and to section 12(b)(1) of such Act, such regulations are amended as follows effective with respect to taxable years of foreign corporations beginning after December 31, 1962, and to taxable years of United States shareholders within which or with which such taxable years of such foreign corporations end:

PARAGRAPH 1. Section 1.542-2 is amended by adding at the end thereof the following new sentence: "For determining the character of the amount includible in gross income under section 951(a), see paragraph (a) of § 1.951-1."

PAR. 2. Section 1.555-1 is amended by adding at the end thereof the following new sentence: "However, the gross income of a foreign corporation which is a foreign personal holding company shall not include, with respect to a United States shareholder described in section 951(b), dividends received by such corporation which are excluded under section 959(b) from the income of such corporation with respect to such shareholder."

PAR. 3. Paragraph (a) of § 1.562-1 is amended by adding a new sentence immediately after the second sentence of such paragraph. The amended provision reads as follows:

§ 1.562-1 Dividends for which dividends paid deduction is allowable.

(a) *General rule.* Except as otherwise provided in section 562 (b) and (d), the term "dividend", for purposes of determining dividends eligible for the dividends paid deduction, refers only to a dividend described in section 316 (relating to definition of dividends for purposes of corporate distributions). No distribution, however, which is preferential within the meaning of section 562(c) and § 1.562-2 shall be eligible for the dividends paid deduction. Moreover, when computing the dividends paid deduction with respect to a United States person (as defined in section 957(d)), no distribution which is excluded from the gross income of a foreign corporation under section 959(b) with respect to such person or from the gross income of such person under section 959(a) shall be eligible for such deduction. Further, for purposes of the dividends paid deduction, the term "dividend" does not include a distribution in liquidation unless the distribution qualifies under section 562(b) and paragraph (b) of this section. If a dividend is paid in property (other than money) the amount of the dividends paid deduction with respect to such property shall be the adjusted basis of the property in the hands of the distributing corporation at the time of the distribution. See paragraph (c) of this section for a special rule for personal holding companies. Also see section 563 for special rules with respect to dividends paid after the close of the taxable year.

* * * * *

PAR. 4. Section 1.901 is amended by revising section 901(a) and by adding a historical note. These amended and added provisions read as follows:

§ 1.901 Statutory provisions; taxes of foreign countries and of possessions of the United States.

SEC. 901. *Taxes of foreign countries and of possessions of the United States*—(a) *Allowance of credit.* If the taxpayer chooses to have the benefits of this subpart, the tax imposed by this chapter shall, subject to the applicable limitation of section 904, be credited with the amounts provided in the applicable paragraph of subsection (b) plus, in the case of a corporation, the taxes deemed to have been paid under sections 902 and 960. Such choice for any taxable year may be made or changed at any time before the expiration of the period prescribed for making a claim for credit or refund of the tax imposed by this chapter for such taxable year. The credit shall not be allowed against the tax imposed by section 531 (relating to the tax on accumulated earnings), against the additional tax imposed for the taxable year under section 1333 (relating to war loss recoveries), or against the personal holding company tax imposed by section 541.

* * * * *

PAR. 5. Paragraph (a)(2) of § 1.901-1 is amended to read as follows:

§ 1.901-1 Allowance of credit for taxes.

(a) *In general.* * * *

(2) *Domestic corporation.* A domestic corporation may claim a credit for (i) the amount of any income, war profits, and excess profits taxes paid or accrued during the taxable year to any foreign country or to any possession of the United States; and (ii) the taxes deemed to have been paid or accrued under section 902, 905(b), or 960.

* * * * *

PAR. 6. There is inserted immediately after § 1.943-1 the following:

CONTROLLED FOREIGN CORPORATIONS

§ 1.951 Statutory provisions; amounts included in gross income of United States shareholders.

SEC. 951. *Amounts included in gross income of United States shareholders*—(a) *Amounts included*—(1) *In general.* If a foreign corporation is a controlled foreign corporation for an uninterrupted period of 30 days or more during any taxable year beginning after December 31, 1962, every person who is a United States shareholder (as defined in subsection (b)) of such corporation and who owns (within the meaning of section 958(a)) stock in such corporation on the last day, in such year, on which such corporation is a controlled foreign corporation shall include in his gross income, for his taxable year in which or with which such taxable year of the corporation ends—

(A) The sum of—

(i) Except as provided in section 963, his pro rata share (determined under paragraph (2)) of the corporation's subpart F income for such year, and

(ii) His pro rata share (determined under section 955(a)(3)) of the corporation's previously excluded subpart F income withdrawn from investment in less developed countries for such year; and

(B) His pro rata share (determined under section 956(a)(2)) of the corporation's increase in earnings invested in United States property for such year (but only to the extent not excluded from gross income under section 959(a)(2)).

(2) *Pro rata share of subpart F income.* The pro rata share referred to in paragraph (1)(A)(i) in the case of any United States shareholder is the amount—

(A) Which would have been distributed with respect to the stock which such shareholder owns (within the meaning of section 958(a)) in such corporation if on the last day, in its taxable year, on which the corporation is a controlled foreign corporation it had distributed pro rata to its shareholders an amount (i) which bears the same ratio to its subpart F income for the taxable year, as (ii) the part of such year during which the corporation is a controlled foreign corporation bears to the entire year, reduced by

(B) The amount of distributions received by any other person during such year as a dividend with respect to such stock, but only to the extent of the dividend which would have been received if the distribution by the corporation had been the amount (i) which bears the same ratio to the subpart F income of such corporation for the taxable year, as (ii) the part of such year during which such shareholder did not own (within the meaning of section 958(a)) such stock bears to the entire year.

(3) *Limitation on pro rata share of previously excluded subpart F income withdrawn from investment.* For purposes of paragraph (1)(A)(ii), the pro rata share of any United States shareholder of the previously excluded subpart F income of a controlled foreign corporation withdrawn from investment in less developed countries shall not exceed an amount (A) which bears the same ratio to his pro rata share of such income withdrawn (as determined under section 955(a)(3)) for the taxable year, as (B) the part of such year during which the corporation is a controlled foreign corporation bears to the entire year.

(4) *Limitation on pro rata share of investment in United States property.* For purposes of paragraph (1)(B), the pro rata share of any United States shareholder in the increase of the earnings of a controlled foreign corporation invested in United States property shall not exceed an amount (A) which bears the same ratio to his pro rata share of such increase (as determined under section 956(a)(2)) for the taxable year, as (B) the part of such year during which the corporation is a controlled foreign corporation bears to the entire year.

(b) *United States shareholder defined.* For purposes of this subpart, the term "United States shareholder" means, with respect to any foreign corporation, a United States person (as defined in section 957(d)) who owns (within the meaning of section 958(a)), or is considered as owning by applying the rules of ownership of section 958(b), 10 percent or more of the total combined voting power of all classes of stock entitled to vote of such foreign corporation.

(c) *Coordination with election of a foreign investment company to distribute income.* A United States shareholder who, for his taxable year, is a qualified shareholder (within the meaning of section 1247(c)) of a foreign investment company with respect to which an election under section 1247 is in effect shall not be required to include in gross income, for such taxable year, any amount under subsection (a) with respect to such company.

(d) *Coordination with foreign personal holding company provisions.* A United States shareholder who, for his taxable year, is subject to tax under section 551(b) (relating to foreign personal holding company income included in gross income of United States shareholders) on income of a controlled foreign corporation shall not be required to include in gross income, for such taxable year, any amount under subsection (a) with respect to such company.

[Sec. 951 as added by sec. 12(a), Rev. Act 1962 (76 Stat. 1006)]

§ 1.951-1 Amounts included in gross income of United States shareholders.

(a) *In general.* If a foreign corporation is a controlled foreign corporation (within the meaning of section 957) for an uninterrupted period of 30 days or more (determined under paragraph (f) of this section) during any taxable year of such corporation beginning after December 31, 1962, every person—

(1) Who is a United States shareholder (as defined in section 951(b) and paragraph (g) of this section) of such corporation at any time during such taxable year, and

(2) Who owns (within the meaning of section 958(a)) stock in such corporation on the last day, in such year, on which such corporation is a controlled foreign corporation shall include in his gross income for his taxable year in which or with which such taxable year of the corporation ends, the sum of—

(i) Except as provided in section 963, such shareholder's pro rata share (determined under paragraph (b) of this section) of the corporation's subpart F income (as defined in section 952) for such taxable year of the corporation,

(ii) Such shareholder's pro rata share (determined under paragraph (c) of this section) of the corporation's previously excluded subpart F income withdrawn from investment in less developed countries for such taxable year of the corporation, and

(iii) Such shareholder's pro rata share (determined under paragraph (d) of this section) of the corporation's increase in earnings invested in United States property for such taxable year of the corporation (but only to the extent such pro rata share is not excluded from such shareholder's gross income for his taxable year under section 959(a)(2)).

For purposes of determining whether a United States shareholder which is a domestic corporation is a personal holding company under section 542 and § 1.542-1, the character of the amount includible in gross income of such domestic corporation under this paragraph shall be determined as if such amount were realized directly by such corporation from the source from which it is realized by the controlled foreign corporation. See paragraph (a) of § 1.957-2 for special limitation on the amount of subpart F income in the case of a controlled foreign corporation described in section 957(b). See section 970(a) and § 1.970-1 which provides for the reduction of subpart F income of export trade corporations.

(b) *Limitation on a United States shareholder's pro rata share of subpart F income*—(1) *In general.* For purposes of paragraph (a)(1) of this section, a United States shareholder's pro rata share (determined in accordance with the rules of paragraph (e) of this section) of the foreign corporation's subpart F income for the taxable year of such corporation is—

(i) The amount which would have been distributed with respect to the stock which such shareholder owns (within the meaning of section 958(a)) in such corporation if on the last day, in such corporation's taxable year, on which such corporation is a controlled foreign corporation it had distributed pro rata to its shareholders an amount which bears the same ratio to its subpart F income for such taxable year as the part of such year during which such corporation is a controlled foreign corporation bears to the entire taxable year, reduced by—

(ii) The amount of distributions received by any other person during such taxable year as a dividend with respect to such stock, but only to the extent that such distributions do not exceed the dividend which would have been received by such other person if the distributions by such corporation to all its shareholders had been the amount which bears the same ratio to the subpart F income of such corporation for the taxable year as the part of such year during which such shareholder did not own (within the meaning of section 958(a)) such stock bears to the entire taxable year.

(2) *Illustrations.* The application of this paragraph may be illustrated by the following examples:

Example (1). A, a United States shareholder, owns 100 percent of the only class of stock of M, a controlled foreign corporation throughout 1963. Both A and M Corporation use the calendar year as a taxable year. For 1963, M Corporation derives $100 of subpart F income, has $100 of earnings and profits, and makes no distributions. A must include $100 in his gross income for 1963 under section 951(a)(1)(A)(i).

Example (2). The facts are the same as in example (1), except that instead of holding 100 percent of the stock of M Corporation for the entire year, A sells 60 percent of such stock to B, a nonresident alien, on May 26, 1963. Thus, M Corporation is a controlled foreign corporation for the period January 1, 1963, through May 26, 1963. A must include $40 ($100 × 146/365) in his gross income for 1963 under section 951(a)(1)(A)(i).

Example (3). The facts are the same as in example (1), except that instead of holding 100 percent of the stock of M Corporation for the entire year, A holds 60 percent of such stock on December 31, 1963, having acquired such interest on May 26, 1963, from B, a nonresident alien, who owned such interest from January 1, 1963. Before A's acquisition of such stock, M Corporation had distributed a dividend of $15 to B in 1963 with respect to such stock. A must include $21 in his gross income for 1963 under section 951(a)(1)(A)(i), such amount being determined as follows:

Corporation M's subpart F income for 1963		$100
Less: Reduction under sec. 951(a)(2)(A) for period (1-1-63 through 5-26-63) during which M Corporation is not a controlled foreign corporation ($100 × 146/365)		40
Subpart F income for 1963 as limited by sec. 951(a)(2)(A)		60
A's pro rata share of subpart F income as determined under sec. 951(a)(2)(A) (60 percent of $60)		36
Less: Reduction under sec. 951(a)(2)(B) for dividends received by B during 1963 with respect to the stock acquired by A in M Corporation:		
(i) Dividend received by B	$15	
(ii) B's pro rata share of the amount which bears the same ratio to M Corporation's subpart F income for 1963 ($100) as the period during which A did not own (within the meaning of sec. 958(a)) his stock (146 days) bears to the entire taxable year (365 days) (60 percent of ($100 × 146/365))	24	
(iii) Amount of reduction (lesser of (i) or (ii))		15
A's pro rata share of subpart F income as determined under sec. 951(a)(2)		21

Example (4). A, a United States shareholder, owns 100 percent of the only class of stock of P, a controlled foreign corporation throughout 1963, and P owns 100 percent of the only class of stock of R, a controlled foreign corporation throughout 1963. A and Corporations P and R each use the calendar year as a taxable year. For 1963, R Corporation derives $100 of subpart F income, has $100 of earnings and profits, and distributes a dividend of $20 to P Corporation. Corporation P has no income for 1963 other than the dividend received from R Corporation. A

must include $100 in his gross income for 1963 under section 951(a)(1)(A)(i) as subpart F income of R Corporation for such year. Such subpart F income is not reduced under sec. 951(a)(2)(B) for the dividend of $20 paid to P Corporation because there was no part of the year 1963 during which A did not own (within the meaning of section 958(a)) the stock of R Corporation. By reason of the application of section 959(b), the $20 distribution from R Corporation to P Corporation is not again includible in the gross income of A under section 951(a).

Example (5). The facts are the same as in example (4), except that instead of holding the stock of R Corporation for the entire year, P Corporation acquires 60 percent of the only class of stock of R Corporation on March 14, 1963, from C, a nonresident alien, after R Corporation distributes in 1963 a dividend of $35 to C with respect to the stock so acquired by P Corporation. The stock interest so acquired by P Corporation was owned by C from January 1, 1963, until acquired by P Corporation. A must include $36 in his gross income for 1963 under section 951(a)(1)(A)(i), such amount being determined as follows:

Corporation R's subpart F income for 1963		$100
Less: Reduction under sec. 951(a)(2)(A) for period (1-1-63 through 3-14-63) during which R Corporation is not a controlled foreign corporation ($100×73/365)		20
Subpart F income for 1963 as limited by sec. 951(a)(2)(A)		80
A's pro rata share of subpart F income as determined under sec. 951(a)(2)(A) (60 percent of $80)		48
Less: Reduction under sec. 951(a)(2)(B) for dividends received by C during 1963 with respect to the stock indirectly acquired by A in R Corporation.		
(i) Dividend received by C	$35	
(ii) C's pro rata share of the amount which bears the same ratio to R Corporation's subpart F income for 1963 ($100) as the period during which A did not indirectly own (within the meaning of section 958(a)(2)) his stock (73 days) bears to the entire taxable year (365 days) (60 percent of ($100×73/365))	12	
(iii) Amount of reduction (lesser of (i) or (ii))		12
A's pro rata share of subpart F income as determined under sec. 951(a)(2)		36

(c) *Limitation on a United States shareholder's pro rata share of previously excluded subpart F income withdrawn from investment.* For purposes of paragraph (a)(2) of this section, a United States shareholder's pro rata share (determined in accordance with the rules of paragraph (e) of this section) of the foreign corporation's previously excluded subpart F income withdrawn from investment in less developed countries for the taxable year of such corporation shall not exceed an amount which bears the same ratio to such shareholder's pro rata share of such income withdrawn (as determined under section 955(a)(3) and paragraph (c) of § 1.955–1) for such taxable year as the part of such year during which such corporation is a controlled foreign corporation bears to the entire taxable year. See paragraph (c)(2) of § 1.955–1 for a special rule applicable to exclusions and withdrawals occurring before the date on which the United States shareholder acquires his stock.

(d) *Limitation on a United States shareholder's pro rata share of increase in investment in United States property.* For purposes of paragraph (a)(3) of this section, a United States shareholder's pro rata share (determined in accordance with the rules of paragraph (e) of this section) of the foreign corporation's increase in earnings invested in United States property for the taxable year of such corporation shall not exceed an amount which bears the same ratio to such shareholder's pro rata share of such increase (as determined under section 956(a)(2) and paragraph (c) of § 1.956–1) for such taxable year as the part of such year during which such corporation is a controlled foreign corporation bears to the entire taxable year. The amount determined under the preceding sentence, however, shall be taken into account under paragraph (a)(3) of this section only to the extent such amount is not excluded from such shareholder's gross income for his taxable year under section 959(a)(2) and the regulations thereunder.

(e) *"Pro rata share" defined*—(1) *In general.* For purposes of paragraphs (b), (c), and (d) of this section, a United States shareholder's pro rata share of a controlled foreign corporation's subpart F income, previously excluded subpart F income withdrawn from investment in less developed countries, or increase in earnings invested in United States property, respectively, for any taxable year is his pro rata share determined under paragraph (a) of § 1.952–1, paragraph (c) of § 1.955–1, or paragraph (c) of § 1.956–1, respectively.

(2) *More than one class of stock.* If a controlled foreign corporation for a taxable year has more than one class of stock outstanding, the amount of such corporation's subpart F income, withdrawal, or increase in investment, for the taxable year which shall be taken into account with respect to any one class of such stock for purposes of subparagraph (1) of this paragraph shall be that amount which bears the same ratio to the total of such subpart F income, withdrawal, or increase in investment for such year as the earnings and profits which would be distributed with respect to such class of stock if all earnings and profits of such corporation for such year were distributed on the last day of such corporation's taxable year on which such corporation is a controlled foreign corporation bear to the total earnings and profits of such corporation for such taxable year. For purposes of the preceding sentence, if an arrearage in dividends for prior taxable years exists with respect to a class of preferred stock of such corporation, the earnings and profits for the taxable year shall be attributed to such arrearage only to the extent such arrearage exceeds the earnings and profits of such corporation remaining from prior taxable years beginning after December 31, 1962.

(3) *Discretionary power to allocate earnings to different classes of stock.* If the allocation of a foreign corporation's earnings and profits for the taxable year between two or more classes of stock depends upon the exercise of discretion by that body of persons which exercises with respect to such corporation the powers ordinarily exercised by the board of directors of a domestic corporation, the allocation of earnings and profits to such classes shall be made for purposes of this paragraph as if such classes constituted one class of stock in which each share has the same rights to dividends as any other share, unless a different method of allocation of earnings and profits is established as proper by the United States shareholder.

(4) *Illustrations.* The application of this paragraph may be illustrated by the following examples:

Example (1). Throughout its taxable year 1964, controlled foreign corporation A has outstanding 40 shares of common stock and 60 shares of 6-percent, nonparticipating, nonvoting, preferred stock with a par value of $100 per share. D, a United States citizen who uses the calendar year as a taxable year, owns 30 shares of the common, and 15 shares of the preferred, stock during 1964. Corporation A for 1964 has earnings and profits of $1,000, and income of $500 with respect to which amounts are required to be included in gross income of United States shareholders under section 951(a). In such case, if the total $1,000 of earnings and profits were distributed on December 31, 1964, $360 (0.06×$100×60) would be distributed with respect to A Corporation's preferred stock and $640 ($1,000 minus $360) would be distributed with respect to its common stock. Accordingly, of the $500 with respect to which amounts are required to be included in gross income of United States shareholders under section 951(a), $180 ($360/$1,000×$500) is allocated to the outstanding preferred stock and $320 ($640/$1,000×$500) is allocated to the outstanding common stock. D's pro rata share of such amounts for 1964 is $285 [($180×15/60) + ($320×30/40)].

Example (2). The facts are the same as in example (1), except that the preferred stock is cumulative and there is an arrearage in dividends with respect to such stock of $900; on December 31, 1963, Corporation A has accumulated earnings and profits for 1963 of $700; therefore, for purposes of this paragraph, Corporation A's earnings and profits for 1964 attributable to such arrearage may not exceed $200 ($900 minus $700). In such case, for purposes of this paragraph, if the $1,000 earnings and profits for 1964 were distributed on December 31, 1964, $560 [(0.06×$100×60) + $200] would be distributed with respect to A Corporation's preferred stock and $440 ($1,000 minus $560) would be distributed with respect to its common stock. Accordingly, of the $500 with respect to which amounts are required to be included in gross income of United States shareholders under section 951(a), $280 ($560/$1,000×$500) is allocated to the outstanding preferred stock and $220 ($440/$1,000×$500) is allocated to the outstanding common stock. D's pro rata share of such amounts for 1964 is $235 [($280×15/60) + ($220×30/40)].

(f) *Determination of holding period.* For purposes of sections 951 through 964, the holding period of an asset (including stock of a controlled foreign corporation) shall be determined by excluding the day on which such asset is acquired and including the day on which such asset is disposed of. The application of this

paragraph may be illustrated by the following example:

Example. On June 30, 1963, United States person E acquires 70 of the 100 shares of the only class of stock of foreign corporation A from nonresident alien B, who until such time owns all such 100 shares. E sells 10 shares of stock of such corporation on November 30, 1963, and 60 shares on December 31, 1963, to nonresident alien F. Corporation A is a controlled foreign corporation for the period beginning with July 1, 1963, and extending through December 31, 1963. As to the 10 shares of stock sold on November 30, 1963, E is treated as not owning such shares at any time after November 30, 1963, nor before July 1, 1963. As to the remaining 60 shares of stock, E is treated as not owning them before July 1, 1963, or after December 31, 1963.

(g) *United States shareholder defined*—(1) *In general.* For purposes of sections 951 through 964, the term "United States shareholder" means, with respect to a foreign corporation, a United States person (as defined in section 957 (d)) who owns within the meaning of section 958(a), or is considered as owning by applying the rules of ownership of section 958(b), 10 percent or more of the total combined voting power of all classes of stock entitled to vote of such foreign corporation.

(2) *Percentage of total combined voting power owned by United States person*—(i) *Meaning of combined voting power.* In determining for purposes of subparagraph (1) of this paragraph whether a United States person owns the requisite percentage of voting power of all classes of stock entitled to vote, consideration will be given to all the facts and circumstances in each case. In any case where—

(*a*) A foreign corporation has more than one class of stock outstanding, and

(*b*) One or more United States persons own (within the meaning of section 958) shares of any one class of stock which possesses the power to elect, appoint, or replace a person, or persons, who with respect to such corporation, exercise the powers ordinarily exercised by a member of the board of directors of a domestic corporation,

the percentage of the total combined voting power with respect to such corporation owned by any such United States person shall be his proportionate share of the percentage of the persons exercising the powers ordinarily exercised by members of the board of directors of a domestic corporation (described in (*b*) of this subdivision) which such class of stock (as a class) possesses the power to elect, appoint, or replace. In all cases, however, a United States person will be deemed to own 10 percent or more of the total combined voting power with respect to a foreign corporation if such person owns (within the meaning of section 958) 20 percent or more of the total number of shares of a class of stock of such corporation possessing one or more powers enumerated in paragraph (b)(1) of § 1.957-1. Whether a foreign corporation is a controlled foreign corporation for purposes of sections 951 through 964 shall be determined by applying the rules of section 957 and §§ 1.957-1 through 1.957-4.

(ii) *Illustration.* The application of this paragraph may be illustrated by the following examples:

Example (1). Foreign corporation S has two classes of capital stock outstanding, consisting of 60 shares of class A stock and 40 shares of class B stock. Each class of the outstanding stock is entitled to participate on a share for share basis in any dividend distributions by S Corporation. The owners of a majority of the class A stock are entitled to elect 7 of the 10 corporate directors, and the owners of a majority of the class B stock are entitled to elect the other 3 of the 10 directors. Thus, the class A stock (as a class) possesses 70 percent of the total combined voting power of all classes of stock entitled to vote of S Corporation, and the class B stock (as a class) possesses 30 percent of such voting power. D, a United States person, owns 31 shares of the class A stock and thus owns 36.167 percent (31/60 × 70 percent) of the total combined voting power of all classes of stock entitled to vote of S Corporation. By reason of the ownership of such voting power, D is a United States shareholder of S Corporation under section 951(b). For purposes of section 957, S Corporation is a controlled foreign corporation by reason of D's ownership of a majority of the class A stock, as illustrated in example (2) of paragraph (c) of § 1.957-1. E, a United States person, owns eight shares of the class A stock and thus owns 9.333 percent (8/60 × 70 percent) of the total combined voting power of all classes of stock entitled to vote of S Corporation. Since E owns only 9.333 percent of such voting power and less than 20 percent of the number of shares of the class A stock, he is not a United States shareholder of S Corporation under section 951(b). F, a United States person, owns 14 shares of the class B stock and thus owns 10.5 percent (14/40 × 30 percent) of the total combined voting power of all classes of stock entitled to vote of S Corporation. By reason of the ownership of such voting power, F is a United States shareholder of S Corporation under section 951(b).

Example (2). Foreign corporation R has three classes of stock outstanding, consisting of 10 shares of class A stock, 20 shares of class B stock, and 300 shares of class C stock. Each class of the outstanding stock is entitled to participate on a share for share basis in any distribution by R Corporation. The owners of a majority of the class A stock are entitled to elect 6 of the 10 corporate directors, and the owners of a majority of the class B stock are entitled to elect the other 4 of the 10 directors. The class C stock is not entitled to vote. D, E, and F, United States persons, each own 2 shares of the class A stock and 100 shares of the class C stock. As owners of a majority of the class A stock, D, E, and F elect 6 members of the board of directors. D, E, and F are United States shareholders of R Corporation under section 951(b) since each owns 20 percent of the total number of shares of the class A stock which possesses the power to elect a majority of the board of directors of R Corporation. For purposes of section 957, R Corporation is a controlled foreign corporation by reason of the ownership by D, E, and F of a majority of the class A stock, as illustrated in example (2) of paragraph (c) of § 1.957-1.

§ 1.951-2 Coordination of subpart F with election of a foreign investment company to distribute income.

A United States shareholder who, for his taxable year is a qualified shareholder (within the meaning of section 1247(c)) of a foreign investment company with respect to which an election under section 1247(a) and the regulations thereunder is in effect for the taxable year of such company which ends with or within such taxable year of such shareholder shall not be required to include any amount in his gross income for his taxable year under paragraph (a) of § 1.951-1 with respect to such company for that taxable year of such company.

§ 1.951-3 Coordination of subpart F with foreign personal holding company provisions.

A United States shareholder (as defined in section 951(b)) who is required under section 551(b) to include in his gross income for his taxable year his share of the undistributed foreign personal holding company income for the taxable year of a foreign personal holding company (as defined in section 552) which for that taxable year is a controlled foreign corporation (as defined in section 957) shall not be required to include in his gross income for his taxable year under section 951(a) and paragraph (a) of § 1.951-1 any amount attributable to the earnings and profits of such corporation for that taxable year of such corporation. If a foreign corporation is both a foreign personal holding company and a controlled foreign corporation for the same period which is only a part of its taxable year, then, for purposes of applying the immediately preceding sentence, such corporation shall be deemed to be, for such part of such year, a foreign personal holding company and not a controlled foreign corporation and the earnings and profits of such corporation for the taxable year shall be deemed to be that amount which bears the same ratio to its earnings and profits for the taxable year as such part of the taxable year bears to the entire taxable year. The application of this section may be illustrated by the following examples:

Example (1). A, a United States shareholder, owns 100 percent of the only class of stock of controlled foreign corporation M which, in turn, owns 100 percent of the only class of stock of controlled foreign corporation N. A and Corporations M and N use the calendar year as a taxable year. During 1963, N Corporation derives $40,000 of gross income all of which is foreign personal holding company income within the meaning of section 553; thus, N Corporation is a foreign personal holding company for such year within the meaning of section 552(a). For 1963, N Corporation has undistributed foreign personal holding company income (as defined in section 556(a)) of $30,000, derives $25,000 of subpart F income, and has earnings and profits of $32,000. During 1963, M Corporation derives $100,000 of gross income (including as a dividend under section 555(c)(2) the $30,000 of N Corporation's undistributed foreign personal holding company income), 65 percent of which is foreign personal holding company income within the meaning of section 553. Therefore, M Corporation is a foreign personal holding company for such year. For 1963, M Corporation has undistributed foreign personal holding company income (as defined in section 556(a)) of $90,000, determined by taking into account under section 552(c)(1) N Corporation's $30,000 of undistributed foreign personal holding company income for such year; in addition, M Corporation derives $50,000 of subpart F income and has earnings and profits of $92,000. Neither M Corporation nor N Corporation makes any actual distributions during 1963. A is required under

section 551(b) to include in his gross income for 1963 as a dividend the $90,000 of M Corporation's undistributed foreign personal holding company income for such year. For 1963, A is not required to include in his gross income under section 951(a) any of the $50,000 subpart F income of M Corporation or of the $25,000 subpart F income of N Corporation.

Example (2). The facts are the same as in example (1), except that only 45 percent of M Corporation's gross income (determined by including under section 555(c)(2) the $30,000 of N Corporation's undistributed foreign personal holding company income) is foreign personal holding company income within the meaning of section 553; accordingly, M Corporation is not a foreign personal holding company for 1963. Since for such year M Corporation is not a foreign personal holding company, the undistributed foreign personal holding company income ($30,000) of N Corporation is not required under section 555(b) to be included in the gross income of M Corporation for 1963; as a result, such income in not required under section 551(b) to be included in the gross income of A for such year even though N Corporation is a foreign personal holding company for that year. For 1963, A is required to include $75,000 in his gross income under section 951(a)(1)(A)(i) and paragraph (a) of § 1.951-1, consisting of the $50,000 subpart F income of M Corporation and the $25,000 subpart F income of N Corporation.

Example (3). The facts are the same as in example (1), except that in 1963 N Corporation actually distributes $30,000 to M Corporation and M Corporation, in turn, actually distributes $90,000 to A. Under section 556 the undistributed foreign personal holding company income of both M corporation and N Corporation is thus reduced to zero; accordingly, no amount is included in the gross income of A under section 551(b) by reason of his interest in corporations M and N. A must include $75,000 in his gross income for 1963 under section 951(a)(1)(A)(i) and paragraph (a) of § 1.951-1, consisting of the $50,000 subpart F income of M Corporation and the $25,000 subpart F income of N Corporation. Of the $90,000 distribution received by A from M Corporation, $75,000 is excludable from his gross income under section 959(a)(1) as previously taxed earnings and profits; the remaining $15,000 is includible in his gross income for 1963 as a dividend.

Example (4). (a) A, a United States shareholder, owns 100 percent of the only class of stock of controlled foreign corporation P, organized on January 1, 1963. Both A and P Corporaton use the calendar year as a taxable year. During 1963, 1964, and 1965, P Corporation is not a foreign personal holding company as defined in section 552(a); in each of such years, P Corporation derives dividend income of $10,000 which constitutes foreign personal holding company income (within the meaning of § 1.954-2) but under paragraph (b)(1) of § 1.954-1 excludes such amounts from foreign base company income as dividends received from, and reinvested in, qualified investments in less developed countries. Corporation P's earnings and profits accumulated for 1963, 1964, and 1965 and determined under paragraph (b)(2) of § 1.955-1 are $40,000. For 1966, P Corporation is a foreign personal holding company, has predistribution earnings and profits of $10,000, derives $10,000 of income which is both foreign personal holding company income within the meaning of section 553 and subpart F income within the meaning of section 952, distributes $8,000 to A, and has undistributed foreign personal holding company income of $2,000 within the meaning of section 556. In addition, for 1966 P Corporation has a withdrawal (determined under section 955(a) but without regard to its earnings and profits for such year) of $25,000 of previously excluded subpart F income from investment in less developed countries. A is required under section 551(b) to include in his gross income for 1966 as a dividend the $2,000 undistributed foreign personal holding company income. The $8,000 distribution is includible in A's gross income for 1966 under sections 61(a)(7) and 301 as a distribution to which section 316(a)(2) applies. Corporation P's $25,000 withdrawal of previously excluded subpart F income from investment in less developed countries is includible in A's gross income for 1966 under section 951(a)(1)(A)(ii) and paragraph (a)(2) of § 1.951-1.

(b) If P Corporation's earnings and profits accumulated for 1963, 1964, and 1965 were $15,000, instead of $40,000, the result would be the same as in paragraph (a) of this example, except that a withdrawal of only $15,000 of previously excluded subpart F income from investment in less developed countries would be includible in A's gross income for 1966 under section 951(a)(1)(A)(ii) and paragraph (a)(2) of § 1.951-1.

Example (5). (a) The facts are the same as in paragraph (a) of example (4), except that, instead of having a $25,000 decrease in qualified investments in less developed countries for 1966, P Corporation invests $20,000 in tangible property (not described in section 956(b)(2)) located in the United States and such investment constitutes an increase (determined under section 956(a) but without regard to the earnings and profits of P Corporation for 1966) in earnings invested in United States property. Corporation P's earnings and profits accumulated for 1963, 1964, and 1965 and determined under paragraph (b)(1) of § 1.956-1 are $22,000. The result is the same as in paragraph (a) of example (4), except that instead of including the $25,000 withdrawal, A must include $20,000 in his gross income for 1966 under section 951(a)(1)(B) and paragraph (a)(3) of § 1.951-1 as an investment of earnings in United States property.

(b) If P Corporation's earnings and profits accumulated for 1963, 1964, and 1965 were $9,000 instead of $22,000, the result would be the same as in paragraph (a) of this example, except that only $9,000 would be includible in A's gross income for 1966 under section 951(a)(1)(B) and paragraph (a)(3) of § 1.951-1 as an investment of earnings in United States property.

§ 1.952 Statutory provisions; subpart F income defined.

SEC. 952. *Subpart F income defined*—(a) *In general.* For purposes of this subpart, the term "subpart F income" means, in the case of any controlled foreign corporation, the sum of—

(1) The income derived from the insurance of United States risks (as determined under section 953), and

(2) The foreign base company income (as determined under section 954).

(b) *Exclusion of United States income.* Subpart F income does not include any item includible in gross income under this chapter (other than this subpart) as income derived from sources within the United States of a foreign corporation engaged in trade or business in the United States.

(c) *Limitation.* For purposes of subsection (a), the subpart F income of any controlled foreign corporation for any taxable year shall not exceed the earnings and profits of such corporation for such year reduced by the amount (if any) by which—

(1) An amount equal to—

(A) The sum of the deficits in earnings and profits for prior taxable years beginning after December 31, 1962, plus

(B) The sum of the deficits in earnings and profits for taxable years beginning after December 31, 1959, and before January 1, 1963 (reduced by the sum of the earnings and profits for such taxable years); exceeds

(2) An amount equal to the sum of the earnings and profits for prior taxable years beginning after December 31, 1962, allocated to other earnings and profits under section 959(c)(3).

For purposes of the preceding sentence, any deficit in earnings and profits for any prior taxable year shall be taken into account under paragraph (1) for any taxable year only to the extent it has not been taken into account under such paragraph for any preceding taxable year to reduce earnings and profits of such preceding year.

(d) *Special rule in case of indirect ownership.* For purposes of subsection (c), if—

(1) A United States shareholder owns (within the meaning of section 958(a)) stock of a foreign corporation, and by reason of such ownership owns (within the meaning of such section) stock of any other foreign corporation, and

(2) Any of such foreign corporations has a deficit in earnings and profits for the taxable year,

then the earnings and profits for the taxable year of each such foreign corporation which is a controlled foreign corporation shall, with respect to such United States shareholder, be properly reduced to take into account any deficit described in paragraph (2) in such manner as the Secretary or his delegate shall prescribe by regulations.

[Sec. 952 as added by sec. 12(a), Rev. Act 1962 (76 Stat. 1006)]

§ 1.952-1 Subpart F income defined.

(a) *In general.* For purposes of sections 951 through 964, a controlled foreign corporation's subpart F income for any taxable year shall, except as provided in paragraph (b) of this section and subject to the limitations of paragraphs (c) and (d) of this section, consist of the sum of—

(1) The income derived by such corporation for such year from the insurance of United States risks (determined in accordance with the provisions of section 953 and §§ 1.953-1 through 1.953-6), and

(2) The income derived by such corporation for such year which constitutes foreign base company income (determined in accordance with the provisions of section 954 and §§ 1.954-1 through 1.954-5).

Pursuant to section 951(a)(1)(A)(i) and § 1.951-1, a United States shareholder of such controlled foreign corporation must include his pro rata share of such subpart F income in his gross income for his taxable year in which or with which such taxable year of the foreign corporation ends. See section 952(a). However, see paragraph (a) of § 1.957-2 for special rule limiting the subpart F income to the income derived from the insurance of United States risks in the case of certain controlled foreign corporations described in section 957(b).

(b) *Exclusion of United States income*—(1) *In general.* Notwithstanding paragraph (a) of this section and except as provided in subparagraph (2) of this paragraph, a controlled foreign corporation's subpart F income for any taxable year shall not include any item of income which is includible in the gross income of such corporation for such year under provisions (other than sections 951 through 964) of chapter 1 of the

Code as income derived from sources within the United States if for the taxable year a tax is imposed with respect to such income in accordance with section 882(a). The deductions attributable to such items of gross income shall not be taken into account for purposes of sections 951 through 964. Any item which is required to be excluded from gross income or which is taxed at a reduced rate under an applicable treaty obligation of the United States shall not be excluded from the gross income of a controlled foreign corporation under this subparagraph. See section 952(b). For purposes only of paragraph (b)(1)(viii) of § 1.956-2, an item of income derived by a controlled foreign corporation from sources within the United States with respect to which for the taxable year a tax is imposed in accordance with section 882(a) shall be considered described in section 952(b) whether or not such item of income would have constituted subpart F income for such year.

(2) *Treatment of United States income of foreign insurance companies.* The subpart F income for any taxable year of a controlled foreign corporation which is a foreign insurance company shall not include any item of income which is includible in the gross income of such corporation for such year under provisions (other than sections 951 through 964) of chapter 1 of the Code as income derived from sources within the United States if such income is described in section 819(a), 822(e), or 832(d) and, for such taxable year, a tax is imposed with respect to such income in accordance with section 802(a), 821(a), or 831(a), as the case may be.

The deductions attributable to such items of gross income shall not be taken into account for purposes of sections 951 through 964. See paragraph (d) of § 1.953-4 and section 11(e)(2).

(c) *Limitation on a controlled foreign corporation's subpart F income*—(1) *In general.* A United States shareholder's pro rata share (determined in accordance with the rules of paragraph (e) of § 1.951-1) of a controlled foreign corporation's subpart F income for any taxable year shall not exceed his pro rata share of the earnings and profits (as defined in section 964(a) and § 1.964-1) of such corporation for such taxable year, computed as of the close of such taxable year without diminution by reason of any distributions made during such taxable year, minus the sum of—

(i) The amount, if any, by which such shareholder's pro rata share of—

(*a*) The sum of such corporation's deficits in earnings and profits for prior taxable years beginning after December 31, 1962, plus

(*b*) The sum of such corporation's deficits in earnings and profits for taxable years beginning after December 31, 1959, and before January 1, 1963 (reduced by the sum of the earnings and profits (as so defined) of such corporation for any of such taxable years) exceeds

(*c*) The sum of such corporation's earnings and profits for prior taxable years beginning after December 31, 1962, which, with respect to such shareholder, are allocated to other earnings and profits under section 959(c)(3) and § 1.959-3; and

(ii) Such shareholder's pro rata share of any deficits in earnings and profits of other foreign corporations for a taxable year beginning after December 31, 1962, which are attributable to stock of such other foreign corporations owned by such shareholder within the meaning of section 958(a) and which, in accordance with section 952(d) and paragraph (d) of this section, are taken into account as a reduction in the controlled foreign corporation's earnings and profits for such taxable year.

For purposes of applying this subparagraph, the reduction (if any) provided by subdivision (i) of this subparagraph in a United States shareholder's pro rata share of the earnings and profits of a controlled foreign corporation shall be taken into account before the reduction provided by subdivision (ii) of this subparagraph. See section 952(c).

(2) *Special rules.* For purposes only of determining the limitation under subparagraph (1) of this paragraph on a United States shareholder's pro rata share of a controlled foreign corporation's subpart F income for any taxable year—

(i) *Status of foreign corporation.* The earnings and profits, or deficit in earnings and profits, of a foreign corporation for any taxable year shall be taken into account whether or not such foreign corporation is a controlled foreign corporation at the time such earnings and profits are derived or such deficit in earnings and profits is incurred.

(ii) *Deficits in earnings and profits taken into account only once.* A controlled foreign corporation's deficit in earnings and profits for any taxable year preceding the taxable year shall be taken into account for the taxable year only to the extent such deficit has not been taken into account under this paragraph, paragraph (d) of this section, or paragraph (d)(2)(ii) of § 1.963-2 in computing a minimum distribution, for any taxable year preceding the taxable year, to reduce earnings and profits of such preceding year of such controlled foreign corporation or of any other controlled foreign corporation.

(iii) *Determination of pro rata share.* A United States shareholder's pro rata share of a controlled foreign corporation's earnings and profits, or deficit in earnings and profits, for any taxable year shall be determined in accordance with the principles of paragraph (e) of § 1.951-1.

(3) *Illustrations.* The application of this paragraph may be illustrated by the following examples:

Example (1). (a) A is a United States shareholder who owns 100 percent of the only class of stock of M Corporation, a controlled foreign corporation organized on January 1, 1963. Both A and M Corporation use the calendar year as a taxable year.

(b) During 1963, M Corporation derives $20,000 of subpart F income and has earnings and profits of $30,000. Corporation M makes no distributions to A during such year. The limitation under section 952(c) on M Corporation's subpart F income for 1963 is $30,000; and $20,000 is includible in A's gross income for such year under section 951(a)(1)(A)(i).

(c) On January 1, 1964, M Corporation acquires 100 percent of the only class of stock of N Corporation, a controlled foreign corporation which uses the calendar year as a taxable year. During 1964, N Corporation derives $6,000 of subpart F income, has $7,000 of earnings and profits, and distributes $5,000 to M Corporation. The limitation under section 952(c) on N Corporation's subpart F income for 1964 is $7,000; and $6,000 of subpart F income is includible in A's gross income for such year under section 951(a)(1)(A)(i).

(d) During 1964, M Corporation derives $8,000 of rents which constitute subpart F income, makes a $10,000 distribution to A, and has earnings and profits of $12,000 (including the $5,000 dividend received from N Corporation). The limitation under section 952(c) on M Corporation's subpart F income for 1964 is $7,000, determined as follows:

Corporation M's earnings and profits for 1964 (determined under section 964(a) and § 1.964-1 as of the close of such year without diminution for any distributions made during such year)	$12,000
Less: Corporation M's earnings and profits for 1964 described in section 959(b)	5,000
Limitation on M Corporation's subpart F income for 1964	7,000

Thus, for 1964 with respect to A's interest in M Corporation, $7,000 of subpart F income is includible in his gross income under section 951(a)(1)(A)(i). The $10,000 dividend received from M Corporation is excludible from A's gross income for 1964 under section 959(a)(1) and paragraph (b) of § 1.959-1.

Example (2). A is a United States shareholder who owns 100 percent of the only class of stock of R Corporation which was organized on January 1, 1961. R Corporation is a controlled foreign corporation for the entire period after December 31, 1962, here involved. Both A and R Corporation use the calendar year as a taxable year. During 1963, R Corporation derives $25,000 of subpart F income and has $50,000 of earnings and profits. Corporation R has $15,000 of earnings and profits for 1961, and a deficit in earnings and profits of $45,000 for 1962. Thus, R Corporation has as of December 31, 1963, a net deficit in earnings and profits of $30,000 for the years 1961 and 1962. Corporation R makes no distributions to A during 1963. The limitation under section 952(c) on R Corporation's subpart F income for 1963 is $20,000 ($50,000 minus $30,000), and $20,000 of subpart F income is includible in A's gross income for 1963 under section 951(a)(1)(A)(i). During 1964, R Corporation derives $18,000 of subpart F income and has $30,000 of earnings and profits. Corporation R makes no distributions to A during 1964. The entire $18,000 of subpart F income is includible in A's gross income for 1964 under section 951(a)(1)(A)(i).

(d) *Treatment of deficits in earnings and profits attributable to stock of other foreign corporation indirectly owned by a United States shareholder*—(1) *In general.* For purposes of paragraph (c)(1)(ii) of this section, if—

(i) A United States shareholder owns (within the meaning of section 958(a)) stock in two or more foreign corporations in a chain of foreign corporations (as defined in subparagraph (2)(ii) of this paragraph), and

(ii) Any of the corporations in such chain has a deficit in earnings and profits

for a taxable year beginning after December 31, 1962,

then, with respect to such shareholder and only for purposes of determining the limitation on subpart F income under paragraph (c) of this section, the earnings and profits for the taxable year of each such foreign corporation which is a controlled foreign corporation shall, in accordance with the rules of subparagraph (2) of this paragraph, be reduced to take into account any deficit in earnings and profits referred to in subdivision (ii) of this subparagraph. See section 952(d).

(2) *Special rules.* For purposes of this paragraph—

(i) *Applicable rules.* The special rules set forth in paragraph (c)(2) of this section shall apply.

(ii) *"Chain" defined.* A chain of foreign corporations shall, with respect to a United States shareholder, include—

(*a*) Any foreign corporation in which such shareholder owns (within the meaning of section 958(a)(1)(A)) stock, but only to the extent of the stock so owned, and

(*b*) All foreign corporations in which such shareholder owns (within the meaning of section 958(a)(2)) stock, but only to the extent of the stock so owned by reason of his ownership of the stock referred to in (*a*) of this subdivision.

(iii) *Allocation of deficit.* If one or more foreign corporations (whether or not a controlled foreign corporation) includible in a chain of foreign corporations has a deficit in earnings and profits (determined under section 964(a) and § 1.964-1) for the taxable year, the amount of deficit taken into account under section 952(d) with respect to a United States shareholder in such chain as a reduction in earnings and profits for the taxable year of a controlled foreign corporation includible in such chain shall be an amount which bears the same ratio to such shareholder's pro rata share of the total deficit in earnings and profits for the taxable year of all includible foreign corporations as his pro rata share of the earnings and profits (determined under paragraph (c) of this section but without regard to the provisions of subparagraph (1)(ii) of such paragraph) for the taxable year of such includible controlled foreign corporation bears to his pro rata share of the total earnings and profits (as so determined under paragraph (c) of this section) for the taxable year of all includible controlled foreign corporations. The amount of deficit taken into account under this subdivision with respect to any controlled foreign corporation includible in a chain of foreign corporations shall not exceed the United States shareholder's pro rata share of the controlled foreign corporation's earnings and profits for the taxable year.

(iv) *Taxable year.* The taxable year from which a deficit is allocated under this paragraph, and the taxable year to which such deficit is allocated to reduce earnings and profits, shall be the taxable year of the foreign corporation ending with or within the taxable year of the United States shareholder described in subparagraph (1)(i) of this paragraph.

(3) *Illustration.* The application of this paragraph may be illustrated by the following examples:

Example (1). (a) Domestic corporation M owns 100 percent, 20 percent, and 100 percent, respectively, of the only class of stock of foreign corporations A, B, and F, respectively. Corporation A owns 80 percent of the only class of stock of each of foreign corporations B and C, respectively. Corporation F owns 20 percent of such stock of C Corporation. Corporation B owns 75 percent of the only class of stock of foreign corporation D, and 50 percent of the only class of stock of each of foreign corporations G and H, respectively. C Corporation owns 75 percent of the only class of stock of foreign corporation E. All the corporations use the calendar year as a taxable year, and all of the foreign corporations, except corporations G and H, are controlled foreign corporations throughout the period here involved.

(b) The subpart F income, and the earnings and profits (determined under paragraph (c) of this section but without regard to subparagraph (1)(ii) of such paragraph) or deficit in earnings and profits (determined under section 964(a) and § 1.964-1), of each of the foreign corporations for 1963 are as follows, the deficits being set forth in parenthesis:

	Subpart F income	Earnings and profits (deficits)
A Corporation	$6,000	$18,000
B Corporation		(7,500)
C Corporation		(2,500)
D Corporation	4,000	5,000
E Corporation	12,000	15,000
F Corporation	8,000	20,250
G Corporation		(10,000)
H Corporation		7,000

(c) The chains of foreign corporations (within the meaning of subparagraph (2)(ii) of this paragraph) for 1963 are the "A" chain, consisting of corporations, A, B, C, D, E, G, and H, but only to the extent of M Corporation's stock interest in such corporations under section 958(a) by reason of its ownership of stock in A Corporation; the "B" chain, consisting of corporations B, D, G, and H, but only to the extent of M Corporation's stock interest in such corporations under section 958(a) by reason of its ownership of stock in B Corporation; and the "F" chain, consisting of corporations F, C, and E, but only to the extent of M Corporation's stock interest in such corporations under section 958(a) by reason of its ownership of stock in F Corporation.

(d) Corporation M's stock interest under section 958(a) in each of the chains of foreign corporations is as follows for 1963:

	A	B	C	D	E	F	G	H
				Percent				
A chain:								
Direct interest	100							
(100%×80%)		80						
(100%×80%)			80					
(80%×75%)				60				
(80%×75%)					60			
(80%×50%)							40	
(80%×50%)								40
B chain:								
Direct interest		20						
(20%×75%)				15				
(20%×50%)							10	
(20%×50%)								10
F chain:								
Direct interest						100		
(100%×20%)			20					
(20%×75%)					15			
Total interests	100	100	100	75	75	100	50	50

(e) Corporation M's pro rata share of the earnings and profits (determined under paragraph (c) of this section but without regard to subparagraph (1)(ii) of such paragraph), or of the deficit, of each controlled foreign corporation or each foreign corporation, respectively, includible in the respective chains for 1963 is as follows:

	Earnings and profits	Deficit
A chain:		
A Corporation (100%)	$18,000	
B Corporation (80%)		($6,000)
C Corporation (80%)		(2,000)
D Corporation (60%)	3,000	
E Corporation (60%)	9,000	
G Corporation (40%)		(4,000)
H Corporation (40%)	(1)	
Total	30,000	(12,000)
B chain:		
B Corporation (20%)		(1,500)
D Corporation (15%)	750	
G Corporation (10%)		(1,000)
H Corporation (10%)	(1)	
Total	$750	(2,500)
F chain:		
F Corporation (100%)	20,250	
C Corporation (20%)		(500)
E Corporation (15%)	2,250	
Total	$22,500	(500)

[1] The earnings and profits of H Corporation are not included in the total earnings and profits for the chain because H Corporation is not a controlled foreign corporation.

(f) The amount by which M Corporation's pro rata share of the earnings and profits for 1963 of the controlled foreign corporations in each respective chain shall be reduced under section 952(d) by M Corporation's pro rata share of the deficits of corporations B, C, and G for 1963 is determined as follows:

		Amount of reduction
A chain:		
A Corporation ($12,000×$18,000/$30,000)		$7,200
D Corporation ($12,000×$3,000/$30,000)		1,200
E Corporation ($12,000×$9,000/$30,000)		3,600
Total		12,000
B chain:		
D Corporation ($2,500×$750/$750)	$2,500	
Limitation: M Corporation's pro-rata share of D Corporation's earnings and profits	750	
Allocation of used deficit ($750) to M Corporation's pro rata share of the deficits of corporations B and G:		
B Corporation ($750×($1,500/$2,500))	450	
G Corporation ($750×($1,000/$2,500))	300	
Total	750	750
F chain:		
F Corporation ($500×$20,250/$22,500)		450
E Corporation ($500×$2,250/$22,500)		50
Total		500

(g) Corporation M's pro rata share of the earnings and profits (determined after reduction for deficits under section 952(d)) for 1963 of each controlled foreign corporation in the respective chains, determined on a chain-by-chain basis, is determined as follows:

	Earnings and profits before reduction	Reduction (sec. 952(d))	Reduced earnings and profits
A chain:			
A Corporation	$18,000	$7,200	$10,800
D Corporation	3,000	1,200	1,800
E Corporation	9,000	3,600	5,400
B chain:			
D Corporation	750	750	
F chain:			
F Corporation	20,250	450	19,800
E Corporation	2,250	50	2,200

(h) Corporation M's pro rata share of each controlled foreign corporation's subpart F income, limited as provided by section 952(c) and paragraph (c) of this section, for 1963 which is includible in its gross income for such year under section 951(a)(1)(A)(i) and § 1.951-1 is determined as follows:

	Subpart F income (before limitation)	Earnings and profits (sec. 952 (c))	Amount includible in income
A Corporation (100%)	$6,000	$10,800	$6,000
D Corporation (75%)	3,000	1,800	1,800
E Corporation (75%)	9,000	7,600	7,600
F Corporation (100%)	8,000	19,800	8,000
Total includible under sec. 951(a)(1)(A)(i)			23,400

Example (2). The facts are the same as in example (1) except that, in addition, for 1964, foreign corporations C, D, and E have no subpart F income and no earnings and profits and foreign corporations G and H have no earnings and profits. For 1964, B Corporation has subpart F income of $1,000 and earnings and profits (determined in accordance with section 964(a) and § 1.964-1) of $1,500; A Corporation has subpart F income of $800 and earnings and profits of $1,000; and F Corporation has subpart F income of $500 and earnings and profits of $1,000. Such earnings and profits are determined without regard to distributions for 1964. Corporation B has an unused deficit in earnings and profits of $1,050 for 1963 ($1,500 minus $450) applicable to M Corporation's interest in such corporation (paragraph (f) of example (1)), and, under paragraph (c)(1)(i)(*a*) of this section, with respect to M Corporation, such deficit reduces B Corporation's earnings and profits for 1964 to $450. Inasmuch as G Corporation is not a controlled foreign corporation for 1964, such corporation's unused deficit in earnings and profits of $700 for 1963 ($1,000 minus $300) applicable to M Corporation's interest in such corporation (paragraph (f) of example (1)) may be used under paragraph (c)(1)(i)(*a*) of this section to reduce M Corporation's interest in G Corporation's earnings and profits in a later year or years for which G Corporation is a controlled foreign corporation. Corporation M's pro rata share of each controlled foreign corporation's subpart F income, limited as provided by section 952(c) and paragraph (c) of this section, for 1964 which is includible in its gross income for such year under section 951(a)(1)(A)(i) and § 1.951-1 is determined as follows:

	Subpart F income (before limitation)	Earnings and profits (sec. 952 (c))	Amount includible in income
A Corporation	$800	$1,000	$800
B Corporation	1,000	450	450
F Corporation	500	1,000	500

Example (3). The facts are the same as in example (2), except that for 1964 B Corporation has subpart F income of $550 and earnings and profits (determined in accordance with section 964(a) and § 1.964-1) of $550; such earnings and profits are determined without regard to distributions for 1964. Under paragraph (c)(1)(i)(*a*) of this section, B Corporation's unused deficit of $1,050 for 1963 reduces its earnings and profits for 1964 with respect to M Corporation to zero. The remaining $500 of the unused deficit for 1963 applicable to M Corporation's interest in B Corporation may be used under paragraph (c)(1)(i)(*a*) of this section in later years to reduce M Corporation's interest in B Corporation's earnings and profits.

§ 1.952-2 Determination of gross income and taxable income of a foreign corporation.

(a) *Determination of gross income*—(1) *In general*. Except as provided in subparagraph (2) of this paragraph, the gross income of a foreign corporation for any taxable year shall, subject to the special rules of paragraph (c) of this section, be determined by treating such foreign corporation as a domestic corporation taxable under section 11 and by applying the principles of section 61 and the regulations thereunder.

(2) *Insurance gross income*—(i) *Life insurance gross income*. The gross income for any taxable year of a controlled foreign corporation which is engaged in the business of reinsuring or issuing insurance or annuity contracts and which, if it were a domestic corporation engaged only in such business, would be taxable as a life insurance company to which part I (sections 801 through 820) of subchapter L of chapter 1 of the Code applies, shall, subject to the special rules of paragraph (c) of this section, be the sum of—

(*a*) The gross investment income, as defined under section 804(b), except that interest which is excluded from gross income under section 103 shall not be taken into account;

(*b*) The sum of the items taken into account under section 809(c), except that advance premiums shall not be taken into account; and

(*c*) The amount by which the net long-term capital gain exceeds the net short-term capital loss.

(ii) *Mutual and other insurance gross income*. The gross income for any taxable year of a controlled foreign corporation which is engaged in the business of reinsuring or issuing insurance or annuity contracts and which, if it were a domestic corporation engaged only in such business, would be taxable as a mutual insurance company to which part II (sections 821 through 826) of subchapter L of chapter 1 of the Code applies or as a mutual marine insurance or other insurance company to which part III (sections 831 and 832) of subchapter L of chapter 1 of the Code applies, shall, subject to the special rules of paragraph (c) of this section, be—

(*a*) The sum of—

(*1*) The gross income, as defined in section 832(b)(1);

(*2*) The amount of losses incurred, as defined in section 832(b)(5); and

(*3*) The amount of expenses incurred, as defined in section 832(b)(6); reduced by

(*b*) The amount of interest which under section 103 is excluded from gross income.

(b) *Determination of taxable income*—(1) *In general*. Except as provided in subparagraph (2) of this paragraph, the taxable income of a foreign corporation for any taxable year shall, subject to the special rules of paragraph (c) of this section, be determined by treating such foreign corporation as a domestic corporation taxable under section 11 and by applying the principles of section 63.

(2) *Insurance taxable income*. The taxable income for any taxable year of a controlled foreign corporation which is engaged in the business of reinsuring or issuing insurance or annuity contracts and which, if it were a domestic corporation engaged only in such business, would be taxable as an insurance company to which subchapter L of chapter 1 of the Code applies shall, subject to the special rules of paragraph (c) of this section, be determined by treating such corporation as a domestic corporation taxable under subchapter L of chapter 1 of the Code and by applying the principles of §§ 1.953-4 and 1.953-5 for determining taxable income.

(c) *Special rules for purposes of this section*—(1) *Nonapplication of certain provisions*. Except where otherwise distinctly expressed, the provisions of subchapters F, G, H, L, M, N, S, and T of chapter 1 of the Code shall not apply.

(2) *Application of principles of § 1.964-1*. The determinations with respect to a foreign corporation shall be made as follows:

(i) *Books of account*. The books of account to be used shall be those regularly maintained by the corporation for the purpose of accounting to its shareholders.

(ii) *Accounting principles*. Except as provided in subparagraphs (3) and (4) of this paragraph, the accounting principles to be employed are those described in paragraph (b) of § 1.964-1. Thus, in applying accounting principles generally accepted in the United States for purposes of reflecting in the financial statements of a domestic corporation the operations of foreign affiliates, no adjustment need be made unless such adjustment will have a material effect, within the meaning of paragraph (a) of § 1.964-1.

(iii) *Translation into United States dollars*—(*a*) *In general*. Except as provided in (*b*) of this subdivision, the amounts determined in accordance with subdivision (ii) of this subparagraph shall be translated into United States dollars in accordance with the principles of paragraph (d) of § 1.964-1.

(*b*) *Special rule*. In any case in which the value of the foreign currency in relation to the United States dollar fluctuates more than 10 percent during any translation period (within the meaning of paragraph (d)(6) of § 1.964-1), the subpart F income and non-subpart F income shall be separately translated as if each constituted all the income of the controlled foreign corporation for the translation period.

(iv) *Tax accounting methods*. The tax accounting methods to be employed are those established or adopted by or on behalf of the foreign corporation under paragraph (c) of § 1.964-1. Thus, such accounting methods must be consistent with the manner of treating inventories, depreciation, and elections referred to in subdivisions (ii), (iii), and (iv) of paragraph (c)(1) of § 1.964-1 and used for purposes of such paragraph; however, if, in accordance with paragraph (c)(6) of § 1.964-1, a foreign

corporation receives foreign base company income before any elections are made or before an accounting method is adopted by or on behalf of such corporation under paragraph (c)(3) of § 1.964–1, the determinations of whether an exclusion set forth in section 954(b) applies shall be made as if no elections had been made and no accounting method had been adopted.

(v) *Exchange gain or loss.* Exchange gain or loss, determined in accordance with the principles of paragraph (e) of § 1.964–1, shall be taken into account and shall be allocated between subpart F income and non-subpart F income for any taxable year under a method which is reasonable under all the facts and circumstances. For example, such exchange gain or loss may be allocated to subpart F income in the same ratio that gross subpart F income of the corporation for the taxable year bears to its total gross income for the taxable year, determined without regard to this subdivision.

(3) *Necessity for recognition of gain or loss.* Gross income of a foreign corporation (including an insurance company) includes gain or loss only if such gain or loss would be recognized under the provisions of the Internal Revenue Code if the foreign corporation were a domestic corporation taxable under section 11 (subject to the modifications of subparagraph (1) of this paragraph). See section 1002. However, a foreign corporation shall not be treated as a domestic corporation for purposes of determining whether section 367 applies.

(4) *Gross income and gross receipts.* The term "gross income" may not have the same meaning as the term "gross receipts". For example, in a manufacturing, merchandising, or mining business, gross income means the total sales less the cost of goods sold, plus any income from investments and from incidental or outside operations or sources.

(5) *Treatment of capital loss and net operating loss.* In determining taxable income of a foreign corporation for any taxable year—

(i) *Capital loss carryover.* The capital loss carryover provided by section 1212(a) shall not be allowed.

(ii) *Net operating loss deduction.* The net operating loss deduction under section 172(a) or the operations loss deduction under section 812 shall not be allowed.

(6) *Corporations which have insurance income.* For purposes of paragraphs (a)(2) and (b)(2) of this section, in determining whether a controlled foreign corporation which is engaged in the business of reinsuring or issuing insurance or annuity contracts and which, if it were a domestic corporation engaged only in such business, would be taxable as an insurance company to which subchapter L of chapter 1 of the Code applies, it is immaterial that—

(i) The corporation would be exempt from taxation as an organization described in section 501(a),

(ii) The corporation would not be taxable as an insurance company to which subchapter L of the Code applies, or

(iii) The corporation would be subject to the alternative tax for small mutual insurance companies provided by section 821(c).

PAR. 7. Paragraph (b)(2)(ii) of § 1.955–1 is amended by revising (*b*). The amended provision reads as follows:

§ 1.955–1 Shareholder's pro rata share of amount of previously excluded subpart F income withdrawn from investment in less developed countries.

* * * * *

(b) *Amount withdrawn by controlled foreign corporation.* * * *

(2) *Limitations applicable in determining decreases.* * * *

(ii) *Treatment of earnings and profits.* * * *

(*a*) Amounts which are, or have been, included in the gross income of a United States shareholder of such controlled foreign corporation under section 951(a) (other than an amount included in gross income of a United States shareholder under section 951(a)(1)(A)(ii) or section 951(a)(1)(B) for the taxable year) and have not been distributed, or

(*b*)(*1*) Amounts which, for the current taxable year, are included in the gross income of a United States shareholder of such controlled foreign corporation under section 551(b) or would be so included under such section but for the fact that such amounts were distributed to such shareholder during the taxable year, or

(*2*) Amounts which, for any prior taxable year, have been included in the gross income of a United States shareholder of such controlled foreign corporation under section 551(b) and have not been distributed.

The rules of this subdivision apply only in determining the limitation on a controlled foreign corporation's decrease in qualified investments in less developed countries. See section 959 and the regulations thereunder for limitations on the exclusion from gross income of previously taxed earnings and profits.

* * * * *

PAR. 8. Paragraph (b)(2) of § 1.956–1 is amended by adding a new subdivision (iii). The amended provision reads as follows:

§ 1.956–1 Shareholder's pro rata share of a controlled foreign corporation's increase in earnings invested in United States property.

* * * * *

(b) *Amount of a controlled foreign corporation's investment of earnings in United States property.* * * *

(2) *Treatment of earnings and profits.* * * *

(i) Amounts which have been included in the gross income of a United States shareholder of such controlled foreign corporation under section 951(a)(1)(B) (or which would have been so included but for section 959(a)(2)) and have not been distributed, or

(ii)(*a*) Amounts which are included in the gross income of a United States shareholder of such controlled foreign corporation under section 551(b) or would be so included under such section but for the fact that such amounts were distributed to such shareholder during the taxable year, or

(*b*) Amounts which, for any prior taxable year, have been included in the gross income of a United States shareholder of such controlled foreign corporation under section 551(b) and have not been distributed.

The rules of this subparagraph apply only in determining the limitation on a controlled foreign corporation's increase in earnings invested in United States property. See section 959 and the regulations thereunder for limitations on the exclusion from gross income of previously taxed earnings and profits.

* * * * *

PAR. 9. Section 1.957 and the historical note are amended to read as follows:

§ 1.957 Statutory provisions; controlled foreign corporations; United States persons.

SEC. 957. *Controlled foreign corporations; United States persons.* * * *

(b) *Special rule for insurance.* For purposes only of taking into account income described in section 953(a) (relating to income derived from insurance of United States risks), the term "controlled foreign corporation" includes not only a foreign corporation as defined by subsection (a) but also one of which more than 25 percent of the total combined voting power of all classes of stock is owned (within the meaning of section 958(a)), or is considered as owned by applying the rules of ownership of section 958(b), by United States shareholders on any day during the taxable year of such corporation, if the gross amount of premiums or other consideration in respect of the reinsurance or the issuing of insurance or annuity contracts described in section 953(a)(1) exceeds 75 percent of the gross amount of all premiums or other consideration in respect of all risks.

* * * * *

[Sec. 957 (a), (b), and (c) as added by sec. 12(a), Rev. Act 1962 (76 Stat. 1006)]

PAR. 10. There is inserted immediately after § 1.957–1 the following new section.

§ 1.957–2 Controlled foreign corporation deriving income from insurance of United States risks.

(a) *In general.* For purposes of taking into account only the income derived from the insurance of United States risks under § 1.953–1, the term "controlled foreign corporation" means any foreign corporation of which more than 25 percent, but not more than 50 percent, of the total combined voting power of all classes of stock entitled to vote is owned within the meaning of section 958(a), or is considered as owned by applying the rules of ownership of section 958(b), by United States shareholders on any day of the taxable year of such foreign corporation, but only if the gross amount of premiums received by such foreign corporation during such taxable year which are attributable to the reinsuring and the issuing of insurance and annuity contracts in connection with United States risks, as defined in § 1.953–2 or 1.953–3, exceeds 75 percent of the gross amount of all premiums received by such foreign corporation during such year which are attributable

to the reinsuring and the issuing of insurance and annuity contracts in connection with all risks. The subpart F income for a taxable year of a foreign corporation which is a controlled foreign corporation for such taxable year within the meaning of this paragraph shall, subject to the provisions of section 952 (b), (c), and (d), and § 1.952-1, include only the income derived from the insurance of United States risks, as determined under § 1.953-1.

(b) *Gross amount of premiums defined.* For a foreign corporation which is engaged in the business of reinsuring or issuing insurance or annuity contracts and which, if it were a domestic corporation engaged only in such business, would be taxable as—

(1) A life insurance company to which part I (sections 801 through 820) of subchapter L of the Code applies,

(2) A mutual insurance company to which part II (sections 821 through 826) of subchapter L of the Code applies, or

(3) A mutual marine insurance or other insurance company to which part III (sections 831 and 832) of subchapter L of the Code applies,

the term "gross amount of premiums" means, for purposes of paragraph (a) of this section, the gross amount of premiums and other consideration which are taken into account by a life insurance company under section 809(c)(1). Determinations for purposes of this paragraph shall be made without regard to section 501(a).

PAR. 11. The following new sections are added:

§ 1.959 Statutory provisions; exclusion from gross income of previously taxed earnings and profits.

SEC. 959. *Exclusion from gross income of previously taxed earnings and profits*—(a) *Exclusion from gross income of United States persons.* For purposes of this chapter, the earnings and profits for a taxable year of a foreign corporation attributable to amounts which are, or have been, included in the gross income of a United States shareholder under section 951(a) shall not, when—

(1) Such amounts are distributed to, or

(2) Such amounts would, but for this subsection, be included under section 951 (a)(1)(B) in the gross income of,

such shareholder (or any other United States person who acquires from any person any portion of the interest of such United States shareholder in such foreign corporation, but only to the extent of such portion, and subject to such proof of the identity of such interest as the Secretary or his delegate may by regulations prescribe) directly, or indirectly through a chain of ownership described under section 958(a), be again included in the gross income of such United States shareholder (or of such other United States person).

(b) *Exclusion from gross income of certain foreign subsidiaries.* For purposes of section 951(a), the earnings and profits for a taxable year of a controlled foreign corporation attributable to amounts which are, or have been, included in the gross income of a United States shareholder under section 951(a), shall not, when distributed through a chain of ownership described under section 958(a), be also included in the gross income of another controlled foreign corporation in such chain for purposes of the application of section 951(a) to such other controlled foreign corporation with respect to such United States shareholder (or to any other United States shareholder who acquires from any person any portion of the interest of such United States shareholder in the controlled foreign corporation, but only to the extent of such portion, and subject to such proof of identity of such interest as the Secretary or his delegate may prescribe by regulations).

(c) *Allocation of distributions.* For purposes of subsections (a) and (b), section 316(a) shall be applied by applying paragraph (2) thereof, and then paragraph (1) thereof—

(1) First to earnings and profits attributable to amounts included in gross income under section 951(a)(1)(B) (or which would have been included except for subsection (a)(2) of this section),

(2) Then to earnings and profits attributable to amounts included in gross income under section 951(a)(1)(A) (but reduced by amounts not included under section 951(a)(1)(B) because of the exclusion in subsection (a)(2) of this section), and

(3) Then to other earnings and profits.

(d) *Distributions excluded from gross income not to be treated as dividends.* Except as provided in section 960(a)(3), any distribution excluded from gross income under subsection (a) shall be treated, for purposes of this chapter, as a distribution which is not a dividend.

[Sec. 959 as added by sec. 12(a), Rev. Act 1962 (76 Stat. 1006)]

§ 1.959-1 Exclusion from gross income of United States persons of previously taxed earnings and profits.

(a) *In general.* Sections 951 through 964 provide that certain types of income of controlled foreign corporations will be subject to United States income tax even though such amounts are not currently distributed to the United States shareholders of such corporations. The amounts so taxed to certain United States shareholders are described as subpart F income, previously excluded subpart F income withdrawn from investment in less developed countries, and increases in earnings invested in United States property. Section 959 provides that amounts taxed as subpart F income or as previously excluded subpart F income withdrawn from investment in less developed countries are not taxed again as increases in earnings invested in United States property. Section 959 also provides an exclusion whereby none of the amounts so taxed are taxed again when actually distributed directly, or indirectly through a chain of ownership described in section 958(a), to United States shareholders or to such shareholders' successors in interest. The exclusion also applies to amounts taxed to United States shareholders as income of one controlled foreign corporation and later distributed to another controlled foreign corporation in such a chain of ownership where such amounts would otherwise be again included in the income of such shareholders or their successors in interest as subpart F income of the controlled foreign corporation to which they are distributed. Section 959 also provides rules for the allocation of distributions to earnings and profits and for the non-dividend treatment of actual distributions which are excluded from gross income.

(b) *Actual distributions to United States persons.* The earnings and profits for a taxable year of a foreign corporation attributable to amounts which are, or have been, included in the gross income of a United States shareholder of such corporation under section 951(a) shall not, when such amounts are distributed to such shareholder directly, or indirectly through a chain of ownership described in section 958(a), be again included in the gross income of such United States shareholder. See section 959(a)(1). Thus, earnings and profits attributable to amounts which are, or have been, included in the gross income of a United States shareholder of a foreign corporation under section 951(a)(1)(A)(i) as subpart F income, under section 951(a)(1)(A)(ii) as previously excluded subpart F income withdrawn from investment in less developed countries, or under section 951(a)(1)(B) as earnings invested in United States property, shall not be again included in the gross income of such shareholder when such amounts are actually distributed, directly or indirectly, to such shareholder. See paragraph (d) of this section for exclusion applicable to such shareholder's successor in interest. The application of this paragraph may be illustrated by the following example:

Example. (a) A, a United States shareholder, owns 100 percent of the only class of stock of R Corporation, a corporation organized on January 1, 1963, which is a controlled foreign corporation throughout the period here involved. Both A and R Corporation use the calendar year as a taxable year.

(b) During 1964, R Corporation derives $100 of subpart F income, and A includes such amount in his gross income under section 951(a)(1)(A)(i). Corporation R's current and accumulated earnings and profits (before taking into account distributions made during 1964) are $150. Also, during 1964, R Corporation distributes $50 to A. The $50 distribution is excludable from A's gross income for 1964 under this paragraph and § 1.959-3 because such distribution represents earnings and profits attributable to amounts which are included in A's gross income for such year under section 951(a).

(c) If instead of deriving the $100 of subpart F income in 1964, R Corporation derives such amount during 1963 and has earnings and profits for 1963 in excess of $100, A must include $100 in his gross income for 1963 under section 951(a)(1)(A)(i). However, the $50 distribution made by R Corporation to A during 1964 is excludable from A's gross income for such year under this paragraph and § 1.959-3 because such distribution represents earnings and profits attributable to amounts which have been included in A's gross income for 1963 under section 951(a).

(d) If, with respect to 1964—

(1) Instead of owning the stock of R Corporation directly, A owns such stock through a chain of ownership described in section 958(a), that is, A owns 100 percent of M Corporation which owns 100 percent of N Corporation which owns 100 percent of R Corporation,

(2) Both M and N Corporations use the calendar year as a taxable year and are controlled foreign corporations throughout the period here involved,

(3) Corporation R derives $100 of subpart F income and has earnings and profits in excess of $100,

(4) Neither M Corporation nor N Corporation has earnings and profits or a deficit in earnings and profits, and

(5) The $50 distribution is from R Corporation to N Corporation to M Corporation to A.

A must include $100 in his gross income for 1964 under section 951(a)(1)(A)(i) by reason of his indirect ownership of R Corporation. However, the $50 distribution is excludable from A's gross income for 1964 under this paragraph and § 1.959-3 because such distribution represents earnings and profits attributable to amounts which are included in A's gross income for such year under section 951(a) and are distributed indirectly to A through a chain of ownership described in section 958(a).

(c) *Excludable investment of earnings in United States property.* The earnings and profits for a taxable year of a foreign corporation attributable to amounts which are, or have been, included in the gross income of a United States shareholder of such corporation under section 951(a)(1)(A) shall not, when such amounts would, but for section 959(a)(2) and this paragraph, be included under section 951(a)(1)(B) in the gross income of such shareholder directly, or indirectly through a chain of ownership described in section 958(a), be again included in the gross income of such United States shareholder. Thus, earnings and profits attributable to amounts which are, or have been, included in the gross income of a United States shareholder of a foreign corporation under section 951(a)(1)(A)(i) as subpart F income or under section 951(a)(1)(A)(ii) as previously excluded subpart F income withdrawn from investment in less developed countries may be invested in United States property without being again included in such shareholder's income under section 951(a). Moreover, the first amounts deemed invested in United States property are amounts previously included in the gross income of a United States shareholder under section 951(a)(1)(A). See paragraph (d) of this section for exclusion applicable to such shareholder's successor in interest. The application of this paragraph may be illustrated by the following example:

Example. (a) A, a United States shareholder, owns 100 percent of the only class of stock of R Corporation, a corporation organized on January 1, 1963, which is a controlled foreign corporation throughout the period here involved. Both A and R Corporation use the calendar year as a taxable year.

(b) During 1964, R Corporation derives $35 of subpart F income, and A includes such amount in his gross income under section 951(a)(1)(A)(i). During 1964, R Corporation also invests $50 in tangible property (other than property described in section 956(b)(2)) located in the United States. Corporation R makes no distributions during the year, and its current earnings and profits are in excess of $50. Of the $50 investment of earnings in United States property, $35 is excludable from A's gross income for 1964 under section 959(a)(2) because such amount represents earnings and profits which are attributable to amounts which are included in A's gross income for such year under section 951(a)(1)(A)(i) and therefore may be invested in United States property without again being included in A's gross income. The remaining $15 is includible in A's gross income for 1964 under section 951(a)(1)(B).

(c) If, instead of deriving $35 of subpart F income in 1964, R Corporation has no subpart F income for 1964 but derives the $35 of subpart F income during 1963 and has earnings and profits for such year in excess of $35, A must include $35 in his gross income for 1963 under section 951(a)(1)(A)(i). However, of the $50 investment of earnings in United States property made by R Corporation during 1964, $35 is excludable from A's gross income for 1964 under section 959(a)(2) because such amount represents earnings and profits attributable to amounts which have been included in A's gross income for 1963 under section 951(a)(1)(A)(i). The remaining $15 is includible in A's gross income for 1964 under section 951(a)(1)(B).

(d) *Application of exclusions to shareholder's successor in interest.* If a United States person (as defined in § 1.957-4) acquires from any person any portion of the interest in the foreign corporation of a United States shareholder referred to in paragraph (b) or (c) of this section, the rules of such paragraph shall apply to such acquiring person but only to the extent that the acquiring person establishes to the satisfaction of the district director his right to the exclusion provided by such paragraph. The information to be furnished by the acquiring person to the district director with his return for the taxable year to support such exclusion shall include:

(1) The name, address, and taxable year of the foreign corporation from which the distribution is received and of all other corporations, partnerships, trusts, or estates in any applicable chain of ownership described in section 958(a);

(2) The name and address of the person from whom the stock interest was acquired;

(3) A description of the stock interest acquired and its relation, if any, to a chain of ownership described in section 958(a);

(4) The amount for which an exclusion under section 959(a) is claimed; and

(5) Evidence showing that the earnings and profits for which an exclusion is claimed are attributable to amounts which were included in the gross income of a United States shareholder under section 951(a), that such amounts were not previously excluded from the gross income of a United States person, and the identity of the United States shareholder including such amounts.

The acquiring person shall also furnish to the district director such other information as may be required by the district director in support of the exclusion.

Example. (a) A, a United States shareholder, owns 100 percent of the only class of stock of R Corporation, a corporation organized on January 1, 1964, and a controlled foreign corporation throughout the period here involved. Both A and R Corporation use the calendar year as a taxable year.

(b) During 1964, R Corporation has $100 of subpart F income and earnings and profits in excess of $100. A includes $100 in his gross income for 1964 under section 951(a)(1)(A)(i). During 1965, A sells 40 percent of his stock in R Corporation to B, a United States person who uses the calendar year as a taxable year. In 1965, R Corporation has no earnings and profits and experiences no increase in earnings invested in United States property. Corporation R distributes $40 to B on December 1, 1965. If B establishes his right to the exclusion to the satisfaction of the district director, he may exclude $40 from his gross income for 1965 under section 959(a)(1).

(c) If, instead of selling his 40-percent interest directly to B, A sells on February 1, 1965, 40 percent of his stock in R Corporation to C, a nonresident alien, and on October 1, 1965, B acquires the 40-percent interest in R Corporation from C, the result is the same as in paragraph (b) of this example, if B establishes his right to the exclusion to the satisfaction of the district director.

(d) If, instead of acquiring 40 percent, B acquires only 5 percent of A's stock in R Corporation and R Corporation distributes $5 to B during 1965, B is not a United States shareholder (within the meaning of section 951(b)) with respect to R Corporation since he owns only 5 percent of the stock of R Corporation. Notwithstanding, B may exclude the $5 distribution from his gross income for 1965 under section 959(a)(1) if he establishes his right to the exclusion to the satisfaction of the district director.

(e) If the facts are assumed to be the same as in paragraphs (a) and (b) of this example except that—

(1) A owns the stock of R Corporation indirectly through a chain of ownership described in section 958(a), that is, A owns 100 percent of M Corporation which owns 100 percent of N Corporation which owns 100 percent of R Corporation,

(2) B acquires from N Corporation 40 percent of the stock in R Corporation,

(3) Both M Corporation and N Corporation are controlled foreign corporations which use the calendar year as a taxable year,

(4) Neither M Corporation nor N Corporation has any amount in 1964 or 1965 which is includible in gross income of United States shareholders under section 951(a), and

(5) Neither M Corporation nor N Corporation has a deficit in earnings and profits for 1964;

the result is the same as in paragraph (b) of this example if B establishes his right to the exclusion to the satisfaction of the district director.

§ 1.959-2 Exclusion from gross income of controlled foreign corporations of previously taxed earnings and profits.

(a) *Applicable rule.* The earnings and profits for a taxable year of a controlled foreign corporation attributable to amounts which are, or have been, included in the gross income of a United States shareholder under section 951(a) shall not, when distributed through a chain of ownership described in section 958(a), be also included in the gross income of another controlled foreign corporation in such chain for purposes of the application of section 951(a) to such other controlled foreign corporation with respect to such United States shareholder. See section 959(b). The exclusion from the income of such other foreign corporation also applies with respect to any other United States shareholder who acquires from such United States shareholder or any other person any portion of the interest of such United States shareholder in the controlled foreign corporation, but only to the extent the acquiring shareholder establishes to the satisfaction of the district director the right to such exclusion. An acquiring shareholder claiming the exclusion under section 959(b) shall furnish to the district director with his return for the taxable year the information required under paragraph (d) of § 1.959-1 to support the exclusion under this paragraph.

(b) *Illustration.* The application of this section may be illustrated by the following example:

Example. (a) A, a United States shareholder, owns 100 percent of the only class of stock of M Corporation which in turn owns 100 percent of the only class of stock of N Corporation. A and corporations M and N use the calendar year as a taxable year and corporations M and N are controlled foreign corporations throughout the period here involved.

(b) During 1963, N Corporation invests $100 in tangible property (other than property described in section 956(b)(2)) located in the United States and has earnings and profits in excess of $100. A is required to include $100 in his gross income for 1963 under section 951(a)(1)(B) by reason of his indirect ownership of the stock of N Corporation. During 1963, M Corporation has no income or investments other than the income derived from a distribution of $100 from N Corporation. Corporation M has earnings and profits of $100 for 1963. Under paragraph (a) of § 1.954-2, the $100 distribution received by M Corporation from N Corporation would otherwise constitute subpart F income of M Corporation; however, by reason of section 959(b) and this section, this amount does not constitute gross income of M Corporation for purposes of determining amounts includible in A's gross income under section 951(a)(1)(A)(i).

(c) During 1964, N Corporation derives $100 of subpart F income and distributes $100 to M Corporation which has no subpart F income for 1964 but which invests the $100 distribution in tangible property (other than property described in section 956(b)(2)) located in the United States. Corporation N's earnings and profits for 1964 are in excess of $100, and M Corporation's current and accumulated earnings and profits (before taking into account distributions made during 1964) are in excess of $100. A is required with respect to N Corporation to include $100 in his gross income for 1964 under section 951(a)(1)(A)(i) by reason of his indirect ownership of the stock of N Corporation. The investment by M Corporation in United States property would otherwise constitute an investment of earnings in United States property to which section 956 applies; however, by reason of section 959(b) and this section, such amount does not constitute gross income of M Corporation for purposes of determining amounts includible in A's gross income under section 951(a)(1)(B).

(d) If during 1965, N Corporation invests $100 in tangible property (other than property described in section 956(b)(2)) located in the United States and has earnings and profits in excess of $100, A will be required with respect to N Corporation to include $100 in his gross income for 1965 under section 951(a)(1)(B), because the $100 of earnings and profits for 1964 attributable to N Corporation's subpart F income which was taxed to A in 1964 was distributed to M Corporation in such year.

(e) If, with respect to 1966—

(1) Corporation N owns 100 percent of the only class of stock of R Corporation,

(2) Corporation R derives $100 of subpart F income, has earnings and profits in excess of $100, and makes no distributions to N Corporation,

(3) Corporation N invests $25 in tangible property (other than property described in section 956(b)(2)) located in the United States and has current and accumulated earnings and profits in excess of $25, and

(4) Corporation M has no income or investments and does not have a deficit in earnings and profits,

the $100 of subpart F income derived by R Corporation is includible in A's gross income for 1966 under section 951(a)(1)(A)(i) and the $25 investment of earnings in United States property by N Corporation is includible in A's gross income for 1966 under section 951(a)(1)(B).

(f) If, however, the facts are the same as in paragraph (e) of this example except that—

(1) During 1966, R Corporation distributes $20 to N Corporation, and

(2) Corporation N makes no distributions during such year to M Corporation,

of the $25 investment in United States property by N Corporation, $20 is not includible in A's gross income for 1966 because such amount represents earnings and profits which are attributable to amounts included in A's gross income for such year under section 951(a)(1)(A)(i) with respect to R Corporation and which have been distributed to N Corporation by R Corporation. By reason of section 959(b) and this section, such $20 distribution to N Corporation does not constitute gross income of N Corporation for purposes of determining amounts includible in A's gross income under section 951(a)(1)(B); however, the remaining $5 of investment of earnings in United States property by N Corporation in 1966 is includible in A's gross income for such year under section 951(a)(1)(B).

§ 1.959-3 Allocation of distributions to earnings and profits of foreign corporations.

(a) *In general.* For purposes of §§ 1.959-1 and 1.959-2, the source of the earnings and profits from which distributions are made by a foreign corporation as between earnings and profits attributable to increases in earnings invested in United States property, previously taxed subpart F income, previously excluded subpart F income withdrawn from investment in less developed countries, and other amounts shall be determined in accordance with section 959(c) and paragraphs (b) through (e) of this section.

(b) *Applicability of section 316(a).* For purposes of this section, section 316(a) shall be applied, in determining the source of distributions from the earnings and profits of a foreign corporation, by first applying section 316(a)(2) and then by applying section 316(a)(1)—

(1) First, as provided by section 959(c)(1), to earnings and profits attributable to amounts included in gross income of a United States shareholder under section 951(a)(1)(B) (or which would have been so included but for section 959(a)(2) and paragraph (c) of § 1.959-1),

(2) Secondly, as provided by section 959(c)(2), to earnings and profits attributable to amounts included in gross income of a United States shareholder under section 951(a)(1)(A) (but reduced by amounts not included in such gross income under section 951(a)(1)(B) because of the exclusion provided by section 959(a)(2) and paragraph (c) of § 1.959-1), and

(3) Finally, as provided by section 959(c)(3), to other earnings and profits.

Thus, distributions shall be considered first attributable to amounts, if any, described in subparagraph (1) of this paragraph (first for the current taxable year and then for prior taxable years beginning with the most recent prior taxable year), secondly to amounts, if any, described in subparagraph (2) of this paragraph (first for the current taxable year and then for prior taxable years beginning with the most recent prior taxable year), and finally to the amounts, if any, described in subparagraph (3) of this paragraph (first for the current taxable year and then for prior taxable years beginning with the most recent prior taxable year). See, however, paragraph (e) of § 1.963-3 for a special rule for determination of the source of distributions counting as minimum distribitions. Earnings and profits are classified as to year and as to section 959(c) amount in the year in which such amounts are included in gross income of a United States shareholder under section 951(a) and are reclassified as to section 959(c) amount in the year in which such amounts would be so included but for the provisions of section 959(a)(2); any subsequent distribution of such amounts to a higher tier in a chain of ownership described in section 958(a) does not of itself change such classifications. Earnings and profits of a foreign corporation attributable to amounts of previously excluded subpart F income withdrawn from investment in less developed countries (or from investments in export trade assets) shall be reclassified as amounts to which subparagraph (2), rather than subparagraph (3), of this paragraph applies for purposes of determining priority of distribution, and such earnings and profits shall be considered attributable to the taxable year in which the withdrawal occurs. This paragraph shall apply to distributions by one foreign corporation to another foreign corporation and by a foreign corporation to a United States person. The application of this paragraph may be illustrated by the following example:

Example. (a) M, a controlled foreign corporation is organized on January 1, 1963, and is 100-percent owned by A, a United States shareholder. Both A and M Corporation use the calendar year as a taxable year, and M Corporation is a controlled foreign corporation throughout the period here involved. As of December 31, 1966, M Corporation's accumulated earnings and profits of $450 (before taking into account distributions made in 1966) applicable to A's interest in such corporation are classified for purposes of section 959(c) as follows:

Year	Classification of earnings and profits for purposes of sec. 959		
	(c)(1)	(c)(2)	(c)(3)
1963	$100		
1964	100	$75	
1965		75	$50
1966			50

(b) During 1966, M Corporation makes three separate distributions to A of $150 each, and the source of such distributions under section 959(c) is as follows:

	Amount	Year	Allocation of distributions under sec. 959
Distribution No. 1	$100	1964	(c)(1)
	50	1963	(c)(1)
	150		
Distribution No. 2	50	1963	(c)(1)
	75	1965	(c)(2)
	25	1964	(c)(2)
	150		
Distribution No. 3	50	1964	(c)(2)
	50	1966	(c)(3)
	50	1965	(c)(3)
	150		

(c) If, in addition to the above facts—

(1) M Corporation owns throughout the period here involved 100 percent of the only class of stock of N Corporation, a controlled foreign corporation which uses the calendar year as a taxable year,

(2) Corporation N derives $60 of subpart F income for 1963 which A includes in his gross income for such year under section 951(a)(1)(A)(i),

(3) Corporation N has earnings and profits for 1963 of $60 but has neither earnings or profits nor a deficit in earnings and profits for 1964, 1965, or 1966, and

(4) During 1966, N Corporation invests $20 in tangible property (not described in section 956(b)(2)) located in the United States and distributes $45 to M Corporation,

the $20 investment of earnings in United States property is excludable from A's gross income for 1966, under section 959(a)(2) and paragraph (c) of § 1.959-1, with respect to N Corporation and the $45 dividend received by M Corporation does not, under section 959(b) and § 1.959-2, constitute gross income of M Corporation for 1966 for purposes of determining amounts includible in A's gross income under section 951(a)(1)(A)(i) with respect to M Corporation. However, the $45 dividend paid by N Corporation to M Corporation is allocated under section 959(c) and this paragraph to the earnings and profits of N Corporation as follows: $20 to 1963 earnings described in section 959(c)(1) and $25 to 1963 earnings described in section 959(c)(2). In such case, M Corporation's earnings and profits of $495 (before taking into account distributions made in 1966) would be classified as follows for purposes of section 959(c):

Year	Classification of earnings and profits for purposes of sec. 959		
	(c)(1)	(c)(2)	(c)(3)
1963	$120	$25	
1964	100	75	
1965		75	$50
1966			50

(d) The three distributions to A in 1966 of $150 each would then have the following source under section 959(c):

	Amount	Year	Allocation of distributions under sec. 959
Distribution No. 1	$100	1964	(c)(1)
	50	1963	(c)(1)
	150		
Distribution No. 2	70	1963	(c)(1)
	75	1965	(c)(2)
	5	1964	(c)(2)
	150		
Distribution No. 3	70	1964	(c)(2)
	25	1963	(c)(2)
	50	1966	(c)(3)
	5	1965	(c)(3)
	150		

(c) *Treatment of deficits in earnings and profits.* For purposes of this section, a United States shareholder's pro rata share (determined in accordance with the principles of paragraph (e) of § 1.951-1) of a foreign corporation's deficit in earnings and profits, determined under section 964(a) and § 1.964-1, for any taxable year shall be applied only to earnings and profits described in paragraph (b)(3) of this section.

(d) *Treatment of certain foreign taxes.* For purposes of this section, any amount described in subparagraph (1), (2), or (3) of paragraph (b) of this section which is distributed by a foreign corporation through a chain of ownership described in section 958(a)(2) shall be reduced by any income, war profits, or excess profits taxes imposed on or with respect to such distribution by any foreign country or possession of the United States.

Example. (a) Domestic corporation M owns 100 percent of the only class of stock of foreign corporation A, which is incorporated under the laws of foreign country X and which, in turn, owns 100 percent of the only class of stock of foreign corporation B, which is incorporated under the laws of foreign country Y. All corporations use the calendar year as a taxable year and corporations A and B are controlled foreign corporations throughout the period here involved.

(b) During 1963, B Corporation (a less developed country corporation for 1963 within the meaning of § 1.955-5) derives $90 of subpart F income, after incurring $10 of foreign income tax allocable to such income under paragraph (c) of § 1.954-1, has earnings and profits in excess of $90, and makes no distributions. Corporation M must include $90 in its gross income for 1963 under section 951(a)(1)(A)(i). As of December 31, 1963, with respect to M Corporation, B Corporation has earnings and profits for 1963 described in section 959(c)(2) of $90.

(c) During 1964, B Corporation has neither earnings and profits nor a deficit in earnings and profits but distributes $90 to A Corporation, and, by reason of section 959(b) and § 1.959-2, such amount is not includible in the gross income of M Corporation for 1964 under section 951(a) with respect to A Corporation. Corporation A incurs a withholding tax of $13.50 on the $90 dividend distributed from B Corporation (15 percent of $90) and an additional foreign income tax of 10 percent or $7.65 by reason of the inclusion of the net distribution of $76.50 ($90 minus $13.50) in its taxable income for 1964. As of December 31, 1964, with respect to M Corporation, B Corporation's earnings and profits for 1963 described in section 959(c)(2) amount to zero ($90 minus $90); and A Corporation's earnings and profits for 1963 described in section 959(c)(2) amount to $68.85 ($90 minus $13.50 minus $7.65).

(e) *Determination of foreign tax credit.* For purposes of determining the foreign tax credit under section 960(b) and the regulations thereunder in a case in which distributions received by a taxpayer include earnings and profits which were taxed to such taxpayer under section 951(a) by reason of his ownership (within the meaning of section 958(a)(2)) of a second-tier corporation, the rules of paragraph (b) of this section shall apply except that in applying subparagraph (1), (2), or (3) of such paragraph distributions from the earnings and profits for any taxable year shall be considered first attributable to the earnings and profits of the second-tier corporation, to the extent of such earnings and profits, and then to the earnings and profits of the first-tier corporation, to the extent thereof. For purposes of this paragraph, a second-tier corporation is a foreign corporation referred to in section 960(a)(1)(B), and a first-tier corporation is a foreign corporation referred to in section 960(a)(1)(A). The application of this paragraph may be illustrated by the following examples:

Example (1). (a) Domestic corporation A, a United States shareholder, owns 100 percent of the only class of stock of foreign corporation R which, in turn, owns 100 percent of the only class of stock of foreign corporation S. All corporations use the calendar year as a taxable year, and corporations R and S are controlled foreign corporations throughout the period here involved.

(b) Neither R Corporation nor S Corporation has subpart F income for 1963. During 1963, S Corporation increases by $100 its investment in tangible property (not described in section 956(b)(2)) located in the United States, makes no distributions, and has earnings and profits of $100. Corporation A must include $100 in its gross income for 1963 under section 951(a)(1)(B) with respect to S Corporation. During 1963, R Corporation also increases by $100 its investment in tangible property (not described in section 956(b)(2)) located in the United States, makes no distributions, and has earnings and profits of $100. Corporation A must include $100 in its gross income for 1963 under section 951(a)(1)(B) with respect to R Corporation.

(c) During 1964, S Corporation distributes $100 to R Corporation, and R Corporation distributes $100 to A Corporation. Neither corporation has any earnings or profits or deficit in earnings and profits for such year. At December 31, 1964, R Corporation has

earnings and profits (computed before distributions to A Corporation made for the year) of $200, consisting of $100 of section 959(c)(1) amounts of R Corporation for 1963 and of $100 of section 959(c)(1) amounts of S Corporation for 1963. For purposes of determining the foreign tax credit under section 960(b) and the regulations thereunder, the $100 distribution by R Corporation shall be considered attributable to S Corporation's earnings and profits for 1963 described in section 959(c)(1).

Example (2). (a) Domestic corporation A, a United States shareholder, owns 100 percent of the only class of stock of foreign corporation T which, in turn, owns 100 percent of the only class of stock of foreign corporation U. All corporations use the calendar year as a taxable year, and corporations T and U are controlled foreign corporations throughout the period here involved.

(b) During 1964, T Corporation invests $100 in tangible property (not described in section 956(b)(2)) located in the United States. For 1964, T Corporation has no subpart F income and makes no distributions; A must include $100 in its gross income for 1964 under section 951(a)(1)(B) with respect to T Corporation. For 1964, U Corporation has no subpart F income or investment of earnings in United States property but U Corporation has $100 of earnings and profits which it distributes to T Corporation. At December 31, 1964, T Corporation has earnings and profits of $300, consisting of operating income of $100 for each of the years 1963 and 1964 and $100 in dividends received from the earnings and profits of U Corporation for 1964. These earnings and profits are classified as follows under section 959(c): $100 of section 959(c)(1) amounts of T Corporation for 1964, $100 of section 959(c)(3) amounts of U Corporation for 1964, and $100 of section 959(c)(3) amounts of T Corporation for 1963.

(c) During 1965 neither T Corporation nor U Corporation has any earnings and profits or deficit in earnings and profits or investment of earnings in United States property, but T Corporation distributes $100 to A Corporation. For purposes of determining the foreign tax credit under section 960(b) and the regulations thereunder, the $100 distribution of T Corporation shall be considered attributable to T Corporation's earnings and profits for 1964 described in section 959(c)(1).

(f) *Illustration*. The application of this section may be illustrated by the following example:

Example. (a) M, a controlled foreign corporation is organized on January 1, 1963, and is wholly owned by A, a United States shareholder. Both A and Corporation M use the calendar year as a taxable year.

(b) Corporation M's earnings and profits (before distributions) for 1963 are $200, $100 of which is attributable to subpart F income. Corporation M's earnings and profits for such year also include $25 attributable to subpart F income which is excluded from M Corporation's foreign base company income under section 954(b)(1) as dividends, interest, and gains invested in qualified investments in less developed countries. Corporation M's increase in earnings invested in tangible property (not described in section 956(b)(2)) located in the United States for 1963, is $50, and M Corporation makes a distribution of such property during such year of $20. For purposes of section 959, A's interest in M Corporation's earnings and profits as of December 31, 1963, determined after the distributions of $20, is classified as follows:

Sec. 959(c)(1) amounts:			
Earnings for 1963 attributable to increased investment in U.S. property which would have been included in A's gross income but for application of sec. 959(a)(2) and § 1.959-1(c)		$50	
Less: Distribution for 1963 allocated under sec. 959(c)(1) and paragraph (b)(1) of this section to such amounts		20	
			$30
Sec. 959(c)(2) amounts:			
Earnings for 1963 attributable to subpart F income included in A's gross income under sec. 951(a)(1)(A)(i)		100	
Less: Earnings for 1963 attributable to increased investment in U.S. property which would have been included in A's gross income but for application of sec. 959(a)(2) and § 1.959-1(c)		50	
			50
Sec. 959(c)(3) amounts:			
Predistribution earnings for 1963		200	
Less: Earnings for 1963 classified as:			
Sec. 959(c)(1) amounts	$50		
Sec. 959(c)(2) amounts	50		
		100	
			100
A's total interest in M Corporation's earnings and profits			180

For 1963, A is required to include $100 of subpart F income in his gross income under section 951(a)(1)(A)(i). He would have been required to include $50 in his gross income under section 951(a)(1)(B) as M Corporation's increase in earnings invested in United States property, except that section 959(a)(2) and paragraph (c) of § 1.959-1 provide in effect that earnings and profits taxed to A under section 951(a)(1)(A) with respect to M Corporation (whether in the current taxable year or in prior years) may be invested in United States property without again being included in gross income under section 951(a). The $20 dividend from M Corporation is excluded from A's gross income under section 959(a)(1) and paragraph (b) of § 1.959-1, since such distribution is allocated under section 959(c)(1) and paragraph (b)(1) of this section to amounts described in section 959(c)(1).

(c) During 1964, M Corporation's earnings and profits (before distributions) are $300, $75 of which is attributable to subpart F income. Corporation M has no change in investments in United States property during such year and withdraws $15 of previously excluded subpart F income from investment in less developed countries. Corporation M makes a cash distribution of $250 to A during 1964. For purposes of section 959, A's interest in M Corporation's earnings and profits as of December 31, 1964, determined after the distribution of $250, is classified as follows:

Sec. 959 (c) (1) amounts:				
Sec. 959(c)(1) net amount for 1963 (as determined under paragraph (b) of this example)			$30	
Less: Distribution for 1964 allocated under sec. 959(c)(1) and paragraph (b)(1) of this section to such amount			30	0
Sec. 959(c)(2) amounts:				
Sec. 959(c)(2) net amount for 1963 (as determined under paragraph (b) of this example)			50	
Plus: Earnings for 1964 attributable to:				
Subpart F income for 1964 included in A's gross income under sec. 951 (a)(1)(A)(i)			75	
Previously excluded subpart F income withdrawn in 1964 from investment in less developed countries and included in A's gross income under sec. 951(a)(1)(A)(ii)			15	
			140	
Less: Distribution for 1964 allocated under sec. 959(c)(2) and paragraph (b)(2) of this section to such amounts			140	0
Sec. 959(c)(3) amounts:				
Sec. 959(c)(3) net amount for 1963 (as determined under paragraph (b) of this example)			100	
Plus: Sec. 959(c)(3) net amount for 1964:				
Predistribution earnings for 1964		$300		
Less:				
Earnings for 1964 classified as sec. 959(c)(1) amounts ($0) and as sec. 959(c)(2) amounts ($75+$15)	$90			
Distributions for 1964 allocated under sec. 959(c)(3) and paragraph (b)(3) of this section	80			
		170		
			130	
				$230
A's total interest in M Corporation's earnings and profits				230

For 1964, A is required to include in his gross income under section 951(a)(1)(A)(i) $75 of subpart F income, and under section 951(a)(1)(A)(ii) $15 of previously excluded subpart F income withdrawn from investment in less developed countries. Of the $250 cash distribution, A may exclude $170 from his gross income under section 959(a)(1) and paragraph (b) of § 1.959-1 and $80 is includible in his gross income as a dividend.

(d) The source under section 959(c) of the 1964 distribution of $250 to A is as follows:

Amount	Year	Allocation of distribution under sec. 959
30	1963	(c)(1).
90	1964	(c)(2).
50	1963	(c)(2).
80	1964	(c)(3).
250		

§ 1.959-4 Distributions to United States persons not counting as dividends.

Except as provided in section 960(a)(3), any distribution to a United States person which is excluded from the gross income of such person under section 959(a)(1) and § 1.959-1 shall be treated for purposes of chapter 1 (relating to normal taxes and surtaxes) of subtitle A (relating to income taxes) of the Code as a distribution which is not a dividend. However, see paragraph (b)(1) of § 1.956-1, relating to the dividend limitation on the amount of a controlled foreign corporation's investment of earnings in United States property.

PAR. 12. Paragraph (c)(2) of § 1.970-1 is amended by revising subdivision (ii). The amended provision reads as follows:

§ 1.970-1 **Export trade corporations.**

* * * * *

(c) *Withdrawal of previously excluded export trade income.* * * *

(2) *Limitations applicable in determining amount includible in income.* * * *

(ii) *Treatment of earnings and profits.* * * *

(*a*) Amounts which are, or have been, included in the gross income of a United States shareholder of such controlled foreign corporation under section 951(a) (other than an amount included in the gross income of a United States shareholder under section 951(a)(1)(A)(ii) or section 951(a)(1)(B) for the taxable year) and have not been distributed, or

(*b*) (*1*) Amounts which for the current taxable year, are included in the gross income of a United States shareholder of such controlled foreign corporation under section 551(b) or would be so included under such section but for the fact that such amounts were distributed to such shareholder during the taxable year, or

(*2*) Amounts which, for any prior taxable year, have been included in the gross income of a United States shareholder of such controlled foreign corporation under section 551(b) and have not been distributed.

The rules of this subdivision apply only in determining the limitation on a United States shareholder's pro rata share of a controlled foreign corporation's decrease in investments in export trade assets. See section 959 and the regulations thereunder for limitations on the exclusion of previously taxed earnings and profits.

* * * * *

PAR. 13. Section 1.1016 is amended by adding paragraphs (19) and (20) to section 1016(a), and by revising the historical note. These amended and added provisions read as follows:

§ 1.1016 **Statutory provisions; adjustments to basis.**

SEC. 1016. *Adjustments to basis*—(a) *General rule.* * * *

(19) To the extent provided in section 48(g) and in section 203(a)(2) of the Revenue Act of 1964, in the case of property which is or has been section 38 property (as defined in section 48(a));

(20) To the extent provided in section 961 in the case of stock in controlled foreign corporations (or foreign corporations which were controlled foreign corporations) and of property by reason of which a person is considered as owning such stock.

* * * * *

[Sec. 1016 as amended by sec. 4(c), Act of June 29, 1956 (Pub. Law 629, 84th Cong. (70 Stat. 407); secs. 2(b) and 64(d)(2), Technical Amendments Act of 1958 (72 Stat. 1607, 1656); sec. 3(d) (1) and (2), Life Insurance Company Income Tax Act 1959 (73 Stat. 139); secs. 2(f), 8(g)(2), and 12(b)(4), Rev. Act 1962 (76 Stat. 972, 998, 1031); sec. 203(a)(3) (C), Rev. Act 1964 (78 Stat. 34)]

PAR. 14. Section 1.1016-5 is amended by adding paragraphs (q) and (r). These added provisions read as follows:

§ 1.1016-5 **Miscellaneous adjustments to basis.**

* * * * *

(q) *Section 38 property.* In the case of property which is or has been section 38 property (as defined in section 48(a)), the basis shall be adjusted to the extent provided in section 48(g) and in section 203(a)(2) of the Revenue Act of 1964.

(r) *Stock in controlled foreign corporations and other property.* In the case of stock in controlled foreign corporations (or foreign corporations which were controlled foreign corporations) and of property by reason of which a person is considered as owning such stock, the basis shall be adjusted to the extent provided in section 961.

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

[F.R. Doc. 65-823; Filed, Jan. 28, 1965; 8:45 a.m.]

Title 32—NATIONAL DEFENSE

Chapter V—Department of the Army

SUBCHAPTER E—ORGANIZED RESERVES

PART 564—NATIONAL GUARD REGULATIONS

Commissioned Officers; Termination of Appointment and Withdrawal of Federal Recognition

Section 564.5 is revised to read as follows:

§ 564.5 **Termination of appointment and withdrawal of Federal recognition.**

(a) *Purpose.* This section prescribes the procedures and criteria applicable to the termination of appointment as an officer of the Army National Guard of a State, Commonwealth of Puerto Rico, or the District of Columbia; and withdrawal of Federal recognition of Army National Guard officers by the Chief of the National Guard Bureau.

(b) *Policy.* (1) The termination of appointment as a commissioned officer of the Army National Guard of a State is a function of the State authorities concerned. Upon notification of termination of such State appointment, the Chief, National Guard Bureau, will withdraw the officer's Federal recognition.

(2) Announcement of withdrawal of Federal recognition is a function of the Chief, National Guard Bureau.

(3) The discharge of an officer from his appointment as a Reserve of the Army is a function of the Secretary of the Army.

(4) Discharge from the Army National Guard of a State may be effected for any reason prescribed in this section, or any provision of State laws.

(5) Unless discharged from his appointment as a Reserve commissioned officer of the Army, when Federal recognition of an officer is withdrawn, he becomes a member of the Army Reserve and ceases to be a member of the Army National Guard. Officers who are not extended permanent Federal recognition do not revert to the Army Reserve upon withdrawal of temporary Federal recognition unless they hold a current appointment as a Reserve commissioned officer of the Army.

(6) An officer discharged from the Army National Guard of one State and appointed the following day in the Army National Guard of another State remains a member of the Army National Guard of the United States, and does not become a member of the Army Reserve.

(c) *Definitions*—(1) *Years of service.* (i) A Reserve commissioned officer's years of service are the greater of:

(*a*) The sum of:

(*1*) His years of service as a commissioned officer of any component of the Armed Forces or of the Army without specification of component;

(*2*) His years of service before 15 June 1933, as a commissioned officer in the federally recognized National Guard or in a federally recognized commissioned status in the National Guard, and in the National Guard after 14 June 1933 if his service was continuous from the date of his Federal recognition as an officer therein to the date of his appointment in the National Guard of the United States; and

(*3*) The years of constructive service credited to him; or

(*b*) The number of years by which his age exceeds 25 years.

(ii) No service may be counted more than once. For an officer credited with constructive service, no actual service before appointment may be counted for this purpose.

(iii) Service accrued while holding an appointment as a commissioned officer of the National Guard of the United States under the provisions of former Section 111, National Defense Act, but serving as an enlisted man or warrant officer is not creditable in computing years of service.

(2) *Constructive service.* The years of service in an active status constructively credited upon appointment as a Reserve commissioned officer of the Army to reflect the officer's combined years of experience and education. If appointed with assignment to the Medical Corps, Dental Corps, Judge Advocate General's Corps, or Chaplains, the officer will, for the purpose of this section, be credited with such constructive service in an active status to which he is entitled in accordance with AR 135-100 or AR 140-101, as applicable.

(d) *Termination of State appointment.* Unless contrary to State law, the appointment of an Army National Guard officer should be terminated for the reasons listed below, which in general prescribe criteria for removal from an active status from the Army National Guard of the United States (see ch. 363, title 10, U.S.C.). If the termination of appointment is contrary to State law, the National Guard Bureau will be notified in advance, where appropriate, and Federal recognition will be withdrawn in accordance with paragraph (e) of this section.

(1) Death.

(2) Attainment of maximum age:

(i) An Army National Guard of the United States officer occupying the position of Chief, National Guard Bureau, or adjutant general or commanding general of a State, the District of Columbia or Puerto Rico, must be removed from an active status in the Army National Guard of the United States on the date he attains age 64.