

- 7191(7) Cryogenic refrigeration equipment specially designed for maintaining ambient temperatures below minus 170° C. and (a) designed for use in marine, airborne, or space application, (b) ruggedized for mobile ground use or (c) designed to maintain operating temperatures for electrical, magnetic, or electronic equipment or components; and parts, n.e.c.
- 7191(9) Cryogenic refrigeration equipment consisting of, or containing as components thereof, jacketed containers for the storage or transportation of liquefied gases at temperatures below minus 274° F. (minus 170° C.), including mobile units, specially designed for (a) liquid fluorine; (b) liquid oxygen, nitrogen, or argon, with (i) multilaminar type insulation under vacuum, or (ii) other types of insulation and (1) having a fixed storage capacity of 500 tons or more, or (2) having a mobile capacity exceeding 1,200 gallons (4,542 liters) and an evaporation loss rate of less than 1.5 percent per day as determined at an ambient temperature of 75° F. (24° C.) without exposure to direct sunlight; or (c) liquefied gases boiling at temperatures below minus 328° F. (minus 200° C.) with (i) multilaminar type insulation under vacuum, or (ii) other types of insulation, having a liquid capacity of more than 250 gallons (946 liters) and an evaporation loss rate of less than 3 percent per day as determined at an ambient temperature of 75° F. (24° C.) without exposure to direct sunlight; and specially designed parts, n.e.c.
- 7191(11) Environmental chambers capable of pressures of 26 Torr or less for treating materials by a process involving a change in temperature; and specially designed parts and accessories, n.e.c.
- 7191(13) Equipment specially designed for the production of uranium hexafluoride (UF₆); and specially designed parts and accessories, n.e.c.
- 7192(33) Centrifugal countercurrent solvent extractors; and parts, n.e.c.
- 7195(5) Parts, accessories, and attachments specially designed for electron beam machines, except equipment using the "sparking" technique.
- 71980(1) Environmental chambers capable of pressures of 26 Torr or less, including those which also have a capability of simulating other constant environments, such as radiation and temperature; and specially designed parts and accessories, n.e.c.
- 722(12) Thermoelectric generators or devices, as follows: (a) Junctions and/or combinations of junctions using any thermoelectric material having a maximum product of the figure of merit (Z) and the temperature (T in °K) in excess of 0.75, (b) heat absorbing and/or electrical power generating devices containing any of the aforementioned junctions; or (c) other power generating devices which generate in excess of 10 watts per pound or 500 watts per cubic foot of the devices' basic thermoelectric components; and specially designed parts, components, and subassemblies, n.e.c.
- 7295(44) Numerical control servo-driven measuring or gauging machines specially designed for measuring at any point of the contour the dimensional shape and contour characteristics of two- or three-dimensional objects, including objects of revolution.
- 7295(51) Process control instruments specially designed or modified for monitoring or controlling the processing of irradiated fissionable or fertile materials or irradiated lithium.
- 7295(66) Centrifugal testing apparatus or equipment having any of the following characteristics: (a) Driven by a motor or motors having a total rated horsepower greater than 400 horsepower, (b) capable of carrying a payload of 250 pounds or more, or (c) capable of exerting a centrifugal acceleration of 8 or more g on a payload of 200 pounds or more.
- 7295(78) Control instruments specially designed for environmental chambers capable of pressures of 26 Torr or less, including those which also have a capability of simulating other environments such as radiation and temperature.
- 7299(12) Electric arc devices, n.e.c., for generating a flow of ionized gas in which the arc column is constricted, except (a) devices wherein the flow of gas is for isolation purposes only, and (b) devices of less than 80 kilowatts for cutting, welding, plating and/or spraying; equipment incorporating such devices; and specially designed parts, accessories, and controls, n.e.c.
- 86140(5) Cameras incorporating image converters; and specially designed parts and accessories, n.e.c.
- 8619(44) Centrifugal testing apparatus or equipment having any of the following characteristics: (a) Driven by a motor or motors having a total rated horsepower greater than 400 horsepower, (b) capable of carrying a payload of 250 pounds or more, or (c) capable of exerting a centrifugal acceleration of 8 or more g on a payload of 200 pounds or more; and specially designed parts, n.e.c.
- 8619(36) Control equipment specially designed for hot or cold isostatic presses under No. 71980 which are subject to the Import Certificate/Delivery Verification procedure.
- 8619(37) Control equipment specially designed for other hot or cold isostatic presses under No. 71980 and parts, n.e.c.
- 8619(38) Control instruments specially designed for environmental chambers capable of pressures of 26 Torr or less, including those which also have a capability of simulating other environments, such as radiation and temperature; and specially designed parts, n.e.c. (See § 399.2 Int. 17.)
- The following commodities are deleted:
Export Control Commodity Number and Commodity Description
- 513 Hafnium oxides containing 15 percent hafnium or less by weight; and monocrystalline gallium compounds.
- 514 Boron hydrides and nitrides, and boron carbides with a boron content of 73 percent or less by weight.
- 514 Hafnium compounds containing 15 percent or less hafnium by weight.
- 514 Zirconium compounds containing one part hafnium or more to 500 parts of zirconium.
- 662 High temperature refractory brick and similar shapes, cement, mortar, and other refractory construction materials, n.e.c. containing zirconium oxide, or zirconium oxide stabilized with lime and/or magnesium oxide.
- 663 Crucibles and refractory products other than refractory construction materials, n.e.c., containing 96 percent or less by weight of magnesium oxide, or zirconium oxide, or containing zirconium oxide stabilized with lime and/or magnesium oxide.
- 683 Nickel powder with a nickel content of 98 percent or less regardless of particle size.
- 683 Other bars, rods, angles, shapes, sections, and wire of nickel alloy containing 32 percent or more nickel, except nickel-copper alloys containing not more than 6 percent of other alloying elements.
- 714 Other electronic computers, analog or digital (including digital differential analyzers) not identified by the code letter "A," following the Export Control Commodity Number on the Commodity Control List.
- 726 X-ray machines having any of the following characteristics: (a) Peak power exceeding 500 MW., (b) output voltage exceeding 500 KV. or (c) output current exceeding 2,000 amperes with pulse width of 0.2 microseconds or less; and parts and accessories, n.e.c.

PART 379—TECHNICAL DATA

4. In § 379.4(e) (1), subdivision (iii) is amended by adding the following commodity thereto:

(aa) Pulse Doppler Sonar Navigation Systems (Export Control Commodity No. 7295).

[FR Doc. 71-7809 Filed 6-3-71; 8:52 am]

Title 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

SUBCHAPTER E—RULES, REGULATIONS, STATEMENTS OF GENERAL POLICY OR INTERPRETATION AND EXEMPTIONS UNDER THE FAIR PACKAGING AND LABELING ACT

PART 501—EXEMPTIONS FROM REQUIREMENTS AND PROHIBITIONS UNDER PART 500

Candles

Notice is given that no objections were filed in the matter of § 501.7 which prescribed an exemption for packaged and labeled tapered and irregularly shaped decorative candles from the requirements of § 500.7 of Part 500 of the Fair

Packaging and Labeling Act's regulations (36 F.R. 5689). Accordingly, the effective date of § 501.7, April 26, 1971, is confirmed.

Issued: May 24, 1971.

By direction of the Commission.

[SEAL] CHARLES A. TOBIN,
Secretary.

[FR Doc.71-7823 Filed 5-3-71;8:53 am]

Title 19—CUSTOMS DUTIES

Chapter I—Bureau of Customs, Department of the Treasury

[T. D. 71-143]

PART 22—DRAWBACK

Miscellaneous Amendments

On November 18, 1970, notice of proposed rule making setting forth proposed amendments to the Customs Regulations, under which an investigation on the applicant's premises by the Customs Agency Service and assistance in preparing the applicant's drawback statement would be discontinued, was published in the FEDERAL REGISTER (35 F.R. 17724). Interested persons were given 30 days from the date of publication of the notice to submit relevant written data, views, or arguments regarding the proposed amendments to the regulations. Representations submitted pursuant to the notice have been carefully considered.

The amendments as proposed are hereby adopted subject to the following changes:

1. Section 22.4(h) is amended by providing that the drawback statement shall be furnished to the regional commissioner of customs in triplicate rather than in quadruplicate, and that the drawback statement shall be submitted to the Commissioner of Customs in quadruplicate rather than in quintuplicate.
2. Section 22.6(a) is amended by providing that the drawback statement shall be furnished to the regional commissioner of customs in triplicate rather than in duplicate, and that statements and supplemental statements in quadruplicate rather than quintuplicate relating to products covered by paragraph (g-1) of the section shall be forwarded to the Bureau for approval.
3. Section 22.6(a) is also amended by changing "(g) (1)" in the first and last sentences thereof to "(g-1)", the correct identity of the paragraph, and by substituting the word "forwarded" for "referred" in the last sentence.
4. Section 22.26(c) is corrected to refer to section 22.20(f) rather than to section 22.20(e).
5. Section 22.43 is amended to provide that schedules, supplemental schedules, and supplemental advisory schedules, when not incorporated in a drawback statement or supplemental statement, shall be referred for verification upon receipt by the regional commissioner.

The text of the amendments to sections 22.4, 22.6, and 22.43, and the correction of section 22.26, Part 22, Chapter I, title 19, Code of Federal Regulations, as adopted, is set forth below.

Effective date. These amendments shall become effective on July 1, 1971.

Applications which are pending on the effective date of the amendments may be processed under the regulations in their present form, or under the regulations as amended, at the option of the applicant.

[SEAL] MYLES J. AMBROSE,
Commissioner of Customs.

Approved: May 25, 1971.

WILLIAM L. DICKEY,
Acting Assistant Secretary
of the Treasury.

§ 22.4 Identification of imported merchandise and ascertainment of quantities for allowance of drawback; establishment of drawback rates.

(h) Each manufacturer or producer shall submit to the regional commissioner of customs where his drawback entries will be liquidated a statement in triplicate describing the methods which he will follow and the records which he will keep for the purpose of establishing that the articles upon which drawback will be claimed have been manufactured or produced in the United States with the use of imported duty-paid merchandise within the meaning of section 313(a), Tariff Act of 1930, and that the records of identification, manufacture, or production and storage prescribed in this section have been maintained. In the case of operations under section 313 (b), (d), or (g), Tariff Act of 1930, as amended, and in the case of operations under any combination of section 313(a) with section 313 (b), (d), or (g), the statement in quadruplicate shall be submitted to the Commissioner of Customs. The statement shall contain an agreement to follow the methods and keep the records described therein with respect to all articles manufactured or produced for exportation with benefit of drawback. Provision for the use of duty-paid merchandise or drawback products, the manufacture or production of articles not specified in the application for the rate, or the use of factories not named therein may be included in the statement prepared as a result of such application.

(i) If drawback entries are to be liquidated at more than one regional office, two additional copies of the statement shall be required for each additional office. The procedure outlined in this and the preceding paragraph shall be followed, so far as applicable, when applications for amendments of drawback rates, or supplemental statements, schedules, or supplemental advisory schedules are filed in accordance with paragraph (o), (p), or (q) of this section.

(j) If the statement shows that the methods and records described therein enable the manufacturer or producer to comply with the law and regulations, the regional commissioner in a case under

section 313(a), Tariff Act of 1930, or the Bureau in a case under section 313 (b), (d), or (g), Tariff Act of 1930, as amended, and in the case of any combination of section 313(a) with section 313 (b), (d), or (g), will issue the rate of drawback on the articles described in the statement. In cases under § 22.6, the procedure in paragraphs (a) and (b) of that section shall be followed. When the statement in a case under section 313(a), Tariff Act of 1930, shows that entries are to be filed with more than one regional commissioner, the regional commissioner at the place first listed shall issue the rate, if that action is warranted.

(o) When a manufacturer or producer in whose behalf a rate of drawback has been established desires to have his rate amended under section 313(a), Tariff Act of 1930, or to change his statement filed under § 22.6 to cover additional articles, to include additional factories, to permit the use of other kinds of imported duty-paid merchandise or drawback products, to provide for a different basis for the liquidation of drawback entries, or to cover different methods of identification or manufacture, or other changes, he shall file an application therefor with the regional commissioner, district director, or port director of customs. The supplemental statement prepared as a result of such application shall be submitted to the regional commissioner where drawback entries filed under the existing rate of drawback are liquidated who shall issue the amendment, if that action is warranted. If entries are liquidated by more than one regional commissioner, the supplemental statement shall identify all such regional commissioners and the regional commissioner at the place first listed shall issue the amendment. The foregoing procedure shall also apply to applications for amendments under section 313 (b), (d), or (g), Tariff Act of 1930, as amended, and in the case of any combination of section 313(a) operations with section 313 (b), (d), or (g) operations, but the supplemental statement in such cases shall be submitted to the Commissioner of Customs except as provided in subparagraph (1) of this paragraph. No drawback shall be allowed on articles exported before the date on which the application was received by the regional commissioner, district director, or port director, unless specifically authorized by the Bureau, or by the regional commissioner in cases within the provisions of § 22.6 or of this paragraph.

(p) When a rate of drawback provides that the drawback allowance shall be determined on the basis of a schedule filed by the manufacturer or producer showing the quantity of imported material used or appearing in each unit of finished articles, and the rate authorizes the filing of supplemental schedules showing changes in the quantity of imported materials used or appearing in

each unit, or different styles or capacities of containers, such supplemental schedules shall be filed with the regional commissioner, district director, or port director of customs. Drawback may be allowed on the articles covered by a supplemental schedule after it has been approved by the regional commissioner.

(q) In cases where the drawback allowance is determined on a quantity-used or appearing-in basis, regional commissioners of customs may request, for the information of liquidating officers in addition to the information required to be filed with the drawback entry, a supplemental advisory schedule showing the quantity of imported merchandise used or appearing in each unit of finished articles. Such schedules shall be filed with the regional commissioner, district director, or port director of customs. Drawback may be allowed on articles covered by a supplemental advisory schedule after it has been approved by the regional commissioner.

In § 22.6 paragraphs (a) and (b) are amended to read:

§ 22.6 General drawback rates in effect; approval of drawback statements by the Bureau and by regional commissioners.

(a) *Drawback statements; filing and approval by one regional commissioner.* Each manufacturer or producer of articles covered by a drawback rate in this section, except under paragraph (g-1), shall submit to the regional commissioner where drawback entries will be filed, a statement in triplicate describing the methods used in the manufacture or production of the products involved and setting forth the records it agrees to keep for the purpose of complying with the drawback law and regulations and for providing all the data required for the proper liquidation of certificates of manufacture and drawback entries filed hereunder. If the statement shows that the methods and records described therein enable the manufacturer or producer to comply with the law and regulations, the regional commissioner shall approve the statement and promptly notify the applicant, in writing, of such action. Statements and supplemental statements in quadruplicate relating to products covered by paragraph (g-1) of this section shall be forwarded to the Bureau for approval.

(b) *Drawback statements; filing and approval at more than one place.* If drawback entries are to be liquidated at more than one regional office, two additional copies of the statement shall be required for each additional office. In such case, the regional commissioner at the place first listed in the drawback statement shall approve the statement, if that action is warranted, and promptly notify the applicant, in writing, of such action.

Section 22.6(c) is amended to read:
(c) The amount of drawback due having been ascertained, such amount

shall be certified for payment in accordance with section 22.20(f).

Section 22.43 is amended to read:

§ 22.43 Verification of drawback claims by Customs Agency Service.

The first drawback claim filed under a drawback rate shall be forwarded by the regional commissioner to the special agent in charge of the area in which the factory covered by the claim is located, for verification. The agent shall verify the claim and the material set forth in the drawback statement. Similar action shall be taken upon receipt of the first drawback claim filed under an amendment of a drawback rate. Verification as to drawback rates and amendments shall include an examination of not only the manufacturing records but also the sales and financial records relating to the transaction. Schedules, supplemental schedules, and supplemental advisory schedules, when not incorporated in a drawback statement or supplemental statement, shall be referred for verification upon receipt by the regional commissioner. Regional commissioners shall cause drawback documents to be referred to the Customs Agency Service for verification whenever such reference is believed to be required for orderly and efficient administration of the drawback law and regulations, and occasionally in any case.

(Secs. 313, 624, 46 Stat. 693, as amended, 759; 19 U.S.C. 1313, 1624)

[FR Doc. 71-7784 Filed 6-3-71; 8:50 am]

Title 20—EMPLOYEES' BENEFITS

Chapter III—Social Security Administration, Department of Health, Education, and Welfare

[Reg. No. 5, further amended]

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED (1965—)

Subpart A—Hospital Insurance Benefits

Subpart C—Exclusions, Recovery of Overpayment, and Liability of a Certifying Officer

POSTHOSPITAL EXTENDED CARE

On October 28, 1969, there was published in the FEDERAL REGISTER (34 F.R. 17390) a notice of proposed rule making with proposed amendments to Subpart A, Regulations No. 5 which define and describe "skilled nursing services on a continuing basis" for purposes of reimbursement as extended care services under title XVIII of the Social Security Act. All comments submitted with respect to the proposed amendments were considered and the following changes were made as a result of comments received: Paragraphs (a) and (b) of § 405.120 and

paragraph (b) of § 405.165 are amended to include references to new §§ 405.126-405.128. The reference to oral drug therapy has been deleted from § 405.127(b) insofar as the administration of nearly every drug involves some degree of risk. The determination as to whether the administration of oral medication in any specific instance is considered a skilled service will be made in accordance with the general principles described in §§ 405.127(c) and 405.128(b). Paragraph (a) of § 405.127 has been revised to indicate specifically that physician direction is a basic requirement in the provision of skilled nursing care. In § 405.128, the phrase "continuous presence of skilled nurses" has been changed to read "continuing availability of skilled nurses" in order to avoid any inference that private-duty nursing is required. Also the term "intravenous injections" in paragraph (a) of that section has been changed to read "intramuscular injections." The definition of "skilled observation," found in paragraph (b) of this section, has been clarified to emphasize the importance of this aspect of skilled nursing care as a basis for an extended care level of services. Several comments have been received requesting that less stringent criteria for extended care coverage be applied to postoperative cataract patients in that they require primarily personal care in a protective environment rather than skilled nursing services on a continuing basis. However, since the law requires as the basis for coverage of extended care services that there be a need for skilled nursing services on a continuing basis, no exception can be made in these cases. A new § 405.129 has been added which sets forth conditions under which an extended care facility may be assured payment for a limited time based on a presumption that the patient required posthospital extended care. Finally, paragraph (g) of § 405.310 has been revised to specify that, with respect to extended care services, no payment may be made for care that does not meet the specifications of §§ 405.126-405.128. Accordingly, the amendments are, with the aforementioned changes and additions, adopted.

(Secs. 1102, 1812-1815, 1871, 49 Stat. 647 as amended, 79 Stat. 291-297; 79 Stat. 331; 42 U.S.C. 1302, 1395 et seq.)

Effective date. The amendments as set forth below shall be effective upon publication in the FEDERAL REGISTER (6-4-71).

Dated: April 27, 1971.

[SEAL] ROBERT M. BALL,
Commissioner of Social Security.

Approved: May 27, 1971.

ELLIOT L. RICHARDSON,
Secretary of Health,
Education, and Welfare.

1. Section 405.120 is amended by revising paragraph (a)(1) and adding a new paragraph (b)(3) to read as follows:

§ 405.120 Posthospital extended care services; scope of benefits.

(a) *Benefits and conditions for entitlement.* (1) An individual who meets the requirements described in § 405.102 and who requires the services referred to in §§ 405.126-405.128, is eligible to have payment made on his behalf to a participating extended care facility (see § 405.150) for up to 100 days of extended care services (§ 405.124) furnished to him in a spell of illness if he is admitted to such extended care facility within 14 days (as defined in paragraph (d) of this section) after his discharge from a hospital in which he was an inpatient for not less than 3 consecutive calendar days (as defined in paragraph (c) of this section) and such discharge occurred on or after the first day of the month in which the individual attained age 65, or after June 30, 1966, whichever is later.

(b) *Services for which payment is not made.* * * *

(3) Where an individual has been furnished services in an extended care facility, no payment may be made for such services if he did not require posthospital extended care as specified in §§ 405.126-405.128, irrespective of whether the other requirements of this section were met.

2. Sections 405.126, 405.127, 405.128, and 405.129 are added to read as follows:

§ 405.126 Posthospital extended care; defined.

Posthospital extended care is that level of care provided after a period of intensive hospital care to a patient who continues to require skilled nursing services (as defined in § 405.127) on a continuing basis (see § 405.128) but who no longer requires the constant availability of medical services provided by a hospital.

§ 405.127 Posthospital extended care; skilled nursing services.

(a) *Defined.* A skilled nursing service is one which must be furnished by or under direct supervision of licensed nursing personnel and under the general direction of a physician in order to assure the safety of the patient and achieve the medically desired result. Skilled nursing includes:

- (1) Observation and assessment of the total needs of the patient;
- (2) Planning and management of a treatment plan; and
- (3) Rendering direct services to the patient.

(b) *Specific services; services which are skilled.* Based upon the general principles set forth in paragraph (a) of this section skilled nursing services include but are not limited to:

- (1) Intravenous or intramuscular injections and intravenous feeding;
- (2) Levine tube and gastrostomy feedings;
- (3) Naso-pharyngeal aspiration;
- (4) Insertion or replacement of catheters;

(5) Application of dressings involving prescription medications and aseptic techniques;

(6) Treatment of extensive decubiti or other widespread skin disorder;

(7) Heat treatments specifically ordered by a physician as part of active treatment and which require observation by skilled personnel to adequately evaluate the patient's progress;

(8) Initial phases of a regimen involving administration of medical gases;

(9) Restorative nursing procedures, including the related teaching and adaptive aspects of skilled nursing, which are part of active treatment and require the presence of licensed nurses at the time of performance.

(c) *Evaluation of services as skilled or unskilled.* In evaluating whether services not enumerated in paragraph (b) of this section are skilled or unskilled nursing services, the following principles shall be applied:

(1) The classification of a particular service as either skilled or unskilled is based on the technical or professional training required to effectively perform or supervise the service. For example, a patient, following instructions, can normally take a daily vitamin pill. Consequently, the act of giving the vitamin pill to the patient because he is too senile to take it himself would not be a skilled service. Similarly, State law may require that all institutional patients receive medication only from a licensed nurse. This fact would not make administration of a medication a skilled nursing service if such medication can be prescribed for administration at home without the presence of a skilled nurse.

(2) The importance of a particular service to an individual patient does not necessarily make it a skilled service. For example, a primary need of a nonambulatory patient may be frequent changes of position in order to avoid development of decubiti. Since changing of position can ordinarily be accomplished by unlicensed personnel, it would not be a skilled service.

(3) Skilled paramedical services involving specialized training outside the nursing curriculum are not skilled nursing services. For example, physical, occupational, and speech therapy are discrete treatment modalities requiring specialized training for proper performance. A need for one or more of these therapies would not necessarily indicate a need for skilled nursing care.

(4) Any generally nonskilled service could, because of special medical complications, require skilled performance, supervision, or observation. In such cases, the complications and special services involved must be documented by physician orders and/or nursing notes. For example, the existence of a plaster cast on an extremity would not generally indicate a need for skilled care. However, a preexisting acute skin problem and a need for special traction of the injured extremity might require skilled personnel in order to properly observe for complications and adjust traction accordingly.

Such procedures would be undertaken only on specific physician order and would be documented in nursing reports. The possibility of adverse effects from improper performance of an otherwise unskilled service does not make it a skilled service.

(d) *Specific services; supportive or unskilled services.* Supportive services which can be learned and performed by the average nonmedical person (and which are not skilled services in the absence of conditions specified in paragraph (c)(5) of this section) include but are not limited to:

(1) Administration of routine oral medications, eye drops, and ointments;

(2) General maintenance care of colostomy or ileostomy;

(3) Routine services in connection with indwelling bladder catheters;

(4) Changes of dressings in noninfected postoperative or chronic conditions;

(5) Prophylactic and palliative skin care, including bathing and application of creams, or treatment of minor skin problem;

(6) General methods of treating incontinence, including use of diapers and rubber sheets;

(7) General maintenance care in connection with a plaster cast;

(8) Routine care in connection with braces and similar devices;

(9) Use of heat for palliative and comfort purposes;

(10) Administration of medical gases after initial phases of instituting the therapy;

(11) General supervision of exercises which have been taught to the patient;

(12) Assistance in dressing, eating, and going to the toilet.

§ 405.128 Posthospital extended care; "continuing basis."

Skilled nursing services are required on a continuing basis (see § 405.126) when the continuing availability of skilled nursing personnel is warranted. In determining whether the continuing availability of skilled nursing personnel is warranted, the following principles apply:

(a) *Frequency of services.* The frequency of skilled nursing services required, rather than their regularity, is the controlling factor in determining whether the continuing availability of skilled nursing personnel is warranted. For example, a patient may require intramuscular injections on a regular basis every second day. If this is the only skilled service required, it would not necessitate the continuing availability of skilled nurses.

(b) *Observation.* Observation may be the principal continuous service when the unstabilized condition of the patient requires the skills of a licensed nurse to detect and evaluate the patient's need for possible modification of treatment or institution of medical procedures. For example, pending stabilization of the condition, a patient suffering from arteriosclerotic heart disease may require

continuous close observation by skilled nurses for signs of decompensation and loss of fluid balance in order to determine whether the digitalis dosage should be changed or other therapeutic measures should be taken. Similarly, in some cases, surgical patients (including cataract patients) are transferred from a hospital to an extended care facility while still in the immediate unstabilized postoperative period during which the possibility of adverse reaction to anesthesia and other aspects of the operative procedure necessitates close skilled monitoring. (This latter situation is, of course, the converse of the "uncomplicated" convalescent stage following the "average" hospital stay for surgery.)

§ 405.129 Assurance of payment.

(a) *General.* Whether a patient in an extended care facility required and received posthospital extended care as referred to in §§ 405.126-405.128 will ordinarily be decided from the facts as presented in or in connection with a request for payment made on behalf of an individual who has received care in an extended care facility. However, where such facility has been determined by its intermediary (see § 405.651) to meet the requirements of paragraph (b) of this section, and in an individual case submits adequate medical information to such intermediary in accordance with paragraph (c) of this section, such patient can be presumed to require posthospital extended care as specified in paragraph (d) of this section.

(b) *Eligibility for assurance of payment procedure.* The presumptions referred to in paragraph (a) of this section may be made with respect to patients of an extended care facility when the conditions and circumstances of submission of claims for posthospital extended care services assure that payment is not being requested for care clearly not falling within the scope of §§ 405.126-405.128 and that the facility promptly identifies to the intermediary, in accordance with paragraph (c) of this section, those cases where there is reasonable doubt whether a patient may require or continue to require posthospital extended care (as referred to in §§ 405.126-405.128). In determining whether such conditions and circumstances exist, the extended care facility's intermediary shall take into account: (1) The adequacy of utilization review in such facility; (2) the facility's effectiveness in applying the definition of posthospital extended care (§§ 405.126-405.128) and limiting its requests for payment for services furnished to patients who required such care; (3) the facility's continuing effectiveness in restricting its requests under this assurance-of-payment procedure to those cases where there is less than certainty but reasonable likelihood that the services a patient may require constitutes such care, as demonstrated by medical information which is forwarded to the intermediary within the time period specified in paragraph (c) of this section;

and (4) the adequacy of the medical information the facility submits to the intermediary.

(c) *Request for determination.* The medical information referred to in paragraphs (a) and (b) of this section shall not be deemed adequate unless: (1) It includes physician's orders for the patient's care in the facility, a profile of the patient's condition, and the services expected to be needed; and (2) it has been provided by the extended care facility's director of nursing services, its charge nurse, or a physician; and (3) it is based on either the attending physician's orders or medical information from the hospital from which the patient was transferred.

(d) *Effect of procedure.* Where the medical information is submitted in accordance with the preceding provisions of this section, the intermediary shall review the medical information and inform the extended care facility of its findings as promptly as possible. For a reasonable number of days necessarily intervening between the time medical information is forwarded to the intermediary, or from the date of admission when such information is forwarded within 48 hours of such admission, and whichever of the following events first occurs, the intermediary may presume that such a patient required posthospital extended care: (1) The facility is advised by the intermediary that the care being provided is not posthospital extended care, or that additional supporting evidence is required; or (2) the patient's condition clearly changes from the condition that existed on a date with respect to which the medical information was submitted, so that there is no longer doubt as to the individual's need for posthospital extended care.

3. In § 405.165, the material in paragraph (b) preceding subparagraph (1) is revised to read as follows:

§ 405.165 Payment for posthospital extended care services; conditions.

(b) When required, a physician (other than a doctor of podiatry or surgical chiropody) certifies and recertifies (see Subpart P of this part) that such services were required to be given on an inpatient basis because the individual needed skilled nursing care on a continuing basis (as defined in §§ 405.126-405.128):

4. Paragraph (g) of § 405.310 is revised to read as follows:

§ 405.310 Types of expenses not covered.

(g) Custodial care (in the case of extended care services, any care which does not meet the definition of extended care in §§ 405.126-405.128);

[FR Doc. 71-7753 Filed 6-3-71; 8:47 am]

Title 21—FOOD AND DRUGS

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

SUBCHAPTER C—DRUGS

PART 135b—NEW ANIMAL DRUGS FOR IMPLANTATION OR INJECTION

Flumethasone

The Commissioner of Food and Drugs has evaluated a new animal drug application (36-211V) filed by Syntex Laboratories, Inc., 3401 Hillview Drive, Palo Alto, Calif. 94304, proposing the safe and effective use of flumethasone for the treatment of specified conditions in horses. The application is approved.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347; 21 U.S.C. 360b(i)) and under authority delegated to the Commissioner (21 CFR 2.120), Part 135b is amended by adding the following new section:

§ 135b.32 Flumethasone suspension veterinary.

(a) *Chemical name.* 6a,9a-Difluoro-11β,17,21-trihydroxy-16a-methylpregna-1,4-diene-3,20-dione.

(b) *Specifications.* Flumethasone suspension veterinary is sterile and each milliliter of the drug contains: 2 milligrams of flumethasone, 20 milligrams of propylene glycol, 9 milligrams of benzyl alcohol (as preservative), 8 milligrams of sodium chloride, 0.02 milligram of polysorbate-80, 0.1 milligram of citric acid, and water for injection q.s.

(c) *Sponsor.* See code No. 036 in § 135.501(c) of this chapter.

(d) *Conditions of use.* (1) It is recommended in the various disease states involving synovial structures (joints) of horses where excessive synovial fluid of inflammatory origin is present and where permanent structural changes do not exist. Such conditions include arthritis, carpalitis, and osselets.

(2) The drug is administered intramuscularly at a dosage level of 6 to 10 milligrams per injection. The dosage level is dependent upon the size of the involved synovial structure and the degree of severity of the condition under treatment. The dosage is limited to a single injection per week in any one synovial structure.

(3) Clinical and experimental data have demonstrated that corticosteroids administered orally and parenterally to animals during the last trimester of pregnancy may induce the first stage of parturition and may precipitate premature parturition followed by dystocia, fetal death, retained placenta, and metritis. The drug is not to be used in horses intended for slaughter for food purposes.

(4) For use only by or on the order of a licensed veterinarian.

Effective date. This order shall be effective upon publication in the *FEDERAL REGISTER* (6-4-71).

(Sec. 512(1), 82 Stat. 347; 21 U.S.C. 360b(1))

Dated: May 21, 1971.

C. D. VAN HOUWELING,

Director,

Bureau of Veterinary Medicine.

[FR Doc.71-7741 Filed 6-3-71; 8:46 am]

Chapter III—Environmental Protection Agency

PART 420—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Endothall

A petition (PP 0F0972) was filed by the Pennwalt Corp., Post Office Box 1297, Tacoma, WA 98401, proposing establishment of a tolerance for residues of endothall (7-oxabicyclo-(2.2.1) heptane-2,3-dicarboxylic acid) in or on the raw agricultural commodity cottonseed at 0.1 part per million from use of its mono-*N,N*-dimethylalkylamine salt as a defoliant on cotton, wherein the alkyl group is the same as in the fatty acids of coconut oil.

Prior to December 2, 1970, the Secretary of Agriculture certified that this pesticide chemical is useful for the purposes for which the tolerance is being established, and the Fish and Wildlife Service of the Department of Interior advised that it has no objection to this tolerance.

Part 120, Chapter I, Title 21 was redesignated Part 420 and transferred to Chapter III (36 F.R. 424).

Based on consideration given the data submitted in the petition and other relevant material, it is concluded that:

1. The proposed usage is not reasonably expected to result in residues of the defoliant in meat, milk, poultry, and eggs. The uses are classified under § 420.6 (a) (3).

2. The tolerance established by this order will protect the public health.

Therefore, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(2), 68 Stat. 512; 21 U.S.C. 346a(d)(2)), the authority transferred to the Administrator (35 F.R. 15623), and the authority delegated by the Administrator to the Deputy Assistant Administrator for Pesticides Programs of the Environmental Protection Agency (36 F.R. 9038), Part 420 is amended by adding the following new section to Subpart C:

§ 420.293 Endothall; tolerances for residues.

A tolerance of 0.1 part per million is established for negligible residues of the defoliant endothall (7-oxabicyclo-(2.2.1) heptane-2,3-dicarboxylic acid) from use of its mono-*N,N*-dimethylalkylamine salt, wherein the alkyl group is the same as in the fatty acids of coconut oil, in or on the raw agricultural commodity cottonseed.

Any person who will be adversely affected by the foregoing order may at any time within 30 days after its date of publication in the *FEDERAL REGISTER* file with the Objections Clerk, Environmental Protection Agency, 1626 K Street, NW., Washington, DC 20460, written objections thereto in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

Effective date. This order shall become effective on its date of publication in the *FEDERAL REGISTER* (6-4-71).

(Sec. 408(d)(2), 68 Stat. 512; 21 U.S.C. 346a (d)(2))

Dated: May 28, 1971.

LOWELL E. MILLER,

Acting Deputy Assistant Administrator for Pesticides Programs.

[FR Doc.71-7774 Filed 6-3-71; 8:49 am]

PART 420—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

N'-(4-Chloro-o-Tolyl)-*N,N*-Dimethylformamide

A petition (PP 0F0980) was filed by Ciba Agrochemical Co., Division of Ciba Corp., Post Office Box 1105, Vero Beach, FL 32960, and Nor-Am Agricultural Products, Inc., 11710 Lake Avenue, Woodstock, IL 60098 in accordance with the provisions of the Federal Food, Drug, and Cosmetic Act as amended (21 U.S.C. 346a) proposing establishment of tolerances for residues of the insecticide *N'*-(4-chloro-o-tolyl)-*N,N*-dimethylformamide and its metabolites containing the 4-chloro-o-toluidine moiety calculated as *N'*-(4-chloro-o-tolyl)-*N,N*-dimethylformamide in or on the raw agricultural commodities broccoli, brussels sprouts, cabbage, and cauliflower at 2 parts per million.

Prior to December 2, 1970, the Secretary of Agriculture certified that this pesticide chemical is useful for the purposes for which tolerances are being established, and the Fish and Wildlife Service of the Department of Interior advised that it has no objection to these tolerances.

Part 120, Chapter I, Title 21 was redesignated Part 420 and transferred to Chapter III (36 F.R. 424).

Based on consideration given data submitted in the petition and other relevant material, it is concluded that:

1. The proposed usage is not reasonably expected to result in residues of the insecticide in meat, milk, poultry, and eggs. The uses are classified in the category specified in § 420.6(a)(3).

2. The tolerances established by this order are safe and will protect the public health.

Therefore, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(2), 68 Stat. 512; 21 U.S.C. 346a(d)(2)), the authority transferred to the Administrator (35 F.R. 15623), and the authority delegated by the Administrator to the Deputy Assistant Administrator for Pesticides Programs of the Environmental Protection Agency (36 F.R. 9038), § 420.285 is amended by adding a new paragraph "2 parts per million * * *" after the paragraph "3 parts per million * * *", as follows:

§ 420.285 *N'*-(4-chloro-o-tolyl)-*N,N*-dimethylformamide; tolerances for residues.

* * * * *

Two parts per million in or on broccoli, brussels sprouts, cabbage, and cauliflower.

Any person who will be adversely affected by the foregoing order may at any time within 30 days after its date of publication in the *FEDERAL REGISTER* file with the Objections Clerk, Environmental Protection Agency, 1626 K Street NW., Washington, DC 20460, written objections thereto in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

Effective date. This order shall become effective on its date of publication in the *FEDERAL REGISTER* (6-4-71).

(Sec. 408(d)(2), 68 Stat. 512; 21 U.S.C. 346a(d)(2))

Dated: May 28, 1971.

LOWELL E. MILLER,

Acting Deputy Assistant Administrator for Pesticides Programs.

[FR Doc.71-7775 Filed 6-3-71; 8:49 am]

Title 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER A—INCOME TAX

[T.D. 7120]

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

Special Rules for Determining Tax Credit for Foreign Income Taxes Paid by Controlled Foreign Corporations

On April 20, 1965, a notice of proposed rule making to conform the Income Tax Regulations (26 CFR Part 1) to section 960 of the Internal Revenue

Code of 1954, as added by section 12(a) of the Revenue Act of 1962 (76 Stat. 1006), was published in the *FEDERAL REGISTER* (30 F.R. 5595). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the amendment of the regulations as proposed is hereby adopted, subject to the changes set forth below:

PARAGRAPH 1. Section 1.960-1, as set forth in paragraph 1 of the notice of proposed rule making, is changed by revising the captions of such section and of paragraph (c), by revising paragraphs (a) and (c) (1), by redesignating paragraphs (c) (3) as paragraph (c) (4), by revising examples (1) and (3) in paragraph (c) (4) as so redesignated and adding example (5) thereto, by revising the examples in paragraph (e) (2), by adding paragraph (i), and by reserving paragraph (c) (1) (iii) and (3).

PAR. 2. Section 1.960-2, as set forth in paragraph 1 of the notice of proposed rule making, is changed.

PAR. 3. Section 1.960-3, as set forth in paragraph 1 of the notice of proposed rule making, is changed.

PAR. 4. Section 1.960-4, as set forth in paragraph 1 of the notice of proposed rule making, is changed by revising paragraph (a) (2), the caption of paragraph (d), and the introductory statement of facts in examples (1), (3), and (4) in paragraph (f).

PAR. 5. Section 1.960-5, as set forth in paragraph 1 of the appendix to the notice of proposed rule making, is changed.

PAR. 6. Section 1.960-6, as set forth in paragraph 1 of the notice of proposed rule making, is changed by revising the introductory statement of facts in the example in paragraph (b).

PAR. 7. Section 1.78-1, as set forth in paragraph 2 of the notice of proposed rule making, is changed by revising paragraph (b) and by adding a new amendment of paragraph (e) (2).

PAR. 8. Section 1.959-4 is amended.

PAR. 9. Section 1.963-3 is amended by revising paragraphs (b) (1) and (e) and example (2) in paragraph (h).
(Sec. 7805 of the Internal Revenue Code of 1954; 68A Stat. 917; 26 U.S.C. 7805)

[SEAL] VERNON D. ACREE,
Commissioner of Internal Revenue.

Approved: May 25, 1971.

JOHN S. NOLAN,
Acting Assistant Secretary
of the Treasury.

PARAGRAPH 1. There are inserted immediately after § 1.959-4 the following new section:

§ 1.960-1 Foreign tax credit with respect to taxes paid on earnings and profits of controlled foreign corporations.

(a) *Scope of regulations under section 960.* This section prescribes rules for determining the foreign income taxes deemed paid under section 960(a) (1) by a domestic corporation which is required under section 951 to include in gross income an amount attributable to a first-tier or second-tier corporation's earnings

and profits. Section 1.960-2 prescribes rules for applying section 902 to dividends paid by a second-tier corporation or a first-tier corporation from earnings and profits attributable to an amount which is, or has been, included in gross income under section 951. Section 1.960-3 provides special rules for the application of the gross-up provisions of section 78 where an amount is included in gross income under section 951. Section 1.960-4 prescribes rules for increasing the applicable foreign tax credit limitation under section 904(a) of the domestic corporation for the taxable year in which it receives a distribution of earnings and profits in respect of which it was required under section 951 to include an amount in its gross income for a prior taxable year. Section 1.960-5 prescribes rules for disallowing a deduction for foreign income taxes for such taxable year of receipt where the domestic corporation received the benefits of the foreign tax credit for such previous taxable year of inclusion. Section 1.960-6 provides that the excess of such an increase in the applicable limitation under section 904(a) over the tax liability of the domestic corporation for such taxable year of receipt results in an overpayment of tax.

(b) *Definitions.* For purposes of section 960 and §§ 1.960-1 through 1.960-6—

(1) *First-tier corporation.* The term "first-tier corporation" means a foreign corporation at least 10 percent of the voting stock of which is owned by the domestic corporation described in paragraph (a) of this section.

(2) *Second-tier corporation.* The term "second-tier corporation" means a foreign corporation at least 50 percent of the voting stock of which is owned by such first-tier corporation.

(3) *Foreign income taxes.* The term "foreign income taxes" means income, war profits, and excess profits taxes, and taxes included in the term "income, war profits, and excess profits taxes" by reason of section 903, imposed by a foreign country or a possession of the United States.

(4) *Less developed country corporation.* The term "less developed country corporation" means a less developed country corporation as defined in section 902(d) and § 1.902-4.

(c) *Amount of foreign income taxes deemed paid by domestic corporation in respect of earnings and profits of foreign corporation attributable to amount included in income under section 951—*

(1) *In general.* For purposes of section 901—(i) If for the taxable year there is included in the gross income of a domestic corporation under section 951 an amount attributable to the earnings and profits of a first-tier corporation for any taxable year, such domestic corporation shall be deemed to have paid the same proportion of the total foreign income taxes paid, accrued, or deemed (in accordance with paragraph (b) of § 1.960-2) to be paid, by such first-tier corporation on or with respect to the earnings and profits of such first-tier corporation for its taxable year as the

amount so included in the gross income of the domestic corporation under section 951 with respect to such first-tier corporation bears to the total earnings and profits of such first-tier corporation for its taxable year.

(ii) If for the taxable year there is included in the gross income of a domestic corporation under section 951 an amount attributable to the earnings and profits of a second-tier corporation for any taxable year, such domestic corporation shall be deemed to have paid the same proportion of the total foreign income taxes paid or accrued by such second-tier corporation on or with respect to the earnings and profits of such second-tier corporation for its taxable year as the amount (determined without regard to section 958(a) (2)) so included in the gross income of the domestic corporation under section 951 with respect to such second-tier corporation bears to the total earnings and profits of such second-tier corporation.

(iii) [Reserved]

(iv) This subparagraph applies whether or not the first-tier corporation or the second-tier corporation makes a distribution for the taxable year of its earnings and profits which are attributable to the amount included in the gross income of the domestic corporation under section 951.

(v) This subparagraph does not apply to an increase in current earnings invested in United States property which, but for paragraph (e) of § 1.963-3, would be included in the gross income of the domestic corporation under section 951 (a) (1) (B) but which, pursuant to such paragraph, counts toward a minimum distribution for the taxable year.

(2) *Taxes paid or accrued on or with respect to earnings and profits of foreign corporation—*(i) *Rule where first-tier corporation is not a less developed country corporation.* For purposes of subparagraph (1) of this paragraph, where the first-tier corporation is not a less developed country corporation for the taxable year or years described in paragraph (e) of this section, the foreign income taxes paid or accrued by such first-tier corporation or its second-tier corporation, as the case may be, on or with respect to its earnings and profits for its taxable year shall be the total amount of the foreign income taxes paid or accrued by such foreign corporation for such taxable year.

(ii) *Rule where first-tier corporation is a less developed country corporation.* For purposes of subparagraph (1) of this paragraph, where the first-tier corporation is a less developed country corporation for the taxable year or years described in paragraph (e) of this section, the foreign income taxes paid or accrued by such first-tier corporation or its second-tier corporation, as the case may be, on or with respect to its earnings and profits for its taxable year shall be the same proportion of the total foreign income taxes paid or accrued by such foreign corporation for such taxable year as the earnings and profits of such corporation for such taxable year bear

to the sum of its earnings and profits and its total foreign income taxes for such year.

(3) [Reserved]

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

Example (1). Domestic corporation N owns all the one class of stock of controlled foreign corporation A, not a less developed country corporation. Both corporations use the calendar year as the taxable year. For 1965, N Corporation is required under section 951 to include in gross income \$50 attributable to the earnings and profits of A Corporation for such year, but A Corporation does not distribute any earnings and profits for such year. The foreign income taxes paid by A Corporation for 1965 which are deemed paid by N Corporation for such year under section 960(a)(1)(C) are determined as follows upon the basis of the facts assumed:

Pretax earnings and profits of A Corporation	\$100.00
Foreign income taxes (20%)	20.00
Earnings and profits	80.00
Amount required to be included in N Corporation's gross income under sec. 951	50.00
Dividends paid to N Corporation	0.
Foreign income taxes paid on or with respect to earnings and profits of A Corporation	20.00
Foreign income taxes of A Corporation deemed paid by N Corporation under sec. 960(a)(1)(C) (\$50/\$80 × \$20)	12.50

Example (2). The facts are the same as in example (1) except that for 1965 A Corporation is a less developed country corporation. The foreign income taxes paid by A Corporation for 1965 which are deemed paid by N Corporation for such year under section 960(a)(1)(D) are determined as follows:

Foreign income taxes paid on or with respect to earnings and profits of A Corporation (\$30/\$100 × \$20)	\$16.00
Foreign income taxes of A Corporation deemed paid by N Corporation under sec. 960(a)(1)(D) (\$50/\$80 × \$16)	10.00

Example (3). Domestic corporation N owns all the one class of stock of controlled foreign corporation A, not a less developed country corporation, which owns all the one class of stock of controlled foreign corporation B. All such corporations use the calendar year as the taxable year. For 1965, N Corporation is required under section 951 to include in gross income \$45 attributable to the earnings and profits of B Corporation for such year, but is not required to include any amount in gross income under section 951 attributable to the earnings and profits of A Corporation for such year. Neither B Corporation nor A Corporation distributes any earnings and profits for 1965. The foreign income taxes paid by B Corporation for 1965 which are deemed paid by N Corporation for such year under section 960(a)(1)(C) are determined as follows upon the basis of the facts assumed:

Pretax earnings and profits of B Corporation	\$100.00
Foreign income taxes (40%)	40.00
Earnings and profits	60.00
Amounts required to be included in N Corporation's gross income under sec. 951 with respect to B Corporation	45.00
Dividends paid	0
Foreign income taxes paid on or with respect to earnings and profits	

of B Corporation	40.00
Foreign income taxes of B Corporation deemed paid by N Corporation under sec. 960(a)(1)(C) (\$45/\$60 × \$40)	30.00

Example (4). The facts are the same as in example (3) except that for 1965 A Corporation is a less developed country corporation. The foreign income taxes paid by B Corporation for 1965 which are deemed paid by N Corporation for such year under section 960(a)(1)(D) are determined as follows:

Foreign income taxes paid on or with respect to earnings and profits of B Corporation (\$60/\$100 × \$40)	\$24.00
Foreign income taxes of B Corporation deemed paid by N Corporation under sec. 960(a)(1)(D) (\$45/\$60 × \$24)	18.00

Example (5). Domestic corporation N owns all the one class of stock of controlled foreign corporation A, not a less developed country corporation, which owns 25 percent of the one class of stock of controlled foreign corporation B, not a less developed country corporation. N Corporation also directly owns 75 percent of the one class of stock of B Corporation. All such corporations use the calendar year as the taxable year. For 1965, N Corporation is required under section 951 to include in gross income \$60 attributable to the earnings and profits of B Corporation and \$76 attributable to the earnings and profits of A Corporation. For 1965, B Corporation distributes \$15 to N Corporation and \$5 to A Corporation, but A Corporation makes no distribution to N Corporation. The foreign income taxes paid by corporations A and B which are deemed paid by N Corporation for such year under section 960(a)(1)(C) are determined as follows upon the basis of the facts assumed:

<i>B Corporation (second-tier corporation):</i>	
Pretax earnings and profits	\$100.00
Foreign income taxes (40%)	40.00
Earnings and profits	60.00
Amount required to be included in N Corporation's gross income under sec. 951 with respect to B Corporation	60.00
<i>A Corporation (first-tier corporation):</i>	
Pretax earnings and profits (including \$5 dividend from B Corporation)	100.00
Foreign income taxes (20%)	20.00
Earnings and profits	80.00
Amount required to be included in N Corporation's gross income with respect to A Corporation (\$95 - [\$95 × 0.20])	76.00

<i>N Corporation (domestic corporation):</i>	
Foreign income taxes deemed paid by N Corporation under sec. 960(a)(1)(C) with respect to—	
B Corporation (\$60 × 0.75) / \$60 × \$40	30.00
A Corporation (\$76 / \$80 × \$20)	19.00
Total taxes deemed paid under sec. 690(a)(1)(C)	49.00

(d) *Time for stock ownership—(1) First-tier corporation.* The 10-percent stock ownership requirement referred to in paragraph (b)(1) of this section with respect to a first-tier corporation having earnings and profits for its taxable year in respect of which an amount is included under section 951 in the gross income for the taxable year of a domestic corporation must be satisfied on the last

day in such taxable year of such first-tier corporation on which such first-tier corporation is a controlled foreign corporation.

(2) *Second-tier corporation.* Both the 10-percent and the 50-percent stock ownership requirements referred to in paragraph (b)(1) and (2) of this section with respect to a second-tier corporation having earnings and profits for its taxable year in respect of which an amount is included under section 951 in the gross income for the taxable year of a domestic corporation must be satisfied on the last day in such taxable year of such second-tier corporation on which such second-tier corporation is a controlled foreign corporation, whether or not the first-tier corporation is a controlled foreign corporation on such day.

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

Example (1). Domestic corporation N is required for its taxable year ending June 30, 1964, to include in gross income under section 951 an amount attributable to the earnings and profits of controlled foreign corporation A for 1963 and another amount attributable to the earnings and profits of controlled foreign corporation B for such year. Corporations A and B use the calendar year as the taxable year. Such amounts are required to be included in N Corporation's gross income by reason of its ownership of stock in A Corporation and in turn by A Corporation's ownership of stock in B Corporation. Corporation A is a controlled foreign corporation throughout 1963, but B Corporation is a controlled foreign corporation only from January 1, 1963, through September 30, 1963. Corporation N may obtain credit under section 960(a)(1) for the year ending June 30, 1964, for foreign income taxes paid by A Corporation for 1963, only if N Corporation owns at least 10 percent of the voting stock of A Corporation on December 31, 1963. Corporation N may obtain credit under section 960(a)(1) for the year ending June 30, 1964, for foreign income taxes paid by B Corporation for 1963, only if on September 30, 1963, N Corporation owns at least 10 percent of the voting stock of A Corporation and A Corporation owns at least 50 percent of the voting stock of B Corporation.

Example (2). The facts are the same as in example (1) except that A Corporation is a controlled foreign corporation only from January 1, 1963, through March 31, 1963. Corporation N may obtain credit under section 960(a)(1) for the year ending June 30, 1964, for foreign income taxes paid by A Corporation for 1963, only if N Corporation owns at least 10 percent of the voting stock of A Corporation on March 31, 1963. Corporation N may obtain credit under section 960(a)(1) for the year ending June 30, 1964, for foreign income taxes paid by B Corporation for 1963, only if on September 30, 1963, N Corporation owns at least 10 percent of the voting stock of A Corporation and A Corporation owns at least 50 percent of the voting stock of B Corporation.

(e) *Time for less-developed-country qualification—(1) In general.* In order for the less-developed-country rule of paragraph (c) of this section to apply for the taxable year of the domestic corporation, the first-tier corporation must be a less developed country corporation—

(i) For its taxable year ending with or within the taxable year of the domestic

corporation for which such domestic corporation is required to include in gross income under section 951 an amount attributable to the earnings and profits of such year of such first-tier corporation in respect of which the foreign tax credit is claimed by such domestic corporation, and

(ii) For its taxable year in which falls the date, as described in paragraph (d) (2) of this section, on which the 10-percent and 50-percent stock ownership requirements must be satisfied with respect to the taxable year of a second-tier corporation in respect of which the domestic corporation is required to include in gross income under section 951 an amount attributable to the earnings and profits of such year of such second-tier corporation in respect of which the foreign tax credit is claimed by such domestic corporation.

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

Example (1). Throughout 1963 domestic corporation N owns 10 percent of the one class of stock of A Corporation which in turn owns from January 1, 1963, through September 30, 1963, 50 percent of the one class of stock of B Corporation. Corporation A is a controlled foreign corporation throughout 1963, but B Corporation is a controlled foreign corporation only from January 1, 1963, through September 30, 1963. Corporations A and B use the calendar year as the taxable year. Corporation N is required for its taxable year ending June 30, 1964, to include in gross income under section 951 an amount attributable to the earnings and profits of A Corporation for 1963 and another amount attributable to the earnings and profits of B Corporation for such year. The less-developed-country rule of paragraph (c) (2) (ii) of this section applies for N Corporation's taxable year ending June 30, 1964, with respect to the earnings and profits for 1963 of both A Corporation and B Corporation if A Corporation is a less-developed-country corporation for 1963.

Example (2). From January 1, 1963, through June 30, 1964, domestic corporation N owns 10 percent of the one class of stock of A Corporation which in turn owns from July 1, 1963, through June 30, 1964, 50 percent of the one class of stock of B Corporation. Corporation A which uses the calendar year as the taxable year, is a controlled foreign corporation throughout 1963 but is not a controlled foreign corporation at any time thereafter. Corporation B is a controlled foreign corporation throughout its taxable year ending June 30, 1964. Corporation N is required for its taxable year ending June 30, 1964, to include in gross income under section 951, an amount attributable to the earnings and profits of A Corporation for 1963 and another amount attributable to the earnings and profits of B Corporation for its taxable year ending June 30, 1964. The less-developed-country rule of paragraph (c) (2) (ii) of this section applies for N Corporation's taxable year ending June 30, 1964, with respect to A Corporation for 1963 and B Corporation's taxable year ending June 30, 1964, if A Corporation is a less-developed-country corporation for both 1963 and 1964.

(f) *Information to be furnished.* If the credit for foreign income taxes claimed under section 901 includes taxes deemed paid under section 960(a) (1), the domestic corporation must furnish the same information with respect to the taxes so deemed paid as it is re-

quired to furnish with respect to the taxes actually paid or accrued by it and for which credit is claimed. See § 1.905-2. For other information required to be furnished by the domestic corporation for the annual accounting period of certain foreign corporations ending with or within such corporation's taxable year, see section 6038 and § 1.6038-2.

(g) *Reduction of foreign income taxes paid or deemed paid.* For reduction of the amount of foreign income taxes paid or deemed paid by a foreign corporation for purposes of section 960, see section 6038(b) and the regulations thereunder, relating to failure to furnish information with respect to certain foreign corporations.

(h) *Amounts under section 951 treated as distributions for purposes of applying effective dates.* For purposes of applying section 902 in determining the amount of credit allowed under section 960(a) (1) and paragraph (c) of this section, the effective date provisions of § 1.902-5 shall apply, and for purposes of so applying § 1.902-5, any amount attributable to the earnings and profits for the taxable year of a first-tier corporation which is included in the gross income of a domestic corporation under section 951 shall be treated as a distribution received by such domestic corporation on the last day in such taxable year on which such first-tier corporation is a controlled foreign corporation.

(i) *Source of income and country to which tax is deemed paid—(1) Source of income.* For purposes of section 904—

(i) The amount included in gross income of a domestic corporation under section 951 for the taxable year with respect to a first-tier corporation or a second-tier corporation, plus

(ii) Any section 78 dividend to which such section 951 amount gives rise by reason of taxes deemed paid by such domestic corporation under section 960(a) (1) (C),

shall be deemed to be derived from sources within the foreign country or possession of the United States under the laws of which such first-tier corporation, or the first-tier corporation of such second-tier corporation, is created or organized.

(2) *Country to which taxes deemed paid.* For purposes of section 904, the foreign income taxes paid by the first-tier corporation or the second-tier corporation and deemed to be paid by the domestic corporation under section 960(a) (1) by reason of the inclusion of the amount described in subparagraph (1) (i) of this paragraph in the gross income of such domestic corporation shall be deemed to be paid to the foreign country or possession of the United States under the laws of which such first-tier corporation, or the first-tier corporation of such second-tier corporation, is created or organized.

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

Example. Domestic corporation N owns all the one class of stock of controlled foreign corporation A, incorporated under the laws of foreign country X, which owns all the one class of stock of controlled foreign corporation B, incorporated under the laws of foreign country Y. All such corporations use the calendar year as the taxable year, and A Corporation is not a less developed country corporation for 1965. For 1965, N Corporation is required under section 951 to include in gross income \$45 attributable to the earnings and profits of B Corporation for such year and \$50 attributable to the earnings and profits of A Corporation for such year. For 1965, because of the inclusion of such amounts in gross income, N Corporation is deemed under section 960(a) (1) (C) and paragraph (c) of this section to have paid \$15 of foreign income taxes paid by B Corporation for such year and \$10 of foreign income taxes paid by A Corporation for such year. For purposes of section 904, the amount (\$95) included in N Corporation's gross income under section 951 attributable to the earnings and profits of Corporations A and B is deemed to be derived from sources within country X, and the section 78 dividend consisting of the foreign income taxes (\$25) deemed paid by N Corporation under section 960(a) (1) (C) with respect to such \$95 is deemed to be derived from sources within country X. The \$25 of foreign income taxes so deemed paid by N Corporation are deemed to be paid to country X for purposes of section 904.

§ 1.960-2 *Interrelation of section 902 and section 960 when dividends are paid by second-tier corporation or by first-tier corporation.*

(a) *Scope of this section.* This section prescribes rules for the application of section 902 in a case where dividends are paid by a second-tier corporation or a first-tier corporation, as the case may be, from the earnings and profits for a taxable year when an amount attributable to such earnings and profits is included in the gross income of a domestic corporation under section 951 or when such earnings and profits are attributable to an amount excluded from the gross income of such foreign corporation under section 959(b) and § 1.959-2 with respect to the domestic corporation. In making determinations under this section, any portion of a distribution received from a first-tier corporation by the domestic corporation which is excluded from the domestic corporation's gross income under section 959(a) and § 1.959-1 shall be treated as a dividend for purposes of taking into account under section 902 any foreign income taxes which are not deemed paid by the domestic corporation under section 960(a) (1) and § 1.960-1. For purposes of this section, earnings and profits of a first-tier corporation or a second-tier corporation attributable to an increase in current earnings invested in United States property which, pursuant to paragraph (e) of § 1.963-3, count toward a minimum distribution for the taxable year shall not be treated as being attributable to an amount which is, or has been, included in the gross income of a domestic corporation under section 951.

(b) *Application of section 902(b) to dividends received by first-tier corporation from second-tier corporation.* For

purposes of paragraph (a) of this section and paragraph (c)(1)(i) of § 1.960-1, section 902(b) shall apply to all dividends received by the first-tier corporation for its taxable year from the second-tier corporation other than dividends attributable to earnings and profits of such second-tier corporation in respect of which an amount is, or has been, included in the gross income of a domestic corporation under section 951 with respect to such second-tier corporation.

(c) *Application of section 902(a) to dividends received by domestic corporation from first-tier corporation.*—(1) *In general.* For purposes of paragraph (a) of this section, section 902(a) shall apply to all dividends received by the domestic corporation for its taxable year from the first-tier corporation other than dividends attributable to earnings and profits of such first-tier corporation in respect of which an amount is, or has been, included in the gross income of a domestic corporation under section 951 with respect to such first-tier corporation.

(2) [Reserved]

(d) *Allocation of earnings and profits of first-tier corporation having income excluded under section 959(b).* If the first-tier corporation for its taxable year receives from the second-tier corporation dividends to which, in accordance with paragraph (b) of this section, section 902(b) applies and other dividends to which section 902(b) does not apply, then in applying section 902(a) pursuant to this section, and in applying section 960(a)(1) pursuant to paragraph (c)(1)(i) of § 1.960-1, with respect to the foreign income taxes deemed paid by such first-tier corporation for such taxable year under section 902(b)—

(1) The earnings and profits of the first-tier corporation for such taxable year shall be considered not to include its earnings and profits which are attributable to such other dividends from the second-tier corporation, and

(2) For purposes of so applying section 902(a), distributions to the domestic corporation from such earnings and profits which are attributable to such other dividends from the second-tier corporation shall not be treated as a dividend.

(e) *Illustrations.* The application of this section may be illustrated by the following examples, in all of which it is assumed that the effective rate of foreign income taxes paid or accrued by the first-tier corporation in respect to dividends received from the second-tier corporation is the same as the effective rate of foreign income taxes paid or accrued by the first-tier corporation in respect to its other income:

Example (1). Domestic corporation N owns all the one class of stock of controlled foreign corporation A, not a less developed country corporation, which owns all the one class of stock of controlled foreign corporation B. All such corporations use the calendar year as the taxable year. For 1965, N Corporation is required under section 951 to include \$50 in gross income attributable to the earnings and profits of A Corporation for

such year, but is not required to include any amount in gross income under section 951 attributable to the earnings and profits of B Corporation. For such year, B Corporation distributes a dividend of \$45, but A Corporation does not make any distributions. The foreign income taxes deemed paid by N Corporation for 1965 under section 960(a)(1)(C), after applying section 902(b)(1) for such year of A Corporation, are determined as follows upon the basis of the facts assumed:

B Corporation (second-tier corporation):	
Pretax earnings and profits	\$100.00
Foreign income taxes (30%)	30.00
Earnings and profits	70.00
Dividends paid to A Corporation	45.00
Foreign income taxes paid by B Corporation on or with respect to its accumulated profits	40.00
Foreign income taxes of B Corporation deemed paid by A Corporation for 1965 under sec. 902(b)(1) (\$45/\$60×\$40)	30.00

A Corporation (first-tier corporation):	
Pretax earnings and profits	\$45.00
Dividends from B Corporation	45.00
Other income	100.00
Total pretax earnings and profits	190.00
Foreign income taxes (20%)	38.00
Earnings and profits	152.00
Foreign income taxes paid, and deemed to be paid, by A Corporation on or with respect to its earnings and profits (\$29+\$30)	59.00
Amount required to be included in N Corporation's gross income under sec. 951 with respect to A Corporation	50.00
Dividends paid to N Corporation	0

N Corporation (domestic corporation):	
Foreign income taxes of A Corporation deemed paid by N Corporation for 1965 under sec. 960(a)(1)(C) (\$50/\$116×\$59)	25.43

Example (2). The facts are the same as in example (1) except that for 1965 A Corporation is a less developed country corporation. The foreign income taxes deemed paid by N Corporation for 1965 under section 960(a)(1)(D), after applying section 902(b)(2), are \$17.76, determined as follows:

Foreign income taxes paid by B Corporation on or with respect to its accumulated profits (\$60/\$100×\$40)	
	\$24.00
Foreign income taxes of B Corporation deemed paid by A Corporation for 1965 under sec. 902(b)(2) (\$45/\$60×\$24)	
	18.00
Foreign income taxes paid by A Corporation on or with respect to its earnings and profits (\$116/\$145×\$29)	
	23.20
Foreign income taxes paid, and deemed to be paid, by A Corporation on or with respect to its earnings and profits (\$23.20+\$18)	
	41.20
Foreign income taxes of A Corporation deemed paid by N Corporation for 1965 under sec. 960(a)(1)(D) (\$50/\$116×\$41.20)	
	17.76

Example (3). Domestic corporation N owns all the one class of stock of controlled foreign corporation A, not a less developed country corporation, which owns all the one class of stock of controlled foreign corporation B. All such corporations use the calendar year as the taxable year. For 1965, N Corporation is required under section 951 to include in gross income \$150 attributable to the earnings and profits of B Corporation for such year, which B Corporation distributes during such year. Corporation N is not required for 1965 to include any amount in gross income under section 951 attributable to the earnings and profits of A Corporation, but A Corporation distributes for such year \$135 from its earnings and profits attributable to B Corporation's dividend. The foreign income taxes deemed paid by N Corporation for 1965 under section 960(a)(1)(C), and section 902(a)(1) are determined as follows upon the basis of the facts assumed:

B Corporation (second-tier corporation):	
Pretax earnings and profits	\$250.00
Foreign income taxes (20%)	50.00
Earnings and profits	200.00
Amounts required to be included in N Corporation's gross income under sec. 951 with respect to B Corporation	150.00
Foreign income taxes paid on or with respect to earnings and profits of B Corporation	50.00
Dividends paid to A Corporation	150.00

A Corporation (first-tier corporation):

Pretax earnings and profits:	
Dividends from B Corporation	\$150.00
Other income	200.00
Total pretax earnings and profits	350.00
Foreign income taxes (10%)	35.00
Earnings and profits	315.00
Dividends paid to N Corporation	135.00
Foreign income taxes paid by A Corporation on or with respect to its accumulated profits	35.00
N Corporation (domestic corporation):	
Foreign income taxes of B Corporation deemed paid by N Corporation for 1965 under sec. 960(a)(1)(C) (\$150/\$200×\$50)	37.50
Foreign income taxes of A Corporation deemed paid by N Corporation for 1965 under sec. 902(a)(1) (\$135/\$315×\$35)	15.00
Total foreign income taxes deemed paid by N Corporation under sec. 901	52.50

Example (4). Domestic corporation N owns all the one class of stock of controlled foreign corporation A, not a less developed country corporation, which owns all the one class of stock of controlled foreign corporation B. All such corporations use the calendar year as the taxable year. For 1965, N Corporation is required under section 951 to include \$180 in gross income attributable to the earnings and profits of A Corporation for such year, but is not required to include any amount in gross income under section 951 attributable to the earnings and profits of B Corporation. Corporation B distributes from its earnings and profits for 1965 a dividend of \$50. For 1965, A Corporation distributes \$180 from its earnings and profits attributable to the amount required under section 951 to be included in N Corporation's gross income for such year with respect to A Corporation and \$20 from its other earnings and profits. The foreign income taxes deemed paid by N Corporation for 1965 under section 960(a)(1)(C), after applying section 902 for such year, are determined as follows upon the basis of the facts assumed:

B Corporation (second-tier corporation):	
Pretax earnings and profits	\$100.00
Foreign income taxes (40%)	40.00
Earnings and profits	60.00
Dividends paid to A Corporation	50.00
Foreign income taxes paid by B Corporation on or with respect to its accumulated profits	40.00
Foreign income taxes of B Corporation deemed paid by A Corporation for 1965 under sec. 902(b)(1) (\$50/\$60×\$40)	33.33
A Corporation (first-tier corporation):	
Pretax earnings and profits	\$50.00
Dividends from B Corporation	50.00
Other income	200.00

Total pretax earnings and profits	
	250.00
Foreign income taxes (10%)	
	25.00
Earnings and profits	
	225.00
Foreign income taxes paid, and deemed to be paid, by A Corporation on or with respect to its earnings and profits (\$25.00+\$33.33)	
	58.33
Amounts required to be included in N Corporation's gross income for 1965 under sec. 951 with respect to A Corporation	
	180.00
Dividends paid to N Corporation:	
Dividends to which sec. 902(a) does not apply (from A Corporation's earnings and profits in respect of which an amount is required under sec. 951 to be included in N Corporation's gross income with respect to A Corporation)	\$180.00
Dividends to which sec. 902(a)(1) applies (from A Corporation's other earnings and profits)	20.00

Total dividends paid to N Corporation	
	200.00
N Corporation (domestic corporation):	
Foreign income taxes of corporations A and B deemed paid by N Corporation under sec. 960(a)(1)(C) (\$180/\$225×\$58.33)	46.66
Foreign income taxes of corporations A and B deemed paid by N Corporation under sec. 902(a)(1) (\$20/\$225×\$58.33)	5.18
Total foreign income taxes deemed paid by N Corporation under sec. 901	51.84

Example (5). Domestic corporation N owns all the one class of stock of controlled foreign corporation A, not a less developed country corporation, which owns all the one class of stock of controlled foreign corporation B. All such corporations use the calendar

dar year as the taxable year. For 1965, N Corporation is required under section 951 to include in gross income \$150 attributable to the earnings and profits of B Corporation for such year and \$22.50 attributable to the earnings and profits of A Corporation for such year. For 1965, B Corporation distributes \$175, consisting of \$150 from its earnings and profits attributable to amounts required under section 951 to be included in N Corporation's gross income with respect to B Corporation and \$25 from its other earnings and profits. Corporation A does not distribute any dividends for 1965. The foreign income taxes deemed paid by N Corporation for 1965 under section 960(a)(1)(C) are determined as follows upon the basis of the facts assumed:

B Corporation (second-tier corporation):	
Pretax earnings and profits.....	\$250.00
Foreign income taxes (20%).....	50.00
Earnings and profits.....	200.00
Amounts required to be included in N Corporation's gross income under sec. 951 to 1965 with respect to B Corporation.....	150.00
Dividends paid by B Corporation:	
Dividends to which sec. 902(b)(1) does not apply (from B Corporation's earnings and profits in respect of which an amount is required under sec. 951 to be included in N Corporation's gross income with respect to B Corporation).....	\$150.00
Dividends to which sec. 902(b)(1) applies (from B Corporation's other earnings and profits).....	25.00
Total dividends paid to A Corporation.....	175.00
Foreign income taxes paid by B Corporation on or with respect to its accumulated profits.....	50.00
Foreign income taxes of B Corporation deemed paid by A Corporation for 1965 under sec. 902(b)(1) (\$25/\$200×\$50).....	6.25
A Corporation (first-tier corporation):	
Pretax earnings and profits.....	175.00
Foreign income tax (10 percent).....	17.50
Earnings and profits.....	157.50
Earnings and profits after exclusion of amounts attributable to dividends to which sec. 902(b) does not apply (\$157.50 less [\$150 - (\$150×0.10)]).....	22.50
Amount required to be included in N Corporation's gross income for 1965 under sec. 951 with respect to A Corporation.....	22.50
Dividends paid to N Corporation.....	0
N Corporation (domestic corporation):	
Foreign income taxes deemed paid by N Corporation under sec. 960(a)(1)(C) with respect to A Corporation:	
Tax actually paid by A Corporation (\$22.50/\$157.50×\$17.50).....	\$2.50
Tax of B Corporation deemed paid by A Corporation under sec. 902(b)(1) (\$22.50/\$22.50×\$6.25).....	6.25
Foreign income taxes deemed paid by N Corporation under sec. 960(a)(1)(C) with respect to B Corporation (\$150/\$200×\$50).....	37.50
Total taxes deemed paid under sec. 960(a)(1)(C).....	46.25

Example (6). Domestic corporation N owns all the one class of stock of controlled foreign corporation A, not a less developed country corporation, which owns all the one class of stock of controlled foreign corporation B. All such corporations use the calendar year as the taxable year. For 1965, N Corporation is required under section 951 to include in gross income \$150 attributable to the earnings and profits of B Corporation for such year and \$22.50 attributable to the earnings and profits of A Corporation for such year. For 1965, B Corporation distributes \$175, consisting of \$150 from its earnings and profits attributable to amounts required under section 951 to be included in N Corporation's gross income with respect to B Corporation and \$25 from its other earnings and profits. The foreign income taxes deemed paid by N Corporation for 1965 under section 960(a)(1)(C) and section 902(a)(1) are determined as follows upon the basis of the facts assumed:

B Corporation (second-tier corporation):	
Pretax earnings and profits.....	\$250.00
Foreign income taxes (20%).....	50.00
Earnings and profits.....	200.00
Amounts required to be included in N Corporation's gross income for 1965 under sec. 951 with respect to B Corporation.....	150.00
Dividends paid by B Corporation:	
Dividends to which sec. 902(b)(1) does not apply (from B Corporation's earnings and profits in respect of which an amount is required under sec. 951 to be included in N Corporation's gross income with respect to B Corporation).....	\$150.00
Dividends to which sec. 902(b)(1) applies (from B Corporation's other earnings and profits).....	25.00
Total dividends paid to A Corporation.....	175.00
Foreign income taxes paid by B Corporation on or with respect to its accumulated profits.....	50.00
Foreign income taxes of B Corporation deemed paid by A Corporation for 1965 under sec. 902(b)(1) (\$25/\$200×\$50).....	6.25
A Corporation (first-tier corporation):	
Pretax earnings and profits.....	175.00
Dividends received from B Corporation.....	175.00
Other income.....	100.00
Total pretax earnings and profits.....	275.00
Foreign income taxes (10 percent).....	27.50
Earnings and profits.....	247.50
Earnings and profits after exclusion of amounts attributable to dividends to which sec. 902(b) does not apply (\$247.50 less [\$150 - (\$150×0.10)]).....	112.50
Amount required to be included in N Corporation's gross income for 1965 under sec. 951 with respect to A Corporation.....	22.50
Distributions paid by A Corporation:	
Dividends to which sec. 902(a) does not apply (from A Corporation's earnings and profits in respect of which an amount is required under sec. 951 to be included in N Corporation's gross income with respect to A Corporation).....	\$22.50
Dividends to which sec. 902(a)(1) applies (from A Corporation's other earnings and profits).....	202.50
Total dividends paid to N Corporation.....	202.50
N Corporation (domestic corporation):	
Foreign income taxes deemed paid by N Corporation under sec. 960(a)(1)(C) with respect to—	
B Corporation (\$150/\$200×\$50).....	37.50
A Corporation:	
Tax paid by A Corporation (\$22.50/\$247.50×\$27.50).....	\$2.50
Tax of B Corporation deemed paid by A Corporation under sec. 902(b)(1) (\$22.50/\$112.50×\$6.25).....	1.25
Total taxes deemed paid under sec. 960(a)(1)(C).....	41.25
Foreign income taxes deemed paid by N Corporation under sec. 902(a)(1) with respect to A Corporation:	
Tax paid by A Corporation (\$22.50/\$247.50×\$27.50).....	\$22.50
Tax of B Corporation deemed paid by A Corporation (\$67.50/\$112.50×\$6.25).....	3.75
Total taxes deemed paid under sec. 902(a)(1).....	26.25
Total foreign income taxes deemed paid by N Corporation under sec. 901.....	67.50

§ 1.960-3 Gross-up of amounts included in income under section 951.

(a) **General rule for including taxes in income.** Any taxes deemed paid by a domestic corporation for the taxable year pursuant to section 960(a)(1)(C) shall, except as provided in paragraph (b) of this section, be included in the gross income of such corporation for such year as a dividend pursuant to section 78 and § 1.78-1. See also paragraph (a) (8) of § 1.902-3.

(b) **Certain taxes not included in income.** Any taxes deemed paid by a do-

mestic corporation for the taxable year pursuant to section 902(a)(1) or section 960(a)(1)(C) shall not be included in the gross income of such corporation for such year as a dividend pursuant to section 78 and § 1.78-1 to the extent that such taxes are paid or accrued by the first-tier corporation or its second-tier corporation, as the case may be, on or with respect to an amount which is excluded from the gross income of such foreign corporation under section 959(b) and § 1.959-2 as distributions from the earnings and profits of another controlled foreign corporation attributable to an amount which is, or has been, required to be included in the gross income of the domestic corporation under section 951.

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

Example (1). Domestic corporation N owns all the one class of stock of controlled foreign corporation A, not a less developed country corporation, which owns all the one class of stock of controlled foreign corporation B. All such corporations use the calendar year as the taxable year. For 1965, B Corporation, after having paid \$20 of foreign income taxes, has \$80 in earnings and profits, which are attributable to the amount required to be included in N Corporation's gross income for such year under section 951 with respect to B Corporation and all of which are distributed to A Corporation in such year. The dividend so received from B Corporation is excluded from A Corporation's gross income under section 959(b) and § 1.959-2. An income tax of 10 percent is required to be withheld from such dividend by the foreign country under the laws of which B Corporation is created, and the foreign country under the laws of which A Corporation is created imposes an income tax of \$22 on the dividend received from B Corporation. For 1965, A Corporation's earnings and profits are \$50 (\$80 - [0.10×\$80] - \$22), which it distributes in such year to N Corporation. For 1965, N Corporation is required under section 951 to include \$80 in gross income with respect to B Corporation and also is required under the gross-up provisions of section 78 to include in gross income \$20 (\$80/\$80×\$20), the amount equal to the foreign income taxes of B Corporation which are deemed paid by N Corporation under section 960(a)(1)(C). Under paragraph (b) of this section N Corporation is not required to include in gross income the \$30 (\$8 + \$22) of foreign income taxes which are paid by A Corporation in connection with the dividend received from B Corporation and which are deemed paid by N Corporation under section 902(a)(1) and paragraph (c) of § 1.960-2.

Example (2). Domestic corporation N owns all the one class of stock of controlled foreign corporation A, not a less developed country corporation, which owns all the one class of stock of controlled foreign corporation B, which in turn owns all the one class of stock of controlled foreign corporation C. All such corporations use the calendar year as the taxable year. For 1965, C Corporation, after having paid \$20 of foreign income taxes, has \$80 in earnings and profits, which are attributable to the amount required to be included in N Corporation's gross income for such year under section 951 with respect to C Corporation and all of which are distributed to B Corporation in such year. After hav-

ing paid foreign income taxes of \$10 on the dividend received from C Corporation, B Corporation distributes the balance of \$70 to A Corporation. After having paid foreign income taxes of \$5 on the dividend received from B Corporation, A Corporation distributes the balance of \$65 to N Corporation. The dividend so received by B Corporation, and in turn by A Corporation, is excluded from the gross income of such corporations under section 959(b) and § 1.959-2. Under paragraph (b) of this section N Corporation is not required to include in gross income the \$15 (\$10+\$5) of foreign income taxes which are paid by corporations B and A, respectively, in connection with the dividend so received and which are deemed paid by N Corporation under section 902(a)(1) and paragraphs (b) and (c) of § 1.960-2.

§ 1.960-4 Additional foreign tax credit in year of receipt of previously taxed earnings and profits.

(a) Increase in section 904(a) limitation for the taxable year of exclusion—

(1) *In general.* The applicable limitation under section 904(a) for a taxpayer's taxable year (hereinafter in this section referred to as the "taxable year of exclusion") in which he receives an amount which is excluded from gross income under section 959(a)(1) and which is attributable to a controlled foreign corporation's earnings and profits in respect of which an amount was required to be included in the gross income of such taxpayer under section 951(a) for a taxable year (hereinafter in this section referred to as the "taxable year of inclusion") previous to the taxable year of exclusion shall be increased under section 960(b)(1) by the amount described in paragraph (b) of this section if the conditions described in subparagraph (2) of this paragraph are satisfied.

(2) *Conditions under which increase in limitation is allowed for the taxable year of exclusion.* The increase in limitation described in subparagraph (1) of this paragraph for the taxable year of exclusion shall be made only if the taxpayer—

(i) For the taxable year of inclusion either chose to claim a foreign tax credit as provided in section 901 or did not pay or accrue any foreign income taxes,

(ii) Chose to claim a foreign tax credit as provided in section 901 for the taxable year of exclusion, and

(iii) For the taxable year of exclusion pays, accrues, or is deemed to have paid foreign income taxes with respect to the amount, described in subparagraph (1) of this paragraph, which is excluded from his gross income for such year under section 959(a)(1).

(b) *Amount of increase in limitation for the taxable year of exclusion.* The amount of increase under section 960(b)(1) in the applicable limitation under section 904(a) for the taxable year of exclusion shall be—

(1) The amount by which the applicable section 904(a) limitation for the taxable year of inclusion was increased, determined as provided in paragraph (c) of this section, by reason of the inclusion of the amount in the taxpayer's income for such year under section 951(a), reduced by

(2) The amount of foreign income taxes allowed as a credit under section 901 for such taxable year of inclusion and which were allowable to such taxpayer solely by reason of the inclusion of such amount in his gross income under section 951(a), as determined under paragraph (d) of this section, and then by

(3) The additional reduction for such taxable year of inclusion arising by reason of increases in limitation under section 960(b)(1) for taxable years intervening between such taxable year of inclusion and such taxable year of exclusion, as determined under paragraph (e) of this section in respect of such inclusion under section 951(a),

except that the amount of increase determined under this paragraph for the taxable year of exclusion shall in no case exceed the amount of foreign income taxes paid, accrued, or deemed to be paid by such taxpayer for such taxable year of exclusion with respect to the amount, described in paragraph (a)(1) of this section, which is excluded from gross income for such year under section 959(a)(1).

(c) *Determination of increase in limitation for the taxable year of inclusion.* The amount of the increase in the applicable limitation under section 904(a) for the taxable year of inclusion which arises by reason of the inclusion of the amount in gross income under section 951(a) shall be the amount of the applicable limitation under section 904(a) for such year reduced by the amount which would have been the applicable limitation under section 904(a) for such year if the amount had not been included in gross income for such year under section 951(a).

(d) *Determination of foreign income taxes allowed for taxable year of inclusion by reason of section 951(a) amount.* The amount of foreign income taxes allowed as a credit under section 901 for the taxable year of inclusion which were allowable solely by reason of the inclusion of the amount in gross income for such year under section 951(a) shall be the amount of foreign income taxes allowed as a credit under section 901 for such year reduced by the amount of foreign income taxes which would have been allowed as a credit under section 901 for such year if the amount had not been included in gross income for such year under section 951(a). For purposes of this paragraph, the term "foreign income taxes" includes foreign income taxes paid or accrued, and foreign income taxes deemed paid under section 902, section 904(d), and section 960(a), for the taxable year of inclusion.

(e) *Additional reduction for the taxable year of inclusion arising by reason of increases in limitation for intervening years.* The amount of increase in the applicable limitation under section 904(a) for the taxable year of inclusion shall also be reduced, after first deducting the foreign income taxes described in paragraph (b)(2) of this section, by any increases in limitation which arise under section 960(b)(1)—by reason of any

earlier exclusions under section 959(a)(1) in respect of the same inclusion under section 951(a) for such taxable year of inclusion—for the first, second, third, fourth, etc., succeeding taxable years of exclusion, in that order, which follow such taxable year of inclusion and precede the taxable year of exclusion in respect of which the increase in limitation under section 960(b)(1) and paragraph (b) of this section is being determined. The amount of any increase in limitation which arises under section 960(b)(1) for any such succeeding taxable year of exclusion shall be the amount of foreign income taxes allowed as a credit under section 901 for each such taxable year reduced by the amount of foreign income taxes which would have been allowed as a credit under section 901 for each such year if the limitation for each such year were not increased under section 960(b)(1). For any such succeeding taxable year of exclusion for which the taxpayer does not choose to claim a foreign tax credit as provided in section 901, the same increase in limitation under section 960(b)(1) shall be treated as having been made, for purposes of this paragraph, which would have been made for such taxable year if the taxpayer had chosen to claim the foreign tax credit for such year.

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

Example (1). Domestic corporation N owns all of the one class of stock of controlled foreign corporation A, not a less developed country corporation. Corporation A, after paying foreign income taxes of \$30, has earnings and profits for 1965 of \$70, all of which are attributable to an amount required under section 951(a) to be included in N Corporation's gross income for 1965. Both corporations use the calendar year as the taxable year. For 1966 and 1967, A Corporation has no earnings and profits attributable to an amount required to be included in N Corporation's gross income under section 951(a); for each such year it makes a distribution of \$35 (from its earnings and profits for 1965) from which a foreign income tax of \$6 is withheld. For each of 1965, 1966, and 1967, N Corporation derives taxable income of \$50 from sources within the United States and claims a foreign tax credit under section 901, determined by applying the overall limitation under section 904(a)(2). The United States tax payable by N Corporation is determined as follows, the surtax exemption under section 11(d) being disregarded for purposes of simplification:

1965	
Taxable income of N Corporation:	
U.S. sources.....	\$50.00
Sources without the U.S.:	
Amount required to be included in N Corporation's gross income under sec. 951(a).....	\$70.00
Foreign income taxes deemed paid by N Corporation under sec. 960(a)(1) (C) and included in N Corporation's gross income under sec. 78 (\$30X \$70/\$70).....	30.00 100.00
Total taxable income.....	150.00
U.S. tax payable for 1965:	
U.S. tax before credit (\$150X.48).....	72.00
Credit: Foreign income taxes of \$30, but not to exceed overall limitation of \$48 for 1965 (\$100/\$150X\$72).....	30.00
U.S. tax payable.....	42.00

1966

Taxable income of N Corporation, consisting of income from U.S. sources	\$50.00	
U.S. tax before credit ($\$50 \times 0.48$)	24.00	
Section 904(a)(2) overall limitation for 1966: Limitation for 1966 before increase under sec. 960(b)(1) ($\$24 \times \$0/\$50$)	0	
Plus: Increase in overall limitation for 1966 under sec. 960(b)(1): Amount by which 1965 overall limitation was increased by reason of inclusion in N Corporation's gross income under sec. 951(a) for 1965 ($\$48 - [(\$50 \times 0.48) \times \$0/\$50]$)	\$48.00	
Less: Foreign income taxes allowed as a credit for 1965 which were allowable solely by reason of such sec. 951(a) inclusion ($\$30 - \$0$)	30.00	
Balance	18.00	
But: Such balance not to exceed foreign income taxes paid by N Corporation for 1966 with respect to \$35 distribution excluded under sec. 959(a)(1) (\$6 tax withheld)	6.00	6.00
Overall limitation for 1966	6.00	
U.S. tax payable for 1966: U.S. tax before credit ($\$50 \times 0.48$)	24.00	
Credit: Foreign income taxes of \$6, but not to exceed overall limitation of \$6 for 1966	6.00	
U.S. tax payable	18.00	

1967

Taxable income of N Corporation, consisting of income from U.S. sources	50.00	
U.S. tax before credit ($\$50 \times 0.48$)	24.00	
Section 904(a)(2) overall limitation for 1967: Limitation for 1967 before increase under sec. 960(b)(1) ($\$24 \times \$0/\$50$)	0	
Plus: Increase in overall limitation for 1967 under sec. 960(b)(1): Amount by which 1965 overall limitation was increased by reason of inclusion in N Corporation's gross income under sec. 951(a) for 1965 ($\$48 - [(\$50 \times 0.48) \times \$0/\$50]$)	\$48.00	
Less: Foreign income taxes allowed as a credit for 1965 which were allowable solely by reason of such sec. 951(a) inclusion ($\$30 - \$0$)	30.00	
Tentative balance	18.00	
Less: Increase in overall limitation under sec. 960(b)(1) for 1966 by reason of such sec. 951(a) inclusion	6.00	
Balance	12.00	
But: Such balance not to exceed foreign income taxes paid by N Corporation for 1967 with respect to \$35 distribution excluded under sec. 959(a)(1) (\$6 tax withheld)	6.00	6.00
Overall limitation for 1967	6.00	
U.S. tax payable for 1967: U.S. tax before credit ($\$50 \times 0.48$)	24.00	
Credit: Foreign income taxes of \$6, but not to exceed overall limitation of \$6 for 1967	6.00	
U.S. tax payable	18.00	

Example (2). The facts for 1965, 1966, and 1967, are the same as in example (1), except that in 1964, to which the section 904(a)(2) overall limitation applies, N Corporation pays \$18 of foreign income taxes in excess of the overall limitation and that such excess is not absorbed as a carryback to 1962 or 1963 under section 904(d). Therefore, there is no increase under section 960(b)(1) in the overall limitation for 1966 or 1967 since the amount (\$48) by which the 1965 overall limitation was increased by reason of the inclusion in N Corporation's gross income for 1965 under section 951(a), less the foreign income taxes (\$48) allowed as a credit which were allowable solely by reason of such inclusion, is zero. The foreign income taxes so allowed as a credit for 1965 which were allowable solely by reason of such section 951(a) inclusion consist of the \$30 of foreign income taxes deemed paid for 1965 under section 960(a)(1)(C) and the \$18 of foreign income taxes for 1964 carried over and deemed paid for 1965 under section 904(d).

Example (3). (a) Domestic corporation N owns all the one class of stock of controlled foreign corporation A, not a less developed country corporation, which in turn owns all the one class of stock of controlled foreign corporation B. All corporations use the calendar years as the taxable year. Corporation B, after paying foreign income taxes of \$30, has earnings and profits for 1965 of \$70, all of which is attributable to an amount required under section 951(a) to be included in N Corporation's gross income for 1965, and \$35 of which it distributes in such year to A Corporation. For 1965, A Corporation, after paying foreign income taxes of \$5 on such dividend from B Corporation, has total earnings and profits of \$30, all of which it distributes in such year to N Corporation, a foreign income tax of \$3 being withheld therefrom.

(b) For 1966, B Corporation has no earnings and profits, but distributes in such year to A Corporation the \$35 remaining of its earnings and profits for 1965. For 1966, A Corporation, after paying foreign income taxes of \$5 on such dividend from B Corporation, has total earnings and profits of \$30, all of which it distributes to N Corporation, a foreign income tax of \$3 being withheld therefrom.

(c) For each of 1965 and 1966, N Corporation has taxable income of \$100 from United States sources and claims a foreign tax credit under section 901, determined by applying the overall limitation under section 904(a)(2). The United States tax payable by N Corporation is determined as follows, the surtax exemption under section 11(d) being disregarded for purposes of simplification:

1965	
Taxable income of N Corporation:	
U.S. sources	\$100
Sources without the U.S.:	
Amount required to be included in N Corporation's gross income under sec. 951(a) with respect to B Corporation	\$70
Foreign income taxes deemed paid by N Corporation under sec. 960(a)(1)(C) and included in N Corporation's gross income under sec. 78 ($\$30 \times \$70/\$70$)	30 100
Total taxable income	200
U.S. tax payable for 1965: U.S. tax before credit ($\$200 \times 0.48$)	96
Credit: Foreign income taxes of \$38 ($\$30 \times \$70/\$70 + \$5 \times \$30/\$30 + \$3$), but not to exceed overall limitation of \$48 ($\$96 \times \$100/\$200$)	38
U.S. tax payable	58

1966	
Taxable income of N Corporation, consisting of income from U.S. sources	100
U.S. tax before credit ($\$100 \times 0.48$)	48
Section 904(a)(2) overall limitation for 1966: Limitation for 1966 before increase under sec. 960(b)(1) ($\$48 \times \$0/\$100$)	0
Plus: Increase in overall limitation for 1966 under sec. 960(b)(1): Amount by which 1965 overall limitation was increased by reason of inclusion in N Corporation's gross income under sec. 951(a) for 1965 ($\$48 - [(\$100 \times 0.48) \times \$0/\$100]$)	\$48
Less: Foreign income taxes allowed as a credit for 1965 which were allowable solely by reason of such sec. 951(a) inclusion ($\$38 - \$0$)	38
Balance	10
But: Such balance not to exceed foreign income taxes paid and deemed paid by N Corporation for 1966 with respect to \$30 distribution excluded under sec. 959(a)(1) ($\$5 \times \$30/\$30 + \$3$)	8 8
Overall limitation for 1966	8
U.S. tax payable for 1966: U.S. tax before credit ($\$100 \times 0.48$)	48
Credit: Foreign income taxes of \$8 ($\$3 + \$5$), but not to exceed overall limitation of \$8 for 1966	8
U.S. tax payable	40

Example (4). (a) Domestic corporation N directly owns all of the one class of stock of each of controlled foreign corporations A and B, neither of which is a less developed country corporation. All such corporations use the calendar year as the taxable year. Corporation A, after paying foreign income taxes of \$110,000, has earnings and profits for 1965 of \$90,000, all of which is attributable to an amount required under section 951(a) to be included in N Corporation's gross income for 1965. For 1966, A Corporation has no earnings and profits but distributes to N Corporation its entire earnings and profits for 1965, from which distribution foreign income taxes of \$9,000 are withheld.

(b) For each of 1965 and 1966 B Corporation, after paying foreign income taxes of \$2,500, has earnings and profits of \$47,500, no part of which is attributable to an amount required under section 951(a) to be included in N Corporation's gross income, and all of which B Corporation distributes to N Corporation in each such year. For 1965 and 1966, N Corporation claims the foreign tax credit under section 901, determined by applying the overall limitation under section 904(a)(2). The United States tax payable by N Corporation is determined as follows, after taking into account the surtax exemption under section 11(d):

1965	
Taxable income of N Corporation:	
Amount required to be included in N Corporation's gross income under sec. 951(a) with respect to A Corporation	\$90,000
Foreign income taxes deemed paid by N Corporation under sec. 960(a)(1)(C) and included in N Corporation's gross income under sec. 78 ($\$110,000 \times \$90,000/\$90,000$)	110,000
Amount included in N Corporation's gross income under sec. 61 as a dividend from B Corporation	47,500
Foreign income taxes deemed paid by N Corporation under sec. 960(a)(1) and included in N Corporation's gross income under sec. 78 ($\$2,500 \times \$47,500/\$47,500$)	2,500 50,000
Total taxable income	250,000
U.S. tax payable for 1965: U.S. tax before credit ($[\$250,000 \times 0.22] + [\$225,000 \times 0.26]$)	113,500
Credit: Foreign income taxes of \$112,500 ($\$110,000 + \$2,500$), but not to exceed overall limitation of \$113,500 ($\$113,500 \times \$250,000/\$250,000$)	112,500
U.S. tax payable	1,000

1966	
Taxable income of N Corporation:	
Amount included in N Corporation's gross income under sec. 61 as a dividend from B Corporation	47,500
Foreign income taxes deemed paid by N Corporation under sec. 960(a)(1) and included in N Corporation's gross income under sec. 78 ($\$2,500 \times \$47,500/\$47,500$)	2,500
Total taxable income	50,000
U.S. tax before credit ($[\$50,000 \times 0.22] + [\$25,000 \times 0.26]$)	17,500
Section 904(a)(2) overall limitation for 1966: Limitation for 1966 before increase under sec. 960(b)(1) ($\$17,500 \times \$50,000/\$50,000$)	17,500
Plus: Increase in overall limitation for 1966 under sec. 960(b)(1): Amount by which 1965 overall limitation was increased by reason of inclusion in N Corporation's gross income under sec. 951(a) for 1965 ($\$113,500 - [\$17,500 \times \$50,000/\$50,000]$)	\$96,000
Less: Foreign income taxes allowed as a credit for 1965 which were allowable solely by reason of such sec. 951(a) inclusion ($\$112,500 - \$2,500$)	110,000
Balance ($[\$96,000 - \$110,000]$, but not to be less than zero)	0

But: Such balance not to exceed foreign income taxes paid by N Corporation for 1966 with respect to \$90,000 distribution excluded under sec. 959(a)(1) (\$9,000 tax withheld)..... 9,000 0

Overall limitation for 1966..... 17,500

U.S. tax payable for 1966:
U.S. tax before credit $[(\$50,000 \times 0.22) \times (\$25,000 \times 0.26)]$ 17,500

Credit: Foreign income taxes of \$11,500 (\$9,000 + \$2,500), but not to exceed overall limitation of \$17,500..... 11,500

U.S. tax payable..... 6,000

§ 1.960-5 Credit for taxable year of inclusion binding for taxable year of exclusion.

(a) *Taxes not allowed as a deduction for taxable year of exclusion.* In the case of any taxpayer who—

(1) Chooses to claim a foreign tax credit as provided in section 901 for the taxable year for which he is required to include in gross income under section 951(a) an amount attributable to the earnings and profits of a controlled foreign corporation, and

(2) Does not choose to claim a foreign tax credit as provided in section 901 for a taxable year in which he receives an amount which is excluded from gross income under section 959(a)(1) and which is attributable to such earnings and profits of such controlled foreign corporation,

no deduction shall be allowed under section 164 for the taxable year of such exclusion for any foreign income taxes paid or accrued on or with respect to such excluded amount.

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

Example. Domestic Corporation N owns all the one class of stock of controlled foreign corporation A, not a less developed country corporation. Both corporations use the calendar year as the taxable year. All of A Corporation's earnings and profits of \$80 for 1965 (after payment of foreign income taxes of \$20 on its total income of \$100 for such year) are attributable to amounts required under section 951(a) to be included in N Corporation's gross income for 1965. For 1965, N Corporation chooses to claim a foreign tax credit for the \$20 of foreign income taxes which for such year are paid by A Corporation and deemed paid by N Corporation under section 960(a)(1)(C) and paragraph (c)(1) of § 1.960-1. For 1966, A Corporation distributes the entire \$80 of 1965 earnings and profits, a foreign income tax of \$8 being withheld therefrom. Although N Corporation does not choose to claim a foreign tax credit for 1966, it may not deduct such \$8 of foreign income taxes under section 164. Corporation N may, however, deduct under such section a foreign income tax of \$4 which is withheld from a distribution of \$40 by A Corporation during 1966 from its 1966 earnings and profits.

§ 1.960-6 Overpayments resulting from increase in limitation for taxable year of exclusion.

(a) *Amount of overpayment.* If an increase in the limitation under section 960(b)(1) and § 1.960-4 for a taxable year of exclusion exceeds the tax (determined before allowance of any credits against tax) imposed by chapter 1 of the Code for such year, the amount of such excess shall be deemed an overpayment of tax for such year and shall be refunded or credited to the taxpayer in

accordance with chapter 65 (section 6401 and following) of the Code.

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

Example. Domestic corporation N owns all the one class of stock of controlled foreign corporation A, not a less developed country corporation. Both corporations use the calendar year as the taxable year. For 1965, A Corporation has total income of \$100,000 on which it pays foreign income taxes of \$20,000. All of A Corporation's earnings and profits for 1965 of \$80,000 are attributable to an amount which is required under section 951(a) to be included in N Corporation's gross income for 1965. By reason of such income inclusion N Corporation is deemed for 1965 to have paid under section 960(a)(1)(C), and is required under section 78 to include in gross income for such year, the \$20,000 $(\$20,000 \times \$80,000 / \$80,000)$ of foreign income taxes paid by A Corporation for such year. Corporation N also derives \$100,000 taxable income from sources within the United States for 1965. For 1966, N Corporation has \$25,000 of taxable income, all of which is derived from sources within the United States. No part of A Corporation's earnings and profits for 1966 is attributable to an amount required under section 951(a) to be included in N Corporation's gross income. During 1966, A Corporation makes one distribution consisting of its \$80,000 earnings and profits for 1965, all of which is excluded under section 959(a)(1) from N Corporation's gross income for 1966, and from which distribution foreign income taxes of \$10,000 are withheld. For 1965 and 1966, N Corporation claims the foreign tax credit under section 901, determined by applying the overall limitation under section 904(a)(2). The United States tax of N Corporation is determined as follows for such years:

1965		
Taxable income of N Corporation:		
U.S. sources.....		\$100,000
Sources without the U.S.:		
Amount required to be included in N Corporation's gross income under sec. 951(a).....	\$80,000	
Foreign income taxes deemed paid by N Corporation under sec. 960(a)(1)(C) and included in N Corporation's gross income under sec. 78 $(\$20,000 \times \$80,000 / \$80,000)$	20,000	100,000
Total taxable income.....		200,000
U.S. tax payable for 1965:		
U.S. tax before credit $(\$200,000 \times 0.22) + [\$175,000 \times 0.26]$		89,500
Credit: Foreign income taxes of \$20,000, but not to exceed overall limitation of \$44,750 $(\$89,500 \times \$100,000 / \$200,000)$		20,000
U.S. tax payable.....		69,500

1966		
Taxable income of N Corporation, consisting of:		
Income from U.S. sources.....		\$25,000
U.S. tax before credit $(\$25,000 \times 0.22)$		5,500
Section 904(a)(2) overall limitation for 1966:		
Limitation for 1966 before increase under sec. 960(b)(1) $(\$5,500 \times \$80 / \$25,000)$		0
Plus: Increase in overall limitation for 1966 under sec. 960(b)(1):		
Amount by which 1965 overall limitation was increased by reason of inclusion in N Corporation's gross income under sec. 951(a) for 1965 $(\$44,750 - [\$41,500 \times \$30 / \$100,000])$	\$44,750	
Less: Foreign income taxes allowed as a credit for 1965 which were allowable solely by reason of such sec. 951(a) inclusion $(\$20,000 - \$0)$	20,000	
Balance.....	24,750	
But: Such balance not to exceed foreign income taxes paid by N Corporation for 1966 with respect to \$80,000 distribution excluded under sec. 959(a)(1) (\$10,000 tax withheld).....	10,000	10,000
Overall limitation for 1966.....		10,000

U.S. tax payable for 1966:	
U.S. tax before credit $(\$25,000 \times 0.22)$	5,500
Credit: Foreign income taxes of \$10,000, but not to exceed overall limitation of \$10,000 for 1966.....	10,000
U.S. tax payable.....	None

Overpayment of tax for 1966:	
Increase in limitation under sec. 960(b)(1) for 1966.....	10,000
Less: Tax imposed for 1966 under chapter 1 of the Code.....	5,500
Excess treated as overpayment.....	4,500

PAR. 2. Paragraph (b) of § 1.78-1 is amended to read as follows:

§ 1.78-1 Dividends received from certain foreign corporations by certain domestic corporations choosing the foreign tax credit.

(b) *Certain taxes not treated as a section 78 dividend.* Foreign income taxes deemed paid by a domestic corporation under section 902(a)(1) or section 960(a)(1)(C) shall not, to the extent provided by paragraph (b) of § 1.960-3, be treated as a section 78 dividend where such taxes are imposed on certain distributions from the earnings and profits of a controlled foreign corporation attributable to an amount which is, or has been, included in gross income under section 951.

(e) *Effective dates for the application of section 78—(1) In general.* This section shall apply to amounts of foreign income taxes deemed paid under section 902(a)(1) and paragraph (a)(2) of § 1.902-3, or under section 960(a)(1)(C) and the regulations thereunder, by reason of a distribution received by a domestic corporation—

- (i) After December 31, 1964, or
- (ii) Before January 1, 1965, in a taxable year of such domestic corporation beginning after December 31, 1962, but only to the extent that such distribution is made out of the accumulated profits of a foreign corporation for a taxable year of such foreign corporation beginning after December 31, 1962.

For special rules relating to determination of accumulated profits for such purposes, see § 1.902-5.

(2) *Amounts under section 951 treated as distributions.* For purposes of this paragraph, any amount attributable to the earnings and profits for the taxable year of a first-tier corporation (as defined in paragraph (b)(1) of § 1.960-1) which is included in the gross income of a domestic corporation under section 951(a) shall be treated as a distribution received by such domestic corporation on the last day in such taxable year on which such first-tier corporation is a controlled foreign corporation.

§ 1.902-3 Credit for domestic corporate shareholder of a foreign corporation (after amendment by Revenue Act of 1962).

- (a) *Domestic shareholder owning stock in a first-tier corporation. * * **
- (3) *Gross-up of dividends by taxes deemed paid.* Any taxes deemed paid by a domestic shareholder for the taxable year pursuant to section 902(a)(1) and subparagraph (2) of this paragraph

shall, except as provided in paragraph (b) of § 1.960-3, be included in the gross income of such shareholder for such year as a dividend pursuant to section 78 and § 1.78-1.

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

Except as provided in section 960(a)(3) and § 1.960-2, 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.

§ 1.963-3 Distributions counting toward a minimum distribution.

(a) *Conditions under which earnings and profits are counted toward a minimum distribution.*—(1) *In general.* A distribution to the United States shareholder by a single first-tier corporation or by a foreign corporation included in a chain or group shall count toward a minimum distribution for the taxable year of such shareholder to which the election under section 963 relates only to the extent that—

(i) It is received by such shareholder during such year or within 180 days thereafter,

(ii) It is a distribution of the type described in paragraph (b) of this section.

(iii) Under paragraph (c) of this section, it is deemed to be distributed from the earnings and profits of the foreign corporations for the taxable year of such corporation to which the election relates, and

(iv) Such shareholder chooses to include it in gross income for the taxable year of such shareholder to which the election relates notwithstanding that such distribution, by reason of its receipt after the close of such year, would ordinarily be includible in the gross income of a subsequent year.

Amounts taken into account under this subparagraph as gross income of the United States shareholder for the taxable year to which the election relates shall not be considered to be includible in the gross income of such shareholder for a subsequent taxable year. For purposes of determining the foreign tax credit under sections 901 through 905, foreign income tax paid or accrued by such shareholder on or with respect to such amounts shall be treated as paid or accrued during the taxable year of such election.

(2) *Distributions made prior to acquisition of stock.* A United States shareholder which owns within the meaning of section 958(a) stock in a foreign corporation with respect to which such shareholder elects to secure an exclusion under section 963 for the taxable year

may count toward the minimum distribution any distribution made with respect to such stock, and before its acquisition by the United States shareholder, to any other domestic corporation not exempt from income tax under chapter 1 of the Code, to the extent that such distribution is made out of the United States shareholder's proportionate share, as determined under paragraph (d)(2) of § 1.963-2, of such corporation's earnings and profits for the taxable year and would have counted toward a minimum distribution if it had been distributed to such United States shareholder. The application of this subparagraph may be illustrated by the following examples:

Example (1). Controlled foreign corporation A, which uses the calendar year as the taxable year, has for 1963 \$100 of earnings and profits and 100 shares of only one class of stock outstanding. Domestic corporation M, not exempt from income tax under chapter 1 of the Code, directly owns all of such shares during the period from January 1, 1963, through June 30, 1963. On June 30, 1963, M Corporation transfers all of such shares to domestic corporation N, which owns them throughout the remainder of 1963 and elects to secure an exclusion under section 963 for such year with respect to the subpart F income of A Corporation. During June 1963, M Corporation receives a dividend of \$75 from A Corporation, which would count toward a minimum distribution if it had been distributed to N Corporation for such year. Corporation N's proportionate share of the earnings and profits of A Corporation for 1963 is \$100; N Corporation may count toward a minimum distribution for 1963 the entire dividend of \$75 paid to M Corporation.

Example (2). The facts are the same as in example (1) except that M is a nonresident alien individual. Since A Corporation is not a controlled foreign corporation from January 1, 1963, through June 30, 1963, N Corporation's proportionate share of the earnings and profits of A Corporation for 1963 is \$50.41 ($\$100 \times 184/365$), as determined under paragraph (d)(2)(iii) of § 1.963-2. Although \$25.41 ($\$75 - \$49.59$) of the \$75 distribution to M is paid from N Corporation's proportionate share of A Corporation's 1963 earnings and profits, N Corporation may not count toward a minimum distribution any part of the \$75 dividend distributed to M, since M is not a domestic corporation.

(b) *Qualifying distributions.*—(1) *Amounts not counted toward a minimum distribution.* No distribution received by a United States shareholder shall count toward a minimum distribution for the taxable year with respect to such shareholder to the extent the distribution is excludable from gross income to the extent gain on the distribution is not recognized, or to the extent the distribution is treated as a distribution in part or full payment in exchange for stock. Undistributed amounts required to be included in gross income under section 551 as undistributed foreign personal holding company income or under section 951 as undistributed amounts of a controlled foreign corporation shall not count toward a minimum distribution under section 963. An amount received by a United States shareholder as a distribution which under section 302 or section 331 is

treated as a distribution in part or full payment in exchange for stock shall not count toward a minimum distribution even though such account is includible in gross income under section 1248 as a dividend. For purposes of this subparagraph, any portion of a distribution of earnings and profits which is attributable to an increase in current earnings, invested in United States property which, but for paragraph (e) of this section, would be included in the gross income of the United States shareholder under section 951(a)(1)(B) shall not be treated as an amount excludable from gross income.

(2) *Inclusion of tax on intercorporate distributions.* In the case of a chain or group election, the United States shareholder's proportionate share of the amount of the foreign income tax paid or accrued for the taxable year by a foreign corporation in the chain or group with respect to distributions received by such corporation from the earnings and profits, of another foreign corporation in such chain or group, for the taxable year of such other corporation to which the election relates shall count toward a minimum distribution from such chain or group for the taxable year, but only if the United States shareholder does not choose under paragraph (d)(1)(iii) of § 1.963-2 to take such tax into account in determining the effective foreign tax rate of such chain or group for the taxable year. To the extent that foreign income tax counts toward a minimum distribution under this subparagraph, it shall be applied against and reduce the amount of the minimum distribution required to be received by the United States shareholder, determined without regard to this paragraph.

(c) *Rules for allocation of distributions to earnings and profits for a taxable year.* To determine whether a distribution to the United States shareholder by a single first-tier corporation or by a foreign corporation in a chain or group is made from the earnings and profits of such corporation for the taxable year to which the election under section 963 relates, the following subparagraphs shall apply:

(1) *Exception to section 316.* Section 316 shall apply except that a distribution of earnings and profits made by a foreign corporation either to another foreign corporation or to the United States shareholder shall be treated as having been paid from the earnings and profits of the distributing corporation for the taxable year of such corporation to which the election relates only if it is made during its distribution period (described in paragraph (g) of this section) for such year.

(2) *Distributions from other corporations.* The earnings and profits of a foreign corporation shall be determined in accordance with paragraph (d)(1) of § 1.963-2 (applied as though the United States shareholder had chosen under subparagraph (1)(iii) of such paragraph to take the tax described therein into account in determining the effective

foreign tax rate) except that, in the case of a chain or group election, a distribution received by a foreign corporation in the chain or group from another foreign corporation in such chain or group shall be taken into account as earnings and profits of the recipient corporation for the taxable year of such recipient corporation to which the election relates but only to the extent that—

(i) The distribution is received by the recipient corporation during the distribution period for the taxable year of such recipient corporation to which the election relates.

(ii) If the distribution had been received by the United States shareholder, it would have constituted a distribution of the type described in paragraph (b) of this section, and

(iii) The distribution is made from the earnings and profits of the distributing corporation for the taxable year of such distributing corporation to which the election relates.

(d) *Year of inclusion in income of foreign corporation and effect upon subpart F income.* To the extent that a distribution to the United States shareholder counting toward a minimum distribution from a chain or group consists of earnings and profits distributed to a foreign corporation in the chain or group after the close of the recipient corporation's taxable year but during its distribution period for such year by another foreign corporation in such chain or group, such amount shall be treated as received by the recipient corporation on the last day of such taxable year and shall not be regarded as foreign personal holding company income (within the meaning of section 553(a) or 954(c)) of such corporation for the taxable year in which such amount is actually received. The extent to which a distribution counting toward a minimum distribution consists of earnings and profits distributed to a foreign corporation in a chain or group shall be determined under the ordering rules of paragraph (b)(3) of § 1.963-4 (applied in each instance as though the United States shareholder had not chosen under paragraph (d)(1) (iii) of § 1.963-2 to take the tax described therein into account in determining the effective foreign tax rate). However, for such purpose, the amount of foreign income tax, if any, which counts toward the minimum distribution shall be determined without regard to paragraph (b)(2) of this section but in accordance with paragraph (b)(3) (iii) of § 1.963-4.

(e) *Distribution of current earnings invested in United States property.* A distribution made by a foreign corporation during its distribution period for a taxable year shall, notwithstanding section 959(c), first be attributed to earnings and profits for such year described in section 959(c)(3) and then to other earnings and profits. For such purposes, earnings and profits of such foreign corporation for such year attributable to amounts which would otherwise be included in gross income of the United

States shareholder under section 951(a)(1)(B) for such year shall be treated as earnings and profits to which section 959(c)(3) applies, shall not be excluded from gross income under section 959(a) or (b), and shall count toward a minimum distribution for such year. See paragraph (c)(1)(v) of § 1.960-1 and paragraph (a) of § 1.960-2.

(f) *Cumulative dividends in arrears.* A distribution in satisfaction of arrearages shall be treated as being made out of earnings and profits of the foreign corporation for the taxable year to which the election under section 963 applies only to the extent the dividend is not attributed, under paragraph (d)(2) (i) of § 1.963-2, to the earnings and profits of such corporation remaining from prior taxable years beginning after December 31, 1962. The application of this paragraph may be illustrated by the following example:

Example. For 1963, single first-tier corporation A, which uses the calendar year as the taxable year, has earnings and profits of \$50; for 1964, a deficit in earnings and profits of \$20; for 1965, earnings and profits of \$100; and for 1966, earnings and profits of \$240. For each of such years preferred dividends accumulate at the rate of \$60; but no dividend is paid until 1966 during which year the current dividend is paid and \$180 is distributed toward the arrearages. Of this \$180, only \$50 (\$180-\$130) shall be treated as paid from 1966 earnings and profits.

(g) *Distribution period of a foreign corporation.*—(1) *General distribution period.* Except as provided by subparagraph (2) of this paragraph, the distribution period with respect to a foreign corporation for its taxable year shall begin immediately after the close of the distribution period for the preceding taxable year and shall end with the close of the 60th day of the next succeeding taxable year. If no election to secure an exclusion under section 963 applied to the preceding taxable year, the distribution period for the taxable year shall begin with the 61st day of the taxable year.

(2) *Special extended distribution period.* If the United States shareholder of the foreign corporation so elects in statement filed with its return for the taxable year for which the election to secure the exclusion under section 963 is made, the distribution period with respect to such foreign corporation for its taxable year to which the election to secure the exclusion applies shall end with any day which occurs no earlier than the last day of such taxable year of such foreign corporation and no later than the 180th day after the close of such taxable year. The statement shall designate the day so elected as the end of the distribution period.

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

Example (1). For 1963 domestic corporation M makes a chain election with respect to controlled foreign corporation A, all of whose one class of stock M Corporation directly owns, and controlled foreign corpora-

tion B, all of whose one class of stock is directly owned by A Corporation. All such corporations use the calendar year as the taxable year, and the distribution periods of corporations A and B for 1963 coincide. Corporations A and B each have earnings and profits (before distributions) of \$100 for 1963. On June 1, 1963, B Corporation distributes earnings and profits of \$120, of which \$100 is from its earnings and profits for 1963 and \$20 is from prior earnings. For 1963, A Corporation pays no income tax and distributes earnings and profits of \$150 to M Corporation. Under paragraph (c) of this section, such \$150 is allocated to A Corporation's earnings and profits of \$200 for 1963, consisting of its total earnings and profits for that year of \$220 less the \$20 received as a distribution from B Corporation's prior earnings.

Example (2). Domestic corporation M directly owns all of the one class of stock of controlled foreign corporation A. Both corporations use the calendar year as the taxable year, and A Corporation's taxable year and its distribution period for 1963 coincide. For 1963, \$50 is included in the gross income of M Corporation under section 951(a)(1)(B) as A Corporation's increase in earnings invested for such year in United States property. For 1964, M Corporation makes a first-tier election with respect to A Corporation. For 1964, A Corporation has earnings and profits of \$100, including \$10 attributable to an increase in earnings invested for such year in United States property. During 1964, A Corporation distributes earnings and profits of \$80 to M Corporation. Without regard to paragraph (e) of this section, \$10 of this distribution is attributable under section 959(c)(1) to A Corporation's 1964 earnings and profits required to be included in M Corporation's gross income under section 951(a)(1)(B). Pursuant to paragraph (e) of this section, however, the entire distribution of \$80 counts toward a minimum distribution for 1964 and is considered to be from earnings and profits of A Corporation for 1964 described in section 959(c)(3). Thus, the entire distribution of \$80 is included in M Corporation's gross income as a dividend and the foreign tax credit in respect of such amount is determined in accordance with § 1.963-4. On the other hand, if A Corporation made no distributions for 1964, no part of the \$10 of A Corporation's increase in earnings invested in United States property for such year would count toward a minimum distribution for any other year but would be included in the gross income for M Corporation for 1964 under section 951(a)(1)(B), and the foreign tax credit in respect of such amount would be determined in accordance with § 1.960-1.

Example (3). For 1964 domestic corporation M makes a chain election with respect to controlled foreign corporation A, all the one class of stock of which is owned directly by M Corporation, and controlled foreign corporation B, all the one class of stock of which is owned directly by A Corporation. Corporation M makes no election under section 963 for 1963 or 1965. Corporations M and B use the calendar year as the taxable year, and A Corporation uses for its taxable year a fiscal year ending on September 30. Corporation M elects to have the distribution period for each controlled foreign corporation end on March 29, 1965, such date being the 180th day after the close of A Corporation's taxable year ending on September 30, 1964. Corporation A's distribution period for its taxable year ending on September 30, 1964, begins on November 30, 1963, the 61st day of such taxable year. The distribution period of B Corporation for 1964 begins on March 1, 1964, the 61st day of such taxable year. A distribution count-

ing toward a minimum distribution for 1964 may be made from the earnings and profits of B Corporation only if the amount thereof is distributed by B Corporation to A Corporation, and in turn by A Corporation to M Corporation, during the period of March 1, 1964, through March 29, 1965.

Example (4). The facts are the same as in example (3), except that for their taxable years ending in 1964, corporations A and B each have earnings and profits (before distributions) of \$100. On March 10, 1965, B Corporation distributes to A Corporation a dividend of \$80 upon which A Corporation incurs foreign income tax at the rate of 10 percent. On March 15, 1965, A Corporation distributes to M Corporation a dividend of \$50. Corporation M chooses to take into account as gross income for 1964 from such distribution only \$40. For purposes of applying this section, the distribution counting toward a minimum distribution is \$44.44, consisting of the \$40 of earnings and profits actually received by M Corporation plus the \$4.44 ($\$40/\$72 \times \$8$) of foreign income tax incurred by A Corporation attributable thereto; A Corporation is deemed to have received \$44.44 ($\$40 + \$4.44$) of the distribution from B Corporation on September 30, 1964, the last day of the taxable year of A Corporation to which the election relates; and the foreign personal holding company income derived by A Corporation for its taxable year ending in 1965 from the distribution from B is only \$35.56 ($\$80 - \$44.44$). Assuming that no exceptions, exclusions, or exemptions were applicable, subpart F income would be realized by A Corporation for its taxable year ending on September 30, 1965, upon the distribution by B Corporation to A Corporation, but only in the amount of \$32 ($\$35.56$ less a deduction under section 954 (b) (5) for taxes of \$3.56).

§ 1.964-5 Effective date of Subpart F.

Sections 951 through 964 and §§ 1.951 through 1.964-4 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.

[FR Doc.71-7640 Filed 6-3-71; 8:45 am]

Title 28—JUDICIAL ADMINISTRATION

Chapter I—Department of Justice

[Order No. 457-71]

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

Subpart M—Land and Natural Resources Division

CRIMINAL POLLUTION LITIGATION

Under existing regulations, the Criminal Division has responsibility for prosecuting Federal crimes unless otherwise assigned. (28 CFR 0.55(a)). This order assigns responsibility for criminal pollution litigation to the Land and Natural Resources Division.

By virtue of the authority vested in me by 5 U.S.C. 301, and 28 U.S.C. 509, 510, § 0.65 of Subpart M of Part 0 of Chapter I of Title 28, Code of Federal Regula-

tions, is amended by adding a new paragraph (d) to read as follows:

§ 0.65 General functions.

(d) Criminal suits and matters involving air and water pollution.

Dated: May 22, 1971.

JOHN N. MITCHELL,
Attorney General.

[FR Doc.71-7766 Filed 6-3-71; 8:48 am]

[Order No. 459-71]

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

Subpart X—Authorizations With Re- spect to Personnel and Certain Ad- ministrative Matters

CERTIFICATION OF OBLIGATIONS

Section 1311(b) of the Supplemental Appropriation Act, 1955 (68 Stat. 831; 31 U.S.C. 200(c)) requires the head of each Federal agency to report to Congress and certain Government officers the amount of each appropriation remaining obligated but unexpended on June 30 each year.

Section 1311(c) of said Act requires each report to be supported by certifications of officials designated by the head of the agency.

By virtue of the authority vested in me by sections 509 and 510 of Title 28 and section 301 of title 5 of the United States Code, § 0.147 of Subpart X of Part 0 of Chapter I of Title 28 of the Code of Federal Regulations, listing such designated officials for the Department of Justice, is amended by deleting the period at the end thereof and inserting the following: "or the Director, Office of Budget and Accounts, Administrative Division."

Dated: May 25, 1971.

JOHN N. MITCHELL,
Attorney General.

[FR Doc.71-7749 Filed 6-3-71; 8:47 am]

[Order No. 458-71]

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

Consumer Affairs Litigation

This order centralizes responsibility for certain consumer affairs litigation in the Antitrust Division.

By virtue of the authority vested in me by 5 U.S.C. 301 and 28 U.S.C. 509, 510, Part 0 of Chapter I of Title 28, Code of Federal Regulations, is amended as follows:

1. Section 0.41(b) of Subpart H is amended to read as follows:

§ 0.41 Special functions.

(b) All civil and criminal litigation arising under the Federal Trade Commission Act, the Federal Food, Drug and Cosmetic Act, the Federal Caustic Poison Act, the Federal Hazardous Sub-

stances Act, and the Federal Cigarette Labelling and Advertising Act.

§ 0.55 [Amended]

2. Section 0.55(c) is amended by deleting the words "the Federal Food, Drug, and Cosmetic Act."

3. Section 0.55(d) is amended by deleting the following language: "Federal Caustic Poisons Act," and "Federal Trade Commission Act, (in case foods, drugs, or cosmetics are involved)."

4. Paragraph (n) of § 0.55 is deleted.

Dated: May 22, 1971.

JOHN N. MITCHELL,
Attorney General.

[FR Doc.71-7767 Filed 6-3-71; 8:49 am]

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

Appendix to Subpart Y—Redelega- tions of Authority To Compromise and Close Civil Claims

TAX DIVISION

[Directive No. 16]

REDELEGATION OF AUTHORITY TO COMPROMISE, SETTLE, AND CLOSE CLAIMS

By virtue of the authority vested in me by Part 0 of Title 28 of the Code of Federal Regulations, particularly §§ 0.70, 0.160, 0.162, 0.164, 0.166, and 0.168, it is ordered as follows:

SECTION 1. The chiefs of the General Litigation Section, the Appellate Section, the Court of Claims Section, and the Refund Trial Sections are authorized to reject offers in compromise, regardless of amount, without reference to the Review Section, provided that such action is not opposed by the agency or agencies involved.

SEC. 2. The Executive Assistant and the Chief of the Litigation Control Unit are authorized to reject offers in compromise in postjudgment collection cases, regardless of amount, without reference to the Review Section: *Provided*, That such action is not opposed by the agency or agencies involved.

SEC. 3. Subject to the conditions and limitations set forth in section (8) hereof, the chiefs of the Court of Claims Section and the Refund Trial Sections are authorized to accept offers in compromise of claims against the United States in cases in which the amount of the refund does not exceed \$20,000, provided that such action is not opposed by the agency or agencies involved.

SEC. 4. Subject to the conditions and limitations set forth in section (8) hereof, the chief of the General Litigation Section is authorized to accept offers in compromise of claims in behalf of the United States in all cases in which the difference between the gross amount of the original claim and the proposed settlement does not exceed \$20,000: *Provided*, That such action is not opposed by the agency or agencies involved.

SEC. 5. Subject to the conditions and limitations set forth in section (8) hereof, the Executive Assistant and the Chief of the Litigation Control Unit are authorized to accept offers in compromise of claims in behalf of the United States in postjudgment collection cases in which the difference between the gross amount of the original claim and the proposed settlement does not exceed \$20,000: *Provided*, That such action is not opposed by the agency or agencies involved.

SEC. 6. Subject to the conditions and limitations set forth in section (8) hereof,