

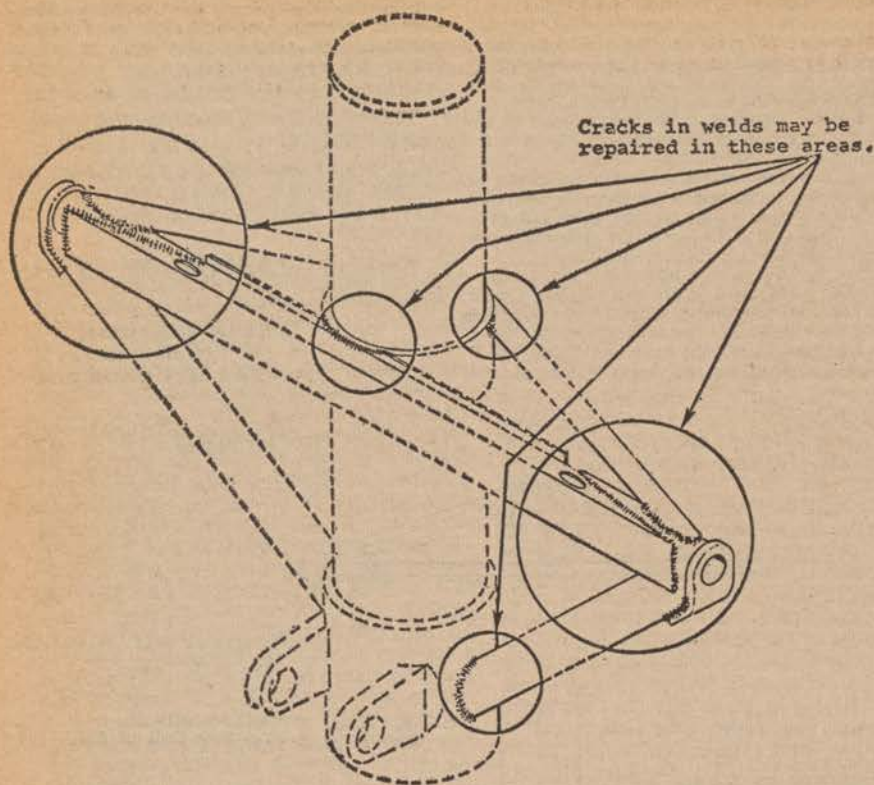


FIGURE NO. 2

[FR Doc.72-18663 Filed 11-2-72;8:45 am]

[Airspace Docket No. 72-PC-3]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Control Zone Extension

On September 12, 1972, a notice of proposed rule making was published in the *FEDERAL REGISTER* (37 F.R. 18472) stating that the Federal Aviation Administration proposed an amendment to Part 71 of the Federal Aviation Regulations that would increase the Guam (NAS Agana) control zone extension.

Interested persons were afforded an opportunity to participate in the proposed rule making through the submission of comments. No objections were received.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., December 6, 1972, as hereinafter set forth.

GUAM ISLAND (NAS AGANA)

Within a 5-mile radius of NAS Agana (latitude 13°29'00" N., longitude 144°47'00" E.); within 4 miles each side of Agana VORTAC 244° R. (245° T.), extending from the 5-mile radius zone to 8 miles southwest of the VORTAC, and within 1.5 miles each

side of the Guam RBN 046° T. bearing, extending from the 5-mile radius zone to 2 miles northeast of the RBN.

(Sec. 307(a), Federal Aviation Act of 1958, 49 U.S.C. 1348(a); sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Honolulu, Hawaii, on October 25, 1972.

JOHN H. HILTON,
Acting Director,
Pacific-Asia Region.

[FR Doc.72-18798 Filed 11-2-72;8:46 am]

[Airspace Docket No. 72-SW-18]

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

Alteration of Jet Route Segments

Correction

In F.R. Doc. 72-16900 appearing on page 20807 in the issue for Wednesday, October 4, 1972, the following changes should be made:

1. The sixth line of paragraph b. should be followed by a closing quotation mark.

2. The fourth line of paragraph c., now reading 'Orleans, La., via' and substitute 'Hous-', should read 'Orleans, La., via' and substitute '(Hous-'.

Title 21—FOOD AND DRUGS

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

SUBCHAPTER C—DRUGS

PART 135c—NEW ANIMAL DRUGS IN ORAL DOSAGE FORMS

Sulfamethazine

The Commissioner of Food and Drugs has evaluated a supplemental new animal drug application (32-378V) filed by Norden Laboratories, Lincoln, Nebr. 68501, proposing revised labeling regarding the safe and effective use of sulfamethazine boluses by deleting reference to "sustained-release". The supplemental 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), § 135c.10 *Sulfamethazine* is amended in paragraph (d) in the table under the "Limitations" column by deleting the words "sustained-release" and by inserting following the word "bolus" the word "form", and by deleting the phrase "for use by or on the order of a licensed veterinarian" and substituting therefore the phrase "Federal law restricts this drug to use by or on the order of a licensed veterinarian".

Effective date. This order shall become effective upon publication in the *FEDERAL REGISTER* (11-3-72).

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

Dated: October 27, 1972.

C. D. VAN HOUWELING,
Director, Bureau of
Veterinary Medicine.

[FR Doc.72-18821 Filed 11-2-72;8:50 am]

Chapter II—Bureau of Narcotics and Dangerous Drugs, Department of Justice

PART 308—SCHEDULES OF CONTROLLED SUBSTANCES

Exempt Chemical Preparations

A notice was published in the *FEDERAL REGISTER* of August 29, 1972 (37 F.R. 17478) proposing that several chemical preparations containing controlled substances be granted the exemptions provided for in § 308.24 of Title 21 of the Code of Federal Regulations. All interested persons were invited to submit objections or comments on the proposal within 30 days after publication. No objections or comments have been received. However, one entry was erroneously made and has been deleted for republication at a later date.

Therefore, under the authority vested in the Attorney General by sections 301

and 501(b) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 821 and 871(b)) and re-delegated to the Director of the Bureau of Narcotics and Dangerous Drugs by § 0.100 of Title 28 of the Code of Federal Regulations, the Director hereby orders that Part 308 of Title 21 of the Code of

Federal Regulations be amended as follows:

By amending § 308.24(i) by adding the following exempt chemical preparations:

§ 308.24 Exempt chemical preparations.

(i) * * *

Manufacturer or supplier	Product name and supplier's catalog number	Form of product	Date of application
Cordis Laboratories	Barbital-Acetate Buffer, Powder 709-317	Package: 20 envelopes—10.65 grains per envelope.	7-27-72
Do	Counterelectrophoresis, Plates CEP I 709-304	Package: 5 plates—18 ml. per plate.	7-27-72
Do	Counterelectrophoresis, Plates CEP II 709-305	Package: 5 plates—18 ml. per plate.	7-27-72
Do	Counterelectrophoresis, Plates CEP III 709-306	Package: 5 plates—18 ml. per plate.	7-27-72
Do	Counterelectrophoresis, Plates CEP IV 709-307	Package: 5 plates—18 ml. per plate.	7-27-72
Do	Counterelectrophoresis, Plates CEP I 709-324	Package: 10 plates—8.5 ml. per plate.	7-27-72
Do	Counterelectrophoresis, Plates CEP II 709-325	Package: 10 plates—8.5 ml. per plate.	7-27-72
Do	Counterelectrophoresis, Plates CEP III 709-326	Package: 10 plates—8.5 ml. per plate.	7-27-72
Do	Counterelectrophoresis, Plates CEP IV 709-327	Package: 10 plates—8.5 ml. per plate.	7-27-72
Do	GVB ⁺ Buffer, 753-037	Bottle: 50 ml.	7-27-72
Do	Glucose—GVB ⁺ Buffer, 753-038	Bottle: 50 ml.	7-27-72
Do	EDTA (0.04M)—GVB Buffer, 753-034	Bottle: 5 ml.	7-27-72
Do	EDTA (0.01M)—GVB Buffer, 753-031	Bottle: 5 ml.	7-27-72
Do	5X Isotonic Veronal Buffer	Bottle: 1000 ml.	7-27-72

Effective date. This order is effective upon the date of its publication in the FEDERAL REGISTER (11-3-72).

Dated: October 30, 1972.

JOHN E. INGERSOLL,
Director, Bureau of
Narcotics and Dangerous Drugs.

[FR Doc.72-18823 Filed 11-2-72; 8:50 am]

Title 29—LABOR

Subtitle A—Office of the Secretary of Labor

PART 20—OCCUPATIONAL TRAINING OF UNEMPLOYED PERSONS

Effective Period of Program

Public Law 92-277 extended title II of the Manpower Development and Training Act for 1 year, from June 30, 1972, to June 30, 1973, and removed the provision which limited expenditures under title II to the 6-month period following the expiration of authority under title II. Section 20.2, Title 29, Code of Federal Regulations, is being amended to conform to Public Law 92-277, and is amended to read as follows:

§ 20.2 Effective period of program.

No commitment of funds shall be made pursuant to the authority conferred upon the Secretary under title II of the Act after June 30, 1973, unless by Act of Congress the Act is extended beyond that date.

(Sec. 207, 76 Stat. 29, 42 U.S.C. 2587)

Signed at Washington, D.C., this 26th day of October 1972.

MALCOLM R. LOVELL,
Assistant Secretary for Manpower.

[FR Doc.72-18869 Filed 11-2-72; 8:52 am]

Title 32—NATIONAL DEFENSE

Chapter XVI—Selective Service System

PART 1631—ALLOCATION OF INDUCTIONS

Action of Local Board Upon Receipt of Allocation

Whereas, on September 30, 1972, the Director of Selective Service published a Notice of Proposed Amendments to Selective Service Regulations (37 F.R. 20577), of September 30, 1972; and

Whereas such publication complied with the publication requirement of section 13(b) of the Military Selective Service Act (50 App. U.S.C. sections 451 et seq.) in that more than 30 days have elapsed subsequent to such publication during which period comments from the public have been received and considered; and I certify that I have requested the views of officials named in section 2(a) of Executive Order 11623 and none of them has timely requested that the matter be referred to the President for decision.

Now therefore by virtue of the authority vested in me by the Military Selective Service Act, as amended (50 App. U.S.C. sections 451 et seq.) and Executive Order 11623 of October 12, 1971, the Selective Service Regulations, constitution a por-

tion of Chapter XVI of Title 32 of the Code of Federal Regulations, are hereby amended, effective 11:59, e.s.t., on November 4, 1972, as follows:

Section 1631.6(c)(2)(ii) is amended to read as follows:

§ 1631.6 Action by local board upon receipt of allocation.

(c) * * *

(ii) 1971 and later years. In the calendar year 1971 and each calendar year thereafter, nonvolunteers in Class 1-A, Class 1-A-O, Class 1-O or Class 1-H who prior to January of each such calendar year have attained the age of 19 years but not of 20 years and nonvolunteers who prior to January 1 of each such calendar year have attained the age of 19 but not of 26 years, who do not qualify for the Extended Priority Selection Group as defined in subparagraph (1) or a lower priority selection group as defined in subparagraph (3), and who during that year are classified into Class 1-A, Class 1-A-O, Class 1-O or Class 1-H.

BYRON V. PEPITONE,
Acting Director.

OCTOBER 31, 1972.

[FR Doc.72-18851 Filed 11-2-72; 8:45 am]

Title 33—NAVIGATION AND NAVIGABLE WATERS

Chapter I—Coast Guard, Department of Transportation

SUBCHAPTER J—BRIDGES

[CGD 72-213R]

PART 117—DRAWBRIDGE OPERATION REGULATIONS

White River, Ark.

This amendment revokes the regulation for the Missouri and Arkansas Railroad Bridge, mile 172.2, White River, near Georgetown, Ark., because this bridge has been removed.

Accordingly, Part 117 of Title 33 of the Code of Federal Regulations is amended by revoking § 117.583.

(Sec. 5, 28 Stat. 362, as amended, sec. 6(g)(2), 80 Stat. 937; 33 U.S.C. 499, 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5), 33 CFR 1.05-1(c)(4))

Effective date. This revision shall become effective on the date of publication in the FEDERAL REGISTER (11-3-72).

Dated: October 26, 1972.

J. D. McCANN,
Captain, U.S. Coast Guard, Acting Chief, Office of Marine Environment and Systems.

[FR Doc.72-18844 Filed 11-2-72; 8:45 am]

SUBCHAPTER K—SECURITY OF VESSELS

[CGD 72-194R]

PART 121—SPECIAL VALIDATION
ENDORSEMENT FOR EMERGENCY
SERVICE FOR MERCHANT MARINE
PERSONNELSUBCHAPTER L—SECURITY OF WATERFRONT
FACILITIESPART 125—IDENTIFICATION CRE-
DENTIALS FOR PERSONS REQUIR-
ING ACCESS TO WATERFRONT FA-
CILITIES OR VESSELS

Revocation of Standard

The amendments in this document to the security regulations revoke one of the standards that the Coast Guard uses to determine whether or not an applicant for a special validation endorsement for emergency service, or a holder of such endorsement, may be precluded from a determination that his character and habits of life are such to warrant the belief that his presence on board vessels of the United States would not be inimical to the security of the United States. This standard is contained in §§ 121.03 (e) and 125.19(e) of Title 33, Code of Federal Regulations, and concerns membership in, or affiliation or sympathetic association with any foreign or domestic organization, association, movement, group, or combination of persons designated by the Attorney General pursuant to Executive Order 10450, as amended.

In a review of its security program, the Coast Guard has determined that the standard contained in §§ 121.03(e) and 125.19(e) is stated in indefinite terms and such vagueness does not fully inform the public of the standard to be applied. This document revokes these sections as an interim measure until a more definitive delineation of the standard to be applied is proposed in the FEDERAL REGISTER.

Since the amendment in this document contains a revocation of a general statement of policy, the exception to the notice of proposed rule making contained in 5 U.S.C. 553(b) (A) applies, and the revocation may be made effective in less than 30 days, as authorized by 5 U.S.C. 553(d) (2).

In consideration of the foregoing, Chapter 1 of Title 33, Code of Federal Regulations is amended as follows:

1. By revoking paragraph (e) of § 121.03.
2. By revoking paragraph (e) of § 125.19.

(Executive Orders 10173, 10277, and 10352, 3 CFR, 1949-53 Comp., pp. 356, 778, and 873; sec. 6(b) (1), 80 Stat. 937; 49 U.S.C. 1655(b) (1); 49 CFR 146(b))

Effective date. This amendment shall become effective on November 6, 1972.

Dated: October 27, 1972.

C. R. BENDER,
Admiral, U.S. Coast Guard,
Commandant.

[FR Doc. 72-18843 Filed 11-2-72; 8:45 am]

Title 39—POSTAL SERVICE

Chapter 1—U.S. Postal Service

SUBCHAPTER N—PROCEDURES

PART 951—PROCEDURE GOVERNING
THE ELIGIBILITY OF PERSONS TO
PRACTICE BEFORE THE POSTAL
SERVICEPART 952—RULES OF PRACTICE IN
PROCEEDINGS RELATIVE TO FALSE
REPRESENTATION AND LOTTERY
ORDERSPART 953—RULES OF PRACTICE IN
PROCEEDINGS RELATIVE TO MAIL-
ABILITYPART 954—RULES OF PRACTICE IN
PROCEEDINGS RELATIVE TO THE
DENIAL, SUSPENSION OR REVOCA-
TION OF SECOND-CLASS MAIL
PRIVILEGESPART 955—RULES OF PRACTICE BE-
FORE THE BOARD OF CONTRACT
APPEALSPART 957—RULES OF PRACTICE IN
PROCEEDINGS RELATIVE TO DE-
BARMENT AND SUSPENSION FROM
CONTRACTINGPART 958—RULES OF PRACTICE IN
PROCEEDINGS RELATIVE TO THE
REFUSAL TO RENT OR RENEW POST
OFFICES BOXES AND THE CLOSING
OF POST OFFICE BOXESChange of Title of Hearing Examiners;
Miscellaneous Amendments

The Judicial Officer pursuant to 39 CFR 222.2(b) (5) has amended the rules of procedure before the Judicial Officer codified in Parts 951-955, 957, and 958. The amendments reflect the change of the title "hearing examiner" to "Administrative Law Judge" in Part 930 of the Civil Service Commission's regulations (5 CFR Part 930) and amendments to the organization regulations of the Postal Service published in the daily issue of September 27, 1972 (37 F.R. 20167). An amendment to § 957.9 conforms terminology in that section to terminology used elsewhere in postal regulations.

The amendments made by the Judicial Officer are set out below and are effective upon publication in the FEDERAL REGISTER (11-3-72).

(39 U.S.C. 204, 401, 404)

ROGER P. CRAIG,
Deputy General Counsel.

ADAM G. WENCHER,
Judicial Officer.

The rules of practice before the Judicial Officer are amended as follows:

1. Section 952.17 is amended by changing "Chief Hearing Examiner" where it appears in paragraph (a) to "Chief Administrative Law Judge".

2. Section 953.11 is amended by changing "Chief Hearing Examiner" to "Chief Administrative Law Judge."

3. Section 954.14 is amended by changing "Chief Hearing Examiner" where it appears in paragraph (a) to "Chief Administrative Law Judge."

4. Section 955.1 is amended by changing the second sentence of paragraph (b) to read: "The Board is composed of the Judicial Officer as Chairman, the Chief Administrative Law Judge and one other Administrative Law Judge designated by the Chairman."

5. Section 957.9 is amended by striking out "departmental decision" and inserting "Postal Service Decision" in lieu thereof.

6. Section 958.7 is amended by changing "Chief Hearing Examiner" to "Chief Administrative Law Judge."

7. Parts 951-954 and 958 are amended by changing "hearing examiner" and "hearing examiners" wherever those terms appear to "Administrative Law Judge" and "Administrative Law Judges", respectively.

[FR Doc. 72-18852 Filed 11-2-72; 8:45 am]

Title 41—PUBLIC CONTRACTS
AND PROPERTY MANAGEMENTChapter 114—Department of the
InteriorPART 114-26—PROCUREMENT
SOURCES AND PROGRAMSPART 114-38—MOTOR EQUIPMENT
MANAGEMENT

Miscellaneous Amendments

Pursuant to the authority of the Secretary of the Interior contained in 5 U.S.C. 301 and section 205(c), 63 Stat. 390; 40 U.S.C. 486(c), Subparts 114-26.4 and 114-38.1 of Chapter 114, Title 41 of the Code of Federal Regulations are amended as set forth below.

These amendments shall become effective on the date of publication in the FEDERAL REGISTER (11-3-72).

CHARLES G. EMILE,
Deputy Assistant
Secretary of the Interior.

OCTOBER 30, 1972.

Subpart 114-26.4—Purchase of Items
From Federal Supply Schedule
Contractors

The table of contents for Subpart 114-26.4 is amended by deleting the reference to § 114-26.406-6, *Notice to GSA of assignment of billing codes and billing addresses.*

Section 114-26.406-4(b) is revised to read as follows:

§ 114-26.406-4 Administrative control of credit cards.

(b) The head of each bureau and office shall be responsible for establishing procedures to provide for the administrative control of credit cards in accordance with the guidelines set forth in FPMR 101-26.406-4(b).

§ 114-26.406-6 [Deleted]

Section 114-26.406-6 is deleted in its entirety.

Subpart 114-38.1—Reporting Motor Vehicle Data

The table of contents for Subpart 114-38.1 is revised to provide for new entries as follows:

Sec.	
114-38.100	Scope of subpart.
114-38.101	Records.
114-38.102	Preparation of Standard Form 82, Agency Report of Motor Vehicle Data.
114-38.102-1	Reporting period and submission.

Authority: The provisions of this Subpart 114-38.1 issued under 5 U.S.C. 301 and section 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

Subpart 114-38.1 is revised to read as follows:

§ 114-38.100 Scope of subpart.

This subpart sets forth the responsibility of each bureau and office for maintaining inventory, cost, and operating data needed for the management and control of motor vehicles and to fulfill the reporting requirements established herein.

§ 114-38.101 Records.

(a) Accounting records. The head of each bureau and office is responsible for the development and maintenance of motor vehicle cost accounting records, and for the establishment of reporting procedures to insure compliance with the requirements of FPMR 101-38.1 and this Subpart 114-38.1.

(b) Utilization records, bureau-owned vehicles. Heads of bureaus and offices shall establish procedures to insure that:

(1) Records are maintained to reflect utilization data (miles or hours operated) on an individual motor vehicle basis.

(2) Utilization data are recorded each day a vehicle is operated. Data covering two or more short trips during a single day may be combined to record total utilization during that particular day.

(3) The utilization record of each motor vehicle is analyzed not less frequently than once each year by appropriate management officials, and

(4) Any necessary followup action is taken promptly to achieve maximum effective utilization at the minimum cost.

(c) Utilization records, interagency motor pool vehicles. Utilization records on interagency motor pool vehicles shall be recorded and reported in accordance with instructions issued by GSA regional offices and individual motor pools.

(d) Operator's record, Form DI-120, Operator's Record, may be used for recording utilization data prescribed in IPMR 114-38.103(b). This form is available on requisition from the Branch of Supply, Division of General Services, Office of Management Operations, Washington, D.C.

§ 114-38.102 Preparation of Standard Form 82, Agency Report of Motor Vehicle Data.

Each bureau and office which owns and/or rents motor vehicles shall prepare and submit a consolidated Standard Form 82, Agency Report of Motor Vehicle Data. Only the applicable portions of Standard Form 82 need to be completed if a bureau or office operates only rental vehicles. Section II is to be completed only by those bureaus having accountability for a fleet of 2,000 or more vehicles.

§ 114-38.102-1 Reporting period and submission.

Standard Form 82 shall be prepared as of June 30 of each year and submitted in triplicate, to reach the Director of Management Operations by September 1 of each year.

[FR Doc.72-18791 Filed 11-2-72; 8:46 am]

Title 50—WILDLIFE AND FISHERIES

Chapter I—Bureau of Sport Fisheries and Wildlife, Fish and Wildlife Service, Department of the Interior

PART 28—PUBLIC ACCESS, USE, AND RECREATION

Salt Meadow National Wildlife Refuge, Conn.

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER (11-3-72).

§ 28.28 Special regulations; public access, use, and recreation; for individual wildlife refuge areas.

CONNECTICUT

SALT MEADOW NATIONAL WILDLIFE REFUGE

Entry onto the refuge, by foot, is permitted during daylight hours, by advanced reservation only, for the purpose of environmental education studies, hiking, and photography. Entrance permits may be obtained for specific dates, by mail, from the Refuge Manager, Great Meadows National Wildlife Refuge, 191 Sudbury Road, Concord, MA 01742. Motor vehicles are limited to the designated parking areas. Pets are not permitted on the refuge unless authorized in the entrance permit.

Information about the refuge, which comprises approximately 180 acres, is available from the Refuge Manager, Great Meadows National Wildlife Refuge, 191 Sudbury Road, Concord, MA

01742, and from the Regional Director, Bureau of Sport Fisheries and Wildlife, U.S. Post Office and Courthouse, Boston, Mass. 02109.

The provisions of this special regulation supplement the regulations which govern recreation on wildlife refuge areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 28, and are effective through December 31, 1972.

RICHARD E. GRIFFITH,
Regional Director, Bureau of
Sport Fisheries and Wildlife.

OCTOBER 26, 1972.

[FR Doc.72-18790 Filed 11-2-72; 8:46 am]

Title 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER A—INCOME TAX

[T.D. 7216]

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

Determination of Income Effectively Connected With U.S. Business of Nonresident Aliens or Foreign Corporations

On January 23, 1969, notice of proposed rule making with respect to the amendment of the Income Tax Regulations (26 CFR Part 1) to conform the regulations to section 864(c) of the Internal Revenue Code of 1954, relating to rules for determining income effectively connected with the U.S. business of nonresident alien individuals or foreign corporations, as added by section 102(d) of the Foreign Investors Tax Act of 1966 (80 Stat. 1544), was published in the FEDERAL REGISTER (34 F.R. 1030). Further, on January 23, 1971, notice of proposed rule making withdrawing a portion of the proposed regulations contained in the previous notice and proposing regulations in lieu thereof was published in the FEDERAL REGISTER (36 F.R. 1149). After consideration of all 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 1.864-3, as set forth in paragraph 2 of the notice of proposed rule making, is changed by revising example (2) of paragraph (b) thereof and by adding a new example (3) to such paragraph. These revised and added provisions read as set forth below.

PAR. 2. Paragraph (c) of § 1.864-4, as set forth in paragraph 2 of the notice of proposed rule making, is changed by revising subdivision (ii) of subparagraph (1), by revising subdivisions (i) and (iii) (b) of subparagraph (2), by revising subdivision (i) of subparagraph (3), and by revising subdivisions (i), (ii), (iii),

(vi), and (vii) of subparagraph (5). These revised provisions read as set forth below.

PAR. 3. Section 1.864-5, as set forth in paragraph 2 of the notice of proposed rule making, is changed by revising paragraph (a), by revising paragraph (b) (2) (i), the example in paragraph (b) (2) (ii), and paragraph (b) (3) (i), by adding a new subdivision (iii) to paragraph (b) (3), by revising paragraph (c) (1), by revising that part of paragraph (d) (2) that precedes the examples therein, and by revising paragraph (d) (3). These revised and added provisions read as follows:

PAR. 4. Section 1.864-6, as set forth in paragraph 2 of the notice of proposed rule making, is changed by revising paragraph (a), by revising paragraph (b) (1), (2), and (3) (i), and by revising paragraph (c) (1) and (2) and example (1) in paragraph (c) (3). These revised provisions read as set forth below.

PAR. 5. Section 1.864-7 is changed by revising paragraphs (c), (d) (1), (2), and (3) (i) and (ii), (e), and (f), by revising example (1) in paragraph (g), and by adding new examples (4), (5), and (6) in paragraph (g), as set forth below.

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

[SEAL] JOHNIE M. WALTERS,
Commissioner of Internal Revenue.

Approved: October 31, 1972.

FREDERIC W. HICKMAN,
Assistant Secretary
of the Treasury.

PARAGRAPH 1. Section 1.864 is amended by adding a subsection (c) to section 864 as follows and by leaving the historical note unchanged:

§ 1.864 Statutory provisions; definitions.

SEC. 864. Definitions. * * *

(c) Effectively connected income, etc.—

(1) General rule. For purposes of this title—

(A) In the case of a nonresident alien individual or a foreign corporation engaged in trade or business within the United States during the taxable year, the rules set forth in paragraphs (2), (3), and (4) shall apply in determining the income, gain, or loss which shall be treated as effectively connected with the conduct of a trade or business within the United States.

(B) Except as provided in section 871(d) or sections 882 (d) and (e), in the case of a nonresident alien individual or a foreign corporation not engaged in trade or business within the United States during the taxable year, no income, gain, or loss shall be treated as effectively connected with the conduct of a trade or business within the United States.

(2) Periodical, etc., income from sources within United States—Factors. In determining whether income from sources within the United States of the types described in section 871(a) (1) or section 881(a), or whether gain or loss from sources within the United States from the sale or exchange of capital assets, is effectively connected with the conduct of a trade or business within the United States, the factors taken into account shall include whether—

(A) The income, gain, or loss is derived from assets used in or held for use in the conduct of such trade or business, or

(B) The activities of such trade or business were a material factor in the realization of the income, gain, or loss.

In determining whether an asset is used in or held for use in the conduct of such trade or business or whether the activities of such trade or business were a material factor in realizing an item of income, gain, or loss, due regard shall be given to whether or not such asset or such income, gain, or loss was accounted for through such trade or business. In applying this paragraph and paragraph (4), interest referred to in section 861(a) (1) (A) shall be considered income from sources within the United States.

(3) Other income from sources within United States. All income, gain, or loss from sources within the United States (other than income, gain, or loss to which paragraph (2) applies) shall be treated as effectively connected with the conduct of a trade or business within the United States.

(4) Income from sources without United States.—

(A) Except as provided in subparagraphs (B) and (C), no income, gain, or loss from sources without the United States shall be treated as effectively connected with the conduct of a trade or business within the United States.

(B) Income, gain, or loss from sources without the United States shall be treated as effectively connected with the conduct of a trade or business within the United States by a nonresident alien individual or a foreign corporation if such person has an office or other fixed place of business within the United States to which such income, gain, or loss is attributable and such income, gain, or loss—

(i) Consists of rents or royalties for the use of or for the privilege of using intangible property described in section 862(a) (4) (including any gain or loss realized on the sale of such property) derived in the active conduct of such trade or business;

(ii) Consists of dividends or interest, or gain or loss from the sale or exchange of stock or notes, bonds, or other evidences of indebtedness, and either is derived in the active conduct of a banking, financing, or similar business within the United States or is received by a corporation the principal business of which is trading in stocks or securities for its own account; or

(iii) Is derived from the sale (without the United States) through such office or other fixed place of business of personal property described in section 1221 (1), except that this clause shall not apply if the property is sold for use, consumption, or disposition outside the United States and an office or other fixed place of business of the taxpayer outside the United States participated materially in such sale.

(C) In the case of a foreign corporation taxable under part I of subchapter L, any income from sources without the United States which is attributable to its U.S. business shall be treated as effectively connected with the conduct of a trade or business within the United States.

(D) No income from sources without the United States shall be treated as effectively connected with the conduct of a trade or business within the United States if it either—

(i) Consists of dividends, interest, or royalties paid by a foreign corporation in which the taxpayer owns (within the meaning of section 958(a)), or is considered as owning (by applying the ownership rules of section 958(b)), more than 50 percent of the total combined voting power of all classes of stock entitled to vote, or

(ii) Is subpart F income within the meaning of section 952(a).

(5) Rules for application of paragraph (4) (B). For purposes of subparagraph (B) of paragraph (4)—

(A) In determining whether a nonresident alien individual or a foreign corporation has an office or other fixed place of business, an office or other fixed place of business of an agent shall be disregarded unless such agent (i) has the authority to negotiate and conclude contracts in the name of the nonresident alien individual or foreign corporation and regularly exercises that authority or has a stock of merchandise from which he regularly fills orders on behalf of such individual or foreign corporation, and (ii) is not a general commission agent, broker, or other agent of independent status acting in the ordinary course of his business.

(B) Income, gain, or loss shall not be considered as attributable to an office or other fixed place of business within the United States unless such office or fixed place of business is a material factor in the production of such income, gain, or loss and such office or fixed place of business regularly carries on activities of the type from which such income, gain, or loss is derived, and

(C) The income, gain, or loss which shall be attributable to an office or other fixed place of business within the United States shall be the income, gain, or loss properly allocable thereto, but, in the case of a sale described in clause (iii) of such subparagraph, the income which shall be treated as attributable to an office or other fixed place of business within the United States shall not exceed the income which would be derived from sources within the United States if the sale were made in the United States.

PAR. 2. The following new sections are added immediately after § 1.864-2:

§ 1.864-3 Rules for determining income effectively connected with U.S. business of nonresident aliens or foreign corporations.

(a) In general. For purposes of the Internal Revenue Code, in the case of a nonresident alien individual or a foreign corporation that is engaged in a trade or business in the United States at any time during the taxable year, the rules set forth in §§ 1.864-4 through 1.864-7 and this section shall apply in determining whether income, gain, or loss shall be treated as effectively connected for a taxable year beginning after December 31, 1966, with the conduct of a trade or business in the United States. Except as provided in sections 871 (c) and (d) and 882 (d) and (e), and the regulations thereunder, in the case of a nonresident alien individual or a foreign corporation that is at no time during the taxable year engaged in a trade or business in the United States, no income, gain, or loss shall be treated as effectively connected for the taxable year with the conduct of a trade or business in the United States. The general rule prescribed by the preceding sentence shall apply even though the income, gain, or loss would have been treated as effectively connected with the conduct of a trade or business in the United States if such income or gain had been received or accrued, or such loss had been sustained, in an earlier taxable year when the taxpayer was engaged in a trade or business in the United States. In applying §§ 1.864-4 through 1.864-7 and this section, the

determination whether an item of income, gain, or loss is effectively connected with the conduct of a trade or business in the United States shall not be controlled by any administrative, judicial, or other interpretation made under the laws of any foreign country.

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

Example (1). During 1967 foreign corporation N, which uses the calendar year as the taxable year, is engaged in the business of purchasing and selling household equipment on the installment plan. During 1967 N is engaged in business in the United States by reason of the sales activities it carries on in the United States for the purpose of selling therein some of the equipment which it has purchased. During 1967 N receives installment payments of \$800,000 on sales it makes that year in the United States, and the income from sources within the United States for 1967 attributable to such payments is \$200,000. By reason of section 864(c)(3) and paragraph (b) of § 1.864-4 this income of \$200,000 is effectively connected for 1967 with the conduct of a trade or business in the United States by N. In December of 1967, N discontinues its efforts to make any further sales of household equipment in the United States, and at no time during 1968 is N engaged in a trade or business in the United States. During 1968 N receives installment payments of \$500,000 on the sales it made in the United States during 1967, and the income from sources within the United States for 1968 attributable to such payments is \$125,000. By reason of section 864(c)(1)(B) and this section, this income of \$125,000 is not effectively connected for 1968 with the conduct of a trade or business in the United States by N, even though such amount, if it had been received by N during 1967, would have been effectively connected for 1967 with the conduct of a trade or business in the United States by that corporation.

Example (2). R, a foreign holding company, owns all of the voting stock in five corporations, two of which are domestic corporations. All of the subsidiary corporations are engaged in the active conduct of a trade or business. R has an office in the United States where its chief executive officer, who is also the chief executive officer of one of the domestic corporations, spends a substantial portion of the taxable year supervising R's investment in its operating subsidiaries and performing his function as chief executive officer of the domestic operating subsidiary. R is not considered to be engaged in a trade or business in the United States during the taxable year by reason of the activities carried on in the United States by its chief executive officer in the supervision of its investment in its operating subsidiary corporations. Accordingly, the dividends from sources within the United States received by R during the taxable year from its domestic subsidiary corporations are not effectively connected for that year with the conduct of a trade or business in the United States by R.

Example (3). During the months of June through December 1971, B, a nonresident alien individual who uses the calendar year as the taxable year and the cash receipts and disbursements method of accounting, is employed in the United States by domestic corporation M for a salary of \$2,000 per month, payable semimonthly. During 1971, B receives from M salary payments totaling \$13,000, all of which income by reason of section 864(c)(2) and paragraph (c)(6)(ii) of § 1.864-4, is effectively connected for 1971

with the conduct of a trade or business in the United States by B. On December 31, 1971, B terminates his employment with M and departs from the United States. At no time during 1972 is B engaged in a trade or business in the United States. In January of 1972, B receives from M salary of \$1,000 for the last half of December 1971, and a bonus of \$1,000 in consideration of the services B performed in the United States during 1971 for that corporation. By reason of section 864(c)(1)(B) and this section, the \$2,000 received by B during 1972 from sources within the United States is not effectively connected for that year with the conduct of a trade or business in the United States, even though such amount, if it had been received by B during 1971, would have been effectively connected for 1971 with the conduct of a trade or business in the United States by B.

§ 1.864-4 U.S. source income effectively connected with U.S. business.

(a) *In general.* This section applies only to a nonresident alien individual or a foreign corporation that is engaged in a trade or business in the United States at some time during a taxable year beginning after December 31, 1966, and to the income, gain, or loss of such person from sources within the United States. If the income, gain, or loss of such person for the taxable year from sources within the United States consists of (1) gain or loss from the sale or exchange of capital assets or (2) fixed or determinable annual or periodical gains, profits, and income or certain other gains described in section 871(a)(1) or 881(a), certain factors must be taken into account, as prescribed by section 864(c)(2) and paragraph (c) of this section, in order to determine whether the income, gain, or loss is effectively connected for the taxable year with the conduct of a trade or business in the United States by that person. All other income, gain, or loss of such person for the taxable year from sources within the United States shall be treated as effectively connected for the taxable year with the conduct of a trade or business in the United States by that person, as prescribed by section 864(c)(3) and paragraph (b) of this section.

(b) *Income other than fixed or determinable income and capital gains.* All income, gain, or loss for the taxable year derived by a nonresident alien individual or foreign corporation engaged in a trade or business in the United States from sources within the United States which does not consist of income, gain, or loss described in section 871(a)(1) or 881(a), or of gain or loss from the sale or exchange of capital assets, shall, for purposes of paragraph (a) of this section, be treated as effectively connected for the taxable year with the conduct of a trade or business in the United States. This income, gain, or loss shall be treated as effectively connected for the taxable year with the conduct of a trade or business in the United States, whether or not the income, gain, or loss is derived from the trade or business being carried on in the United States during the taxable year. The application of this paragraph may be illustrated by the following examples:

Example (1). M, a foreign corporation which uses the calendar year as the taxable year, is engaged in the business of manufacturing machine tools in a foreign country. It establishes a branch office in the United States during 1968 which solicits orders from customers in the United States for the machine tools manufactured by that corporation. All negotiations with respect to such sales are carried on in the United States. By reason of its activity in the United States M is engaged in business in the United States during 1968. The income or loss from sources within the United States from such sales during 1968 is treated as effectively connected for that year with the conduct of a business in the United States by M. Occasionally, during 1968 the customers in the United States write directly to the home office of M, and the home office makes sales directly to such customers without routing the transactions through its branch office in the United States. The income or loss from sources within the United States for 1968 from these occasional direct sales by the home office is also treated as effectively connected for that year with the conduct of a business in the United States by M.

Example (2). The facts are the same as in example (1) except that during 1967 M was also engaged in the business of purchasing and selling office machines and that it used the installment method of accounting for the sales made in this separate business. During 1967 M was engaged in business in the United States by reason of the sales activities it carried on in the United States for the purpose of selling therein a number of the office machines which it had purchased. Although M discontinued this business activity in the United States in December of 1967, it received in 1968 some installment payments on the sales which it had made in the United States during 1967. The income of M for 1968 from sources within the United States which is attributable to such installment payments is effectively connected for 1968 with the conduct of a business in the United States, even though such income is not connected with the business carried on in the United States during 1968 through its sales office located in the United States for the solicitation of orders for the machine tools it manufactures.

Example (3). Foreign corporation S, which uses the calendar year as the taxable year, is engaged in the business of purchasing and selling electronic equipment. The home office of such corporation is also engaged in the business of purchasing and selling vintage wines. During 1968, S establishes a branch office in the United States to sell electronic equipment to customers, some of whom are located in the United States and the balance, in foreign countries. This branch office is not equipped to sell, and does not participate in sales of, wine purchased by the home office. Negotiations for the sales of the electronic equipment take place in the United States. By reason of the activity of its branch office in the United States, S is engaged in business in the United States during 1968. As a result of advertisements which the home office of S places in periodicals sold in the United States, customers in the United States frequently place orders for the purchase of wines with the home office in the foreign country, and the home office makes sales of wine in 1968 directly to such customers without routing the transactions through its branch office in the United States. The income or loss from sources within the United States for 1968 from sales of electronic equipment by the branch office, together with the income or loss from sources within the United States for that

year from sales of wine by the home office, is treated as effectively connected for that year with the conduct of a business in the United States by S.

(c) *Fixed or determinable income and capital gains*—(1) *Principal factors to be taken into account*—(i) *In general*. In determining for purposes of paragraph (a) of this section whether any income for the taxable year from sources within the United States which is described in section 871(a)(1) or 881(a), relating to fixed or determinable annual or periodical gains, profits, and income and certain other gains, or whether gain or loss from sources within the United States for the taxable year from the sale or exchange of capital assets, is effectively connected for the taxable year with the conduct of a trade or business in the United States, the principal tests to be applied are (a) the asset-use test, that is, whether the income, gain, or loss is derived from assets used in, or held for use in, the conduct of the trade or business in the United States, and (b) the business-activities test, that is, whether the activities of the trade or business conducted in the United States were a material factor in the realization of the income, gain, or loss.

(ii) *Special rule relating to interest on certain deposits*. For purposes of determining under section 861(a)(1)(A) (relating to interest on deposits with banks, savings and loan associations, and insurance companies paid or credited before Jan. 1, 1976) whether the interest described therein is effectively connected for the taxable year with the conduct of a trade or business in the United States, such interest shall be treated as income from sources within the United States for purposes of applying this paragraph and § 1.864-5. If by reason of the application of this paragraph such interest is determined to be income which is not effectively connected for the taxable year with the conduct of a trade or business in the United States, it shall then be treated as interest from sources without the United States which is not subject to the application of § 1.864-5.

(2) *Application of the asset-use test*—(i) *In general*. For purposes of subparagraph (1) of this paragraph, the asset-use test ordinarily shall apply in making a determination with respect to income, gain, or loss of a passive type where the trade or business activities as such do not give rise directly to the realization of the income, gain, or loss. However, even in the case of such income, gain, or loss, any activities of the trade or business which materially contribute to the realization of such income, gain, or loss shall also be taken into account as a factor in determining whether the income, gain, or loss is effectively connected with the conduct of a trade or business in the United States. The asset-use test is of primary significance where, for example, interest or dividend income is derived from sources within the United States by a nonresident alien individual or foreign corporation that is engaged in the business of manufacturing or selling

goods in the United States. See also subparagraph (5) of this paragraph for rules applicable to taxpayers conducting a banking, financing, or similar business in the United States.

(ii) *Cases where applicable*. Ordinarily, an asset shall be treated as used in, or held for use in, the conduct of a trade or business in the United States if the asset is—

(a) Held for the principal purpose of promoting the present conduct of the trade or business in the United States, as, for example, in the case of stock acquired and held to assure a constant source of supply for the trade or business, or

(b) Acquired and held in the ordinary course of the trade or business conducted in the United States, as, for example, in the case of an account or note receivable arising from that trade or business, or

(c) Otherwise held in a direct relationship to the trade or business conducted in the United States, as determined under subdivision (iii) of this subparagraph.

(iii) *Direct relationship between holding of asset and trade or business*—(a) *In general*. In determining whether an asset is held in a direct relationship to the trade or business conducted in the United States, principal consideration shall be given to whether the asset is needed in that trade or business. An asset shall be considered needed in a trade or business, for this purpose, only if the asset is held to meet the present needs of that trade or business and not its anticipated future needs. An asset shall be considered as needed in the trade or business conducted in the United States if, for example, the asset is held to meet the operating expenses of that trade or business. Conversely, an asset shall be considered as not needed in the trade or business conducted in the United States if, for example, the asset is held for the purpose of providing for (1) future diversification into a new trade or business, (2) expansion of trade or business activities conducted outside of the United States, (3) future plant replacement, or (4) future business contingencies.

(b) *Presumption of direct relationship*. Generally, an asset will be treated as held in a direct relationship to the trade or business if (1) the asset was acquired with funds generated by that trade or business, (2) the income from the asset is retained or reinvested in that trade or business, and (3) personnel who are present in the United States and actively involved in the conduct of that trade or business exercise significant management and control over the investment of such asset.

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

Example (1). M, a foreign corporation which uses the calendar year as the taxable year, is engaged in industrial manufacturing in a foreign country. M maintains a branch in the United States which acts as importer and distributor of the merchandise it manufactures abroad; by reason of these branch activities, M is engaged in business in the

United States during 1968. The branch in the United States is required to hold a large current cash balance for business purposes, but the amount of the cash balance so required varies because of the fluctuating seasonal nature of the branch's business. During 1968 at a time when large cash balances are not required the branch invests the surplus amount in U.S. Treasury bills. Since these Treasury bills are held to meet the present needs of the business conducted in the United States they are held in a direct relationship to that business, and the interest for 1968 on these bills is effectively connected for that year with the conduct of the business in the United States by M.

Example (2). R, a foreign corporation engaged in the manufacture of goods, maintains a factory at its branch in the United States and by reason of its activities therein is engaged in business in the United States during the taxable year 1968. R engages a stock brokerage firm in the United States to manage its securities which were purchased with funds from R's general surplus reserves. The brokerage firm is engaged by the U.S. branch and is instructed to deposit all income and gains derived from the securities in the New York bank account of the U.S. branch. The funds invested in these securities are not necessary to provide for the present needs of the U.S. branch. Accordingly, the securities are not held in a direct relationship to the business conducted in the United States by R, and all such income and gains for 1968 from sources within the United States are not effectively connected for that year with the conduct of the business in the United States.

Example (3). S, a foreign corporation which uses the calendar year as the taxable year, is engaged in the manufacture of goods in a foreign country. S maintains a branch in the United States and by reason of the activities of that branch is engaged in business in the United States during 1968. S invests excess cash, which is generated by the U.S. branch but not currently needed in the business of the branch, in securities issued by domestic corporations. The securities are held in the name of S in a brokerage office in the United States, which receives and remits all income from the securities to S's home office abroad. The officers of the U.S. branch have authority to manage the securities held in the brokerage account of S. Any dividends and interest on the securities for 1968, and any gain or loss for that year resulting from the sale or exchange of the securities, are not effectively connected for 1968 with the conduct of the business in the United States by S, because the securities are not held to meet the present needs of that business and thus are not held in a direct relationship to that business.

Example (4). F, a foreign corporation which uses the calendar year as the taxable year, is engaged in business in the United States during 1968 through its manufacturing branch in the United States. The branch holds on its books stock in domestic corporation D, a wholly owned subsidiary of F. There is no relationship between the business of D and the business of F's branch in the United States, and the officers of D report to the home office of F and not to its U.S. branch. Dividends paid on the stock in D are paid to F's branch in the United States and are mingled with its general funds, but the U.S. branch has no present need in its business operations for the cash so received. Since the stock in D is not held in a direct relationship to the business conducted in the United States by F, any dividends received by F during 1968 on such stock are not effectively connected for that year with the conduct of that business.

Example (5). Foreign corporation M, which uses the calendar year as the taxable year,

has a branch office in the United States where it sells to customers located in the United States various products which are manufactured by that corporation in a foreign country. By reason of this activity M is engaged in business in the United States during 1968. The U.S. branch establishes in 1968 a fund to which are periodically credited various amounts which are derived from the business carried on at such branch. The amounts in this fund are invested in various securities issued by domestic corporations by the managing officers of the U.S. branch, who have the responsibility for maintaining proper investment diversification and investment of the fund. During 1968, the branch office derives from sources within the United States dividends on these securities, and gains and losses resulting from the sale or exchange of such securities. Since the securities were acquired with amounts generated by the business conducted in the United States, the dividends are retained in that business, and the portfolio is managed by personnel actively involved in the conduct of that business, the securities are presumed under subdivision (iii)(b) of this subparagraph to be held in a direct relationship to that business. However, M is able to rebut this presumption by demonstrating that the fund was established to carry out a program of future expansion and not to meet the present needs of the business conducted in the United States. Consequently, the income, gains, and losses from the securities for 1968 are not effectively connected for that year with the conduct of a trade or business in the United States by M.

(3) *Application of the business-activities test*—(i) *In general.* For purposes of subparagraph (1) of this paragraph, the business-activities test shall ordinarily apply in making a determination with respect to income, gain, or loss which, even though generally of the passive type, arises directly from the active conduct of the taxpayer's trade or business in the United States. The business-activities test is of primary significance, for example, where (a) dividends, interest, or gain or loss are derived by a dealer in stocks or securities, or similar business, (b) royalties are derived in the active conduct of a business consisting of the licensing of patents or similar intangible property, or (c) service fees are derived in the active conduct of a servicing business. In applying the business-activities test, activities relating to the management of investment portfolios shall not be treated as activities of the trade or business conducted in the United States unless the maintenance of the investments constitutes the principal activity of that trade or business. See also subparagraph (5) of this paragraph for rules applicable to taxpayers conducting a banking, financing, or similar business in the United States.

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

Example (1). Foreign corporation S is a foreign investment company organized for the purpose of investing in stocks and securities. S is not a personal holding company or a corporation which would be a personal holding company but for section 542(c)(7) or 543(b)(1)(C). Its investment portfolios consist of common stocks issued by both foreign and domestic corporations and a sub-

stantial amount of high grade bonds. The business activity of S consists of the management of its portfolios for the purpose of investing, reinvesting, or trading in stocks and securities. During the taxable year 1968, S has its principal office in the United States within the meaning of paragraph (c)(2)(iii) of § 1.864-2 and, by reason of its trading in the United States in stocks and securities, is engaged in business in the United States. The dividends and interest derived by S during 1968 from sources within the United States, and the gains and losses from sources within the United States for such year from the sale of stocks and securities from its investment portfolios, are effectively connected for 1968 with the conduct of the business in the United States by that corporation, since its activities in connection with the management of its investment portfolios are activities of that business and such activities are a material factor in the realization of such income, gains, and losses.

Example (2). N, a foreign corporation which uses the calendar year as the taxable year, has a branch in the United States which acts as an importer and distributor of merchandise; by reason of the activities of that branch, N is engaged in business in the United States during 1968. N also carries on a business in which it licenses patents to unrelated persons in the United States for use in the United States. The businesses of the licensee in which these patents are used have no direct relationship to the business carried on in N's branch in the United States, although the merchandise marketed by the branch is similar in type to that manufactured under the patents. The negotiations and other activities leading up to the consummation of these licenses are conducted by employees of N who are not connected with the U.S. branch of that corporation, and the U.S. branch does not otherwise participate in arranging for the licenses. Royalties received by N during 1968 from these licenses are not effectively connected for that year with the conduct of its business in the United States because the activities of that business are not a material factor in the realization of such income.

(4) *Method of accounting as a factor.* In applying the asset-use test or the business-activities test described in subparagraph (1) of this paragraph, due regard shall be given to whether or not the asset, or the income, gain, or loss, is accounted for through the trade or business conducted in the United States, that is, whether or not the asset, or the income, gain, or loss, is carried on books of account separately kept for that trade or business, but this accounting test shall not by itself be controlling. In applying this subparagraph, consideration shall be given to whether the accounting treatment of an item reflects the consistent application of generally accepted accounting principles in a particular trade or business in accordance with accepted conditions or practices in that trade or business and whether there is a consistent accounting treatment of that item from year to year by the taxpayer.

(5) *Special rules relating to banking, financing, or similar business activity*—(i) *Definition of banking, financing, or similar business.* A nonresident alien individual or a foreign corporation shall be considered for purposes of this section and paragraph (b)(2) of § 1.864-5 to be engaged in the active conduct of a banking, financing, or similar business in the

United States if at some time during the taxable year the taxpayer is engaged in business in the United States and the activities of such business consist of any one or more of the following activities carried on, in whole or in part, in the United States in transactions with persons situated within or without the United States:

(a) Receiving deposits of funds from the public,

(b) Making personal, mortgage, industrial, or other loans to the public,

(c) Purchasing, selling, discounting, or negotiating for the public on a regular basis, notes, drafts, checks, bills of exchange, acceptances, or other evidences of indebtedness,

(d) Issuing letters of credit to the public and negotiating drafts drawn thereunder,

(e) Providing trust services for the public, or

(f) Financing foreign exchange transactions for the public.

Although the fact that the taxpayer is subjected to the banking and credit laws of a foreign country shall be taken into account in determining whether he is engaged in the active conduct of a banking, financing, or similar business, the character of the business actually carried on during the taxable year in the United States shall determine whether the taxpayer is actively conducting a banking, financing, or similar business in the United States. A foreign corporation which acts merely as a financing vehicle for borrowing funds for its parent corporation or any other person who would be a related person within the meaning of section 954(d)(3) if such foreign corporation were a controlled foreign corporation shall not be considered to be engaged in the active conduct of a banking, financing, or similar business in the United States.

(ii) *Effective connection of income from stocks or securities with active conduct of a banking, financing, or similar business.* Notwithstanding the rules in subparagraphs (2) and (3) of this paragraph with respect to the asset-use test and the business-activities test, any dividends or interest from stocks or securities, or any gain or loss from the sale or exchange of stocks or securities which are capital assets, which is from sources within the United States and derived by a nonresident alien individual or a foreign corporation in the active conduct during the taxable year of a banking, financing, or similar business in the United States shall be treated as effectively connected for such year with the conduct of that business only if the stocks or securities giving rise to such income, gain, or loss are attributable to the U.S. office through which such business is carried on and—

(a) Were acquired—

(1) As a result of, or in the course of making loans to the public,

(2) In the course of distributing such stocks or securities to the public, or

(3) For the purpose of being used to satisfy the reserve requirements, or other

requirements similar to reserve requirements, established by a duly constituted banking authority in the United States, or

(b) Consist of securities (as defined in subdivision (v) of this subparagraph) which are—

(1) Payable on demand or at a fixed maturity date not exceeding 1 year from the date of acquisition.

(2) Issued by the United States, or any agency or instrumentality thereof, or

(3) Not described in (a) or in (1) or (2) of this (b).

However, the amount of interest from securities described in (b)(3) of this subdivision (ii) which shall be treated as effectively connected for the taxable year with the active conduct of a banking, financing, or similar business in the United States shall be an amount (but not in excess of the entire interest for the taxable year from sources within the United States from such securities) determined by multiplying the entire interest for the taxable year from sources within the United States from such securities by a fraction the numerator of which is 10 percent and the denominator of which is the same percentage, determined on the basis of a monthly average for the taxable year, as the book value of the total of such securities held by the U.S. office through which such business is carried on bears to the book value of the total assets of such office. The amount of gain or loss, if any, for the taxable year from the sale or exchange of such securities which shall be treated as effectively connected for the taxable year with the active conduct of a banking, financing, or similar business in the United States shall be an amount (but not in excess of the entire gain or loss for the taxable year from sources within the United States from the sale or exchange of such securities) determined by multiplying the entire gain or loss for the taxable year from sources within the United States from the sale or exchange of such securities by the fraction described in the immediately preceding sentence. The percentage of the denominator of the limiting fraction for such purposes shall be the percentage obtained by separately adding the book value of such securities and such total assets held at the close of each month in the taxable year, dividing each such sum by 12, and then dividing the amount of securities so obtained by the amount of assets so obtained. This subdivision does not apply to dividends from stock owned by a foreign corporation in a domestic corporation of which more than 50 percent of the total combined voting power of all classes of stock entitled to vote is owned by such foreign corporation and which is engaged in the active conduct of a banking business in the United States. The application of this subdivision may be illustrated by the following example:

Example. Foreign corporation M, created under the laws of foreign country Y, has in the United States a branch, B, which during

the taxable year is engaged in the active conduct of the banking business in the United States within the meaning of subdivision (i) of this subparagraph. During the taxable year M derives from sources within the United States through the activities carried on through B, \$7,500,000 interest from securities described in subdivision (b)(3) of this subdivision (ii) and \$7,500,000 gain from the sale or exchange of such securities. The monthly average, determined as of the last day of each month in the taxable year, of such securities held by B divided by the monthly average, as so determined, of the total assets held by B equals 15 percent. Under this subdivision, the amount of interest income from such securities that shall be treated as effectively connected for the taxable year with the active conduct by M of a banking business in the United States is \$5 million ($\$7,500,000 \text{ interest} \times 10\% / 15\%$), and the amount of gain from the sale or exchange of such securities that shall be treated as effectively connected for such year with the active conduct of such business is \$5 million ($\$7,500,000 \text{ gain} \times 10\% / 15\%$).

(iii) *Stocks or securities attributable to U.S. office—(a) In general.* For purposes of subdivision (ii) of this subparagraph, a stock or security shall be deemed to be attributable to a U.S. office only if—

(1) Such office actively participated in soliciting, negotiating, or performing other activities required to arrange, the acquisition of such stock or security, and

(2) Such stock or security is or was held in the United States by or for such office and recorded on its books or records as having been purchased or acquired by such office or for its account.

(b) *Exceptions.* A stock or security shall not be deemed to be attributable to a U.S. office merely because such office conducts one or more of the following activities:

(1) Collects or accounts for the dividends, interest, gain, or loss from such stock or security.

(2) Exercises general supervision over the activities of the persons directly responsible for carrying on the activities described in (a)(1) of this subdivision.

(3) Performs merely clerical functions incident to the acquisition of such stock or security, or

(4) Exercises final approval over the execution of the acquisition of such stock or security.

(iv) *Acquisitions in course of making loans to the public.* For purposes of subdivision (ii) of this subparagraph—

(a) A stock or security shall be considered to have been acquired in the course of making a loan to the public where, for example, such stock or security was acquired as additional consideration for the making of the loan.

(b) A stock or security shall be considered to have been acquired as a result of making a loan to the public if, for example, such stock or security was acquired by foreclosure upon a bona fide default of the loan and is held as an ordinary and necessary incident to the active conduct of the banking, financing, or similar business in the United States, and

(c) A stock or security acquired on a stock exchange or organized over-the-counter market shall be considered not to have been acquired as a result of, or in the course of, making loans to the public.

(v) *Security defined.* For purposes of this subparagraph, a security is any bill, note, bond, debenture, or other evidence of indebtedness, or any evidence of an interest in, or right to subscribe to or purchase, any of the foregoing items.

(vi) *Limitations on application of subparagraph—(a) Other business activity.* This subparagraph provides rules for determining when certain income from stocks or securities is effectively connected with the active conduct of a banking, financing, or similar business in the United States. Any dividends, interest, gain, or loss from sources within the United States which by reason of the application of subdivision (ii) of this subparagraph is not effectively connected with the active conduct by a non-resident alien individual or a foreign corporation of a banking, financing, or similar business in the United States may be effectively connected for the taxable year, under subparagraph (2) or (3) of this paragraph with the conduct by such taxpayer of another trade or business in the United States, such as, for example, the business of selling or manufacturing goods or merchandise or of trading in stocks or securities for the taxpayer's own account.

(b) *Other income.* For rules relating to income, gain, or loss from sources within the United States (other than dividends or interest from, or gain or loss from the sale or exchange of, stocks or securities referred to in subdivision (ii) of this subparagraph) derived in the active conduct of a banking, financing, or similar business in the United States, see subparagraphs (2) and (3) of this paragraph and paragraph (b) of this section.

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

Example (1). Foreign corporation F, which is created under the laws of foreign country X and engaged in the active conduct of the banking business in country X and a number of other foreign countries, has in the United States a branch, B, which during the taxable year is engaged in the active conduct of the banking business in the United States within the meaning of subdivision (i) of this subparagraph. In the course of its banking business in foreign countries, F receives at its branches located in country X and other foreign countries substantial deposits in U.S. dollars which are transferred to the accounts of B in the United States. During the taxable year, B actively participates in negotiating loans to residents of the United States, such as call loans to U.S. brokers, which are financed from the U.S. dollar deposits transferred to B by F. In addition, B actively participates in purchasing on the New York Stock Exchange and over-the-counter markets long-term bonds and notes issued by the U.S. Government, U.S. Treasury bills, and long-term interest-bearing bonds issued by domestic corporations and having a maturity date of less than 1 year from the date of acquisition, all of

which are purchased from the deposits transferred to B by F. All of the securities so acquired are held by B and recorded on its books in the United States. Pursuant to subdivision (ii) of this subparagraph, the interest received by F during the taxable year on these loans, bonds, notes, and bills is effectively connected for such year with the active conduct by F of a banking business in the United States.

Example (2). The facts are the same as in example (1) except that B also actively participates in using part of the U.S. dollar deposits, which are transferred to it by F, to purchase on the New York Stock Exchange shares of common stock issued by various domestic corporations. All of the shares so purchased are considered to be capital assets within the meaning of section 1221 and are recorded on B's books in the United States. None of the shares so purchased were acquired for the purpose of meeting reserve or other similar requirements. During the taxable year some of the shares are sold by B on the stock exchange. Pursuant to subdivision (ii) of this subparagraph, the dividends and gains received by F during the taxable year on these shares of stock are not effectively connected with the active conduct by F of a banking, financing, or similar business in the United States.

Example (3). The facts are the same as in example (1) except that B also uses part of the U.S. dollar deposits, which are transferred to it by F, to make a loan to domestic corporation M. As part of the consideration for the loan, M gives to B a number of shares of common stock issued by M. All of these shares of stock are considered to be capital assets within the meaning of section 1221 and are recorded on B's books in the United States. During the taxable year one-half of these shares of stock is sold by B on the New York Stock Exchange. Pursuant to subdivision (ii) of this subparagraph, the dividends and gains received by F during the taxable year on these shares of stock are effectively connected for such year with the active conduct by F of a banking business in the United States.

Example (4). The facts are the same as in example (1) except that during the taxable year the home office of F in country X actively participates in negotiating loans to residents of the United States, such as call loans to U.S. brokers, which are financed by the U.S. dollar deposits received at the home office and are recorded on the books of the home office. B does not participate in negotiating these loans. Pursuant to subdivision (ii) of this subparagraph the interest received by F during the taxable year on these loans made by the home office in country X is not effectively connected with the active conduct by F of a banking, financing, or similar business in the United States.

(6) Income related to personal services of an individual—(i) Income, gain, or loss from assets. Income or gains from sources within the United States described in section 871(a)(1) and derived from an asset, and gain or loss from sources within the United States from the sale or exchange of capital assets, realized by a nonresident alien individual engaged in a trade or business in the United States during the taxable year solely by reason of his performing personal services in the United States shall not be treated as income, gain, or loss which is effectively connected for the taxable year with the conduct of a trade or business in the United States, unless there is a direct economic rela-

tionship between his holding of the asset from which the income, gain, or loss results and his trade or business of performing the personal services. This direct economic relationship exists, for example, where the individual purchases stock in a domestic corporation to assure the opportunity of performing personal services in the United States for that corporation.

(ii) Wages, salaries, and pensions. Wages, salaries, fees, compensations, emoluments, or other remunerations, including bonuses, received by a nonresident alien individual for performing personal services in the United States which, under paragraph (a) of § 1.864-2, constitute engaging in a trade or business in the United States, and pensions and retirement pay attributable to such personal services, constitute income which is effectively connected for the taxable year with the conduct of a trade or business in the United States by that individual if he is engaged in a trade or business in the United States at some time during the taxable year in which such income is received.

§ 1.864-5 Foreign source income effectively connected with U.S. business.

(a) In general. This section applies only to a nonresident alien individual or a foreign corporation that is engaged in a trade or business in the United States at some time during a taxable year beginning after December 31, 1966, and to the income, gain, or loss of such person from sources without the United States. The income, gain, or loss of such person for the taxable year from sources without the United States which is specified in paragraph (b) of this section shall be treated as effectively connected for the taxable year with the conduct of a trade or business in the United States, only if he also has in the United States at some time during the taxable year, but not necessarily at the time the income, gain, or loss is realized, an office or other fixed place of business, as defined in § 1.864-7, to which such income, gain, or loss is attributable in accordance with § 1.864-6. The income of such person for the taxable year from sources without the United States which is specified in paragraph (c) of this section shall be treated as effectively connected for the taxable year with the conduct of a trade or business in the United States when derived by a foreign corporation carrying on a life insurance business in the United States. Except as provided in paragraphs (b) and (c) of this section, no income, gain, or loss of a nonresident alien individual or a foreign corporation for the taxable year from sources without the United States shall be treated as effectively connected for the taxable year with the conduct of a trade or business in the United States by that person. Any income, gain, or loss described in paragraph (b) or (c) of this section which, if it were derived by the taxpayer from sources within the United States for the taxable year, would not be treated under § 1.864-4 as effectively

connected for the taxable year with the conduct of a trade or business in the United States shall not be treated under this section as effectively connected for the taxable year with the conduct of a trade or business in the United States.

(b) Income other than income attributable to U.S. life insurance business. Income, gain, or loss from sources without the United States other than income described in paragraph (c) of this section shall be taken into account pursuant to paragraph (a) of this section in applying §§ 1.864-6 and 1.864-7 only if it consists of—

(1) Rents, royalties, or gains on sales of intangible property. (i) Rents or royalties for the use of, or for the privilege of using, intangible personal property located outside the United States or from any interest in such property, including rents or royalties for the use, or for the privilege of using, outside the United States, patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other like properties, if such rents or royalties are derived in the active conduct of the trade or business in the United States.

(ii) Gains or losses on the sale or exchange of intangible personal property located outside the United States or from any interest in such property, including gains or losses on the sale or exchange of the privilege of using, outside the United States, patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other like properties, if such gains or losses are derived in the active conduct of the trade or business in the United States.

(iii) Whether or not such an item of income, gain, or loss is derived in the active conduct of a trade or business in the United States shall be determined from the facts and circumstances of each case. The frequency with which a nonresident alien individual or a foreign corporation enters into transactions of the type from which the income, gain, or loss is derived shall not of itself determine that the income, gain, or loss is derived in the active conduct of a trade or business.

(iv) This subparagraph shall not apply to rents or royalties for the use of, or for the privilege of using, real property or tangible personal property, or to gain or loss from the sale or exchange of such property.

(2) Dividends or interest, or gains or loss from sales of stocks or securities—

(i) In general. Dividends or interest from any transaction, or gains or losses on the sale or exchange of stocks or securities, realized by (a) a nonresident alien individual or a foreign corporation in the active conduct of a banking, financing, or similar business in the United States or (b) a foreign corporation engaged in business in the United States whose principal business is trading in stocks or securities for its own account. Whether the taxpayer is engaged in the active conduct of a banking, financing,

or similar business in the United States for purposes of this subparagraph shall be determined in accordance with the principles of paragraph (c)(5)(i) of § 1.864-4.

(i) *Incidental investment activity.* This subparagraph shall not apply to income, gain, or loss realized by a non-resident alien individual or foreign corporation on stocks or securities held, sold, or exchanged in connection with incidental investment activities carried on by that person. Thus, a foreign corporation which is primarily a holding company owning significant percentages of the stocks or securities issued by other corporations shall not be treated under this subparagraph as a corporation the principal business of which is trading in stocks or securities for its own account, solely because it engages in sporadic purchases or sales of stocks or securities to adjust its portfolio. The application of this subdivision may be illustrated by the following example:

Example. F, a foreign corporation, owns voting stock in foreign corporations M, N, and P, its holdings in such corporations constituting 15, 20, and 100 percent, respectively, of all classes of their outstanding voting stock. Each of such stock holdings by F represents approximately 20 percent of its total assets. The remaining 40 percent of F's assets consist of other investments, 20 percent being invested in securities issued by foreign governments and in stocks and bonds issued by other corporations in which F does not own a significant percentage of their outstanding voting stock, and 20 percent being invested in bonds issued by N. None of the assets of F are held primarily for sale; but, if the officers of that corporation were to decide that other investments would be preferable to its holding of such assets, F would sell the stocks and securities and reinvest the proceeds therefrom in other holdings. Any income, gain, or loss which F may derive from this investment activity is not considered to be realized by a foreign corporation described in subdivision (1) of this subparagraph.

(3) *Sale of goods or merchandise through U.S. office.* (i) Income, gain, or loss from the sale of inventory items or of property held primarily for sale to customers in the ordinary course of business, as described in section 1221(1), where the sale is outside the United States but through the office or other fixed place of business which the non-resident alien or foreign corporation has in the United States, irrespective of the destination to which such property is sent for use, consumption, or disposition.

(ii) This subparagraph shall not apply to income, gain, or loss resulting from a sales contract entered into on or before February 24, 1966. See section 102(e)(1) of the Foreign Investors Tax Act of 1966 (80 Stat. 1547). Thus, for example, the sales office in the United States of a foreign corporation enters into negotiations for the sale of 500,000 industrial bearings which the corporation produces in a foreign country for consumption in the Western Hemisphere. These negotiations culminate in a binding agreement entered into on January 1, 1966. By its terms delivery under the contract is to

be made over a period of 3 years beginning in March of 1966. Payment is due upon delivery. The income from sources without the United States resulting from this sale negotiated by the U.S. sales office of the foreign corporation shall not be taken into account under this subparagraph for any taxable year.

(iii) This subparagraph shall not apply to gains or losses on the sale or exchange of intangible personal property to which subparagraph (1) of this paragraph applies or of stocks or securities to which subparagraph (2) of this paragraph applies.

(c) *Income attributable to U.S. life insurance business.* (1) All of the income for the taxable year of a foreign corporation described in subparagraph (2) of this paragraph from sources without the United States, which is attributable to its U.S. life insurance business, shall be treated as effectively connected for the taxable year with the conduct of a trade or business in the United States by that corporation. Thus, in determining its life insurance company taxable income from its U.S. business for purposes of section 802, the foreign corporation shall include all of its items of income from sources without the United States which would appropriately be taken into account in determining the life insurance company taxable income of a domestic corporation. The income to which this subparagraph applies shall be taken into account for purposes of paragraph (a) of this section without reference to §§ 1.864-6 and 1.864-7.

(2) A foreign corporation to which subparagraph (1) of this paragraph applies is a foreign corporation carrying on an insurance business in the United States during the taxable year which—

(i) Without taking into account its income not effectively connected for that year with the conduct of any trade or business in the United States, would qualify as a life insurance company under part I (section 801 and following) of subchapter L, chapter 1 of the Code, if it were a domestic corporation, and

(ii) By reason of section 842 is taxable under that part on its income which is effectively connected for that year with its conduct of any trade or business in the United States.

(d) *Excluded foreign source income.* Notwithstanding paragraphs (b) and (c) of this section, no income from sources without the United States shall be treated as effectively connected for any taxable year with the conduct of a trade or business in the United States by a non-resident alien individual or a foreign corporation if the income consists of—

(1) *Dividends, interest, or royalties paid by a related foreign corporation.* Dividends, interest, or royalties paid by a foreign corporation in which the non-resident alien individual or the foreign corporation described in paragraph (a) of this section owns, within the meaning of section 958(a), or is considered as owning, by applying the ownership rules of section 958(b), at the time such items

are paid more than 50 percent of the total combined voting power of all classes of stock entitled to vote.

(2) *Subpart F income of a controlled foreign corporation.* Any income of the foreign corporation described in paragraph (a) of this section which is subpart F income for the taxable year, as determined under section 952(a), even though part of the income is attributable to amounts which, if distributed by the foreign corporation, would be distributed with respect to its stock which is owned by shareholders who are not U.S. shareholders within the meaning of section 951(b). This subparagraph shall not apply to any income of the foreign corporation which is excluded in determining its subpart F income for the taxable year for purposes of section 952(a). Thus, for example, this subparagraph shall not apply to—

(i) Any dividends, interest, or gains from qualified investments in less developed countries which are excluded under section 954(b)(1),

(ii) Foreign base company income amounting to less than 30 percent of gross income which by reason of section 954(b)(3)(A) does not become subpart F income for the taxable year,

(iii) Any income excluded from foreign base company income under section 954(b)(4), relating to exception for foreign corporations not availed of to reduce taxes,

(iv) Any income derived in the active conduct of a trade or business which is excluded under section 954(c)(3), or

(v) Any income received from related persons which is excluded under section 954(c)(4).

This subparagraph shall apply to the foreign corporation's entire subpart F income for the taxable year determined under section 952(a), even though no amount is included in the gross income of a U.S. shareholder under section 951(a) with respect to that subpart F income because of the minimum distribution provisions of section 963(a) or because of the reduction under section 970(a) with respect to an export trade corporation. This subparagraph shall apply only to a foreign corporation which is a controlled foreign corporation within the meaning of section 957 and the regulations thereunder. The application of this subparagraph may be illustrated by the following examples:

Example (1). Controlled foreign corporation M, incorporated under the laws of foreign country X, is engaged in the business of purchasing and selling merchandise manufactured in foreign country Y by an unrelated person. M negotiates sales, through its sales office in the United States, of its merchandise for use outside of country X. These sales are made outside the United States, and the merchandise is sold for use outside the United States. No office maintained by M outside the United States participates materially in the sales made through its U.S. sales office. These activities constitute the only activities of M. During the taxable year M derives \$100,000 income from these sales made through its U.S. sales office, and all of such income is foreign base

company sales income by reason of section 954(d)(2) and paragraph (b) of § 1.954-3. The entire \$100,000 is also subpart F income, determined under section 952(a). In addition, all of this income would, without reference to section 864(c)(4)(D)(ii) and this subparagraph, be treated as effectively connected for the taxable year with the conduct of a trade or business in the United States by M. Through its entire taxable year 60 percent of the one class of stock of M is owned within the meaning of section 958(a) by U.S. shareholders, as defined in section 951(b), and 40 percent of its one class of stock is owned within the meaning of section 958(a) by persons who are not U.S. shareholders, as defined in section 951(b). Although only \$60,000 of the subpart F income of M for the taxable year is includible in the income of the U.S. shareholders under section 951(a), the entire subpart F income of \$100,000 constitutes income which, by reason of section 864(c)(4)(D)(ii) and this subparagraph, is not effectively connected for the taxable year with the conduct of a trade or business in the United States by M.

Example (2). The facts are the same as in example (1) except that the foreign base company sales income amounts to \$150,000 determined in accordance with paragraph (d)(3)(i) of § 1.954-1, and that M also has gross income from sources without the United States of \$50,000 from sales, through its sales office in the United States, of merchandise for use in country X. These sales are made outside the United States. All of this income would, without reference to section 864(c)(4)(D)(ii) and this subparagraph, be treated as effectively connected for the taxable year with the conduct of a trade or business in the United States by M. Since the foreign base company income of \$150,000 amounts to 75 percent of the entire gross income of \$200,000, determined as provided in paragraph (d)(3)(ii) of § 1.954-1, the entire \$200,000 constitutes foreign base company income under section 954(b)(3)(B). Assuming that M has no amounts to be taken into account under paragraphs (1), (2), (4), and (5) of section 954(b), the \$200,000 is also subpart F income, determined under section 952(a). This subpart F income of \$200,000 constitutes income which, by reason of section 864(c)(4)(D)(ii) and this subparagraph, is not effectively connected for the taxable year with the conduct of a trade or business in the United States by M.

(3) **Interest on certain deposits.** Interest which, by reason of section 861(a)(1)(A) (relating to interest on deposits with banks, savings and loan associations, and insurance companies paid or credited before January 1, 1976) and paragraph (c) of § 1.864-4, is determined to be income from sources without the United States because it is not effectively connected for the taxable year with the conduct of a trade or business in the United States by the nonresident alien individual or foreign corporation.

§ 1.864-6 Income, gain, or loss attributable to an office or other fixed place of business in the United States.

(a) **In general.** Income, gain, or loss from sources without the United States which is specified in paragraph (b) of § 1.864-5 and received by a nonresident alien individual or a foreign corporation

engaged in a trade or business in the United States at some time during a taxable year beginning after December 31, 1966, shall be treated as effectively connected for the taxable year with the conduct of a trade or business in the United States only if the income, gain, or loss is attributable under paragraphs (b) and (c) of this section to an office or other fixed place of business, as defined in § 1.864-7, which the taxpayer has in the United States at some time during the taxable year.

(b) **Material factor test—(1) In general.** For purposes of paragraph (a) of this section, income, gain, or loss is attributable to an office or other fixed place of business which a nonresident alien individual or a foreign corporation has in the United States only if such office or other fixed place of business is a material factor in the realization of the income, gain, or loss, and if the income, gain, or loss is realized in the ordinary course of the trade or business carried on through that office or other fixed place of business. For this purpose, the activities of the office or other fixed place of business shall not be considered to be a material factor in the realization of the income, gain, or loss unless they provide a significant contribution to, by being an essential economic element in, the realization of the income, gain, or loss. Thus, for example, meetings in the United States of the board of directors of a foreign corporation do not of themselves constitute a material factor in the realization of income, gain, or loss. It is not necessary that the activities of the office or other fixed place of business in the United States be a major factor in the realization of the income, gain, or loss. An office or other fixed place of business located in the United States at some time during a taxable year may be a material factor in the realization of an item of income, gain, or loss for that year even though the office or other fixed place of business is not present in the United States when the income, gain, or loss is realized.

(2) **Application of material factor test to specific classes of income.** For purposes of paragraph (a) of this section, an office or other fixed place of business which a nonresident alien individual or a foreign corporation, engaged in a trade or business in the United States at some time during the taxable year, had in the United States, shall be considered a material factor in the realization of income, gain, or loss consisting of—

(i) **Rents, royalties, or gains on sales of intangible property.** Rents, royalties, or gains or losses, from intangible personal property specified in paragraph (b)(1) of § 1.864-5, if the office or other fixed place of business either actively participates in soliciting, negotiating, or performing other activities required to arrange, the lease, license, sale, or exchange from which such income, gain, or loss is derived or performs significant services incident to such lease, license, sale, or exchange. An office or other fixed place of business in the United States

shall not be considered to be a material factor in the realization of income, gain, or loss for purposes of this subdivision merely because the office or other fixed place of business conducts one or more of the following activities: (a) develops, creates, produces, or acquires and adds substantial value to, the property which is leased, licensed, or sold, or exchanged, (b) collects or accounts for the rents, royalties, gains, or losses, (c) exercises general supervision over the activities of the persons directly responsible for carrying on the activities or services described in the immediately preceding sentence, (d) performs merely clerical functions incident to the lease, license, sale, or exchange or (e) exercises final approval over the execution of the lease, license, sale, or exchange. The application of this subdivision may be illustrated by the following examples:

Example (1). F, a foreign corporation, is engaged in the active conduct of the business of licensing patents which it has either purchased or developed in the United States. F has a business office in the United States. Licenses for the use of such patents outside the United States are negotiated by offices of F located outside the United States, subject to approval by an officer of such corporation located in the U.S. office. All services which are rendered to F's foreign licensees are performed by employees of F's offices located outside the United States. None of the income, gain, or loss resulting from the foreign licenses so negotiated by F is attributable to its business office in the United States.

Example (2). N, a foreign corporation, is engaged in the active conduct of the business of distributing motion picture films and television programs. N does not distribute such films or programs in the United States. The foreign distribution rights to these films and programs are acquired by N's U.S. business office from the U.S. owners of these films and programs. Employees of N's offices located in various foreign countries carry on in such countries all the solicitations and negotiations for the licensing of these films and programs to licensees located in such countries and provide the necessary incidental services to the licensees. N's U.S. office collects the rentals from the foreign licensees and maintains the necessary records of income and expense. Officers of N located in the United States also maintain general supervision over the employees of the foreign offices, but the foreign employees conduct the day to day business of N outside the United States of soliciting, negotiating, or performing other activities required to arrange the foreign licenses. None of the income, gain, or loss resulting from the foreign licenses so negotiated by N is attributable to N's U.S. office.

(ii) **Dividends or interest, or gains or losses from sales of stock or securities—(a) In general.** Dividends or interest from any transaction, or gains or losses on the sale or exchange of stocks or securities, specified in paragraph (b)(2) of § 1.864-5, if the office or other fixed place of business either actively participates in soliciting, negotiating, or performing other activities required to arrange, the issue, acquisition, sale, or exchange, of the asset from which such income, gain, or loss is derived or performs significant services incident to such issue, acquisition, sale, or exchange.

An office or other fixed place of business in the United States shall not be considered to be a material factor in the realization of income, gain, or loss for purposes of this subdivision merely because the office or other fixed place of business conducts one or more of the following activities: (1) collects or accounts for the dividends, interest, gains, or losses, (2) exercises general supervision over the activities of the persons directly responsible for carrying on the activities or services described in the immediately preceding sentence, (3) performs merely clerical functions incident to the issue, acquisition, sale, or exchange, or (4) exercises final approval over the execution of the issue, acquisition, sale, or exchange.

(b) *Effective connection of income from stocks or securities with active conduct of a banking, financing, or similar business.* Notwithstanding (a) of this subdivision (ii), the determination as to whether any dividends or interest from stocks or securities, or gain or loss from the sale or exchange of stocks or securities which are capital assets, which is from sources without the United States and derived by a nonresident alien individual or a foreign corporation in the active conduct during the taxable year of a banking, financing, or similar business in the United States, shall be treated as effectively connected for such year with the active conduct of that business shall be made by applying the principles of paragraph (c) (5) (ii) of § 1.864-4 for determining whether income, gain, or loss of such type from sources within the United States is effectively connected for such year with the active conduct of that business.

(c) *Security defined.* For purposes of this subdivision (ii), a security is any bill, note, bond, debenture, or other evidence of indebtedness, or any evidence of an interest in, or right to subscribe to or purchase, any of the foregoing items.

(d) *Limitations on application of rules on banking, financing, or similar business—(1) Trading for taxpayer's own account.* The provisions of (b) of this subdivision (ii) apply for purposes of determining when certain income, gain, or loss from stocks or securities is effectively connected with the active conduct of a banking, financing, or similar business in the United States. Any dividends, interest, gain, or loss from sources without the United States which by reason of the application of (b) of this subdivision (ii) is not effectively connected with the active conduct by a foreign corporation of a banking, financing, or similar business in the United States may be effectively connected for the taxable year, under (a) of this subdivision (ii), with the conduct by such taxpayer of a trade or business in the United States which consists of trading in stocks or securities for the taxpayer's own account.

(2) *Other income.* For rules relating to dividends or interest from sources

without the United States (other than dividends or interest from, or gain or loss from the sale or exchange of, stocks or securities referred to in (b) of this subdivision (ii)) derived in the active conduct of a banking, financing, or similar business in the United States, see (a) of this subdivision (ii).

(iii) *Sale of goods or merchandise through U.S. office.* Income, gain, or loss from sales of goods or merchandise specified in paragraph (b) (3) of § 1.864-5, if the office or other fixed place of business actively participates in soliciting the order, negotiating the contract of sale, or performing other significant services necessary for the consummation of the sale which are not the subject of a separate agreement between the seller and the buyer. The office or other fixed place of business in the United States shall be considered a material factor in the realization of income, gain, or loss from a sale made as a result of a sales order received in such office or other fixed place of business except where the sales order is received unsolicited and that office or other fixed place of business is not held out to potential customers as the place to which such sales orders should be sent. The income, gain, or loss must be realized in the ordinary course of the trade or business carried on through the office or other fixed place of business in the United States. Thus, if a foreign corporation is engaged solely in a manufacturing business in the United States, the income derived by its office in the United States as a result of an occasional sale outside the United States is not attributable to the U.S. office if the sales office of the manufacturing business is located outside the United States. On the other hand, if a foreign corporation establishes a sales office in the United States to sell for consumption in the Western Hemisphere merchandise which the corporation produces in Africa, the income derived by the sales office in the United States as a result of an occasional sale made by it in Europe shall be attributable to the U.S. sales office. An office or other fixed place of business in the United States shall not be considered to be a material factor in the realization of income, gain, or loss for purposes of this subdivision merely because of one or more of the following activities: (a) the sale is made subject to the final approval of such office or other fixed place of business, (b) the property sold is held in, and distributed from, such office or other fixed place of business, (c) samples of the property sold are displayed (but not otherwise promoted or sold) in such office or other fixed place of business, or (d) such office or other fixed place of business performs merely clerical functions incident to the sale. Activities carried on by employees of an office or other fixed place of business constitute activities of that office or other fixed place of business.

(3) *Limitation where foreign office is a material factor in realization of income—(i) Goods or merchandise des-*

igned for foreign use, consumption, or disposition. Notwithstanding subparagraphs (1) and (2) of this paragraph, an office or other fixed place of business which a nonresident alien individual or a foreign corporation has in the United States shall not be considered, for purposes of paragraph (a) of this section, to be a material factor in the realization of income, gain, or loss from sales of goods or merchandise specified in paragraph (b) (3) of § 1.864-5 if the property is sold for use, consumption, or disposition outside the United States and an office or other fixed place of business, as defined in § 1.864-7, which such nonresident alien individual or foreign corporation has outside the United States participates materially in the sale. For this purpose an office or other fixed place of business which the taxpayer has outside the United States shall be considered to have participated materially in a sale made through the office or other fixed place of business in the United States if the office or other fixed place of business outside the United States actively participates in soliciting the order resulting in the sale, negotiating the contract of sale, or performing other significant services necessary for the consummation of the sale which are not the subject of a separate agreement between the seller and buyer. An office or other fixed place of business which the taxpayer has outside the United States shall not be considered to have participated materially in a sale merely because of one or more of the following activities: (a) The sale is made subject to the final approval of such office or other fixed place of business, (b) the property sold is held in, and distributed from, such office or other fixed place of business, (c) samples of the property sold are displayed (but not otherwise promoted or sold) in such office or other fixed place of business, (d) such office or other fixed place of business is used for purposes of having title to the property pass outside the United States, or (e) such office or other fixed place of business performs merely clerical functions incident to the sale.

(ii) *Rules for determining country of use, consumption, or disposition—(a) In general.* As a general rule, personal property which is sold to an unrelated person shall be presumed for purposes of this subparagraph to have been sold for use, consumption, or disposition in the country of destination of the property sold; for such purpose, the occurrence in a country of a temporary interruption in shipment of property shall not cause that country to be considered the country of destination. However, if at the time of a sale of personal property to an unrelated person the taxpayer knew, or should have known from the facts and circumstances surrounding the transaction, that the property probably would not be used, consumed, or disposed of in the country of destination, the taxpayer must determine the country of ultimate use, consumption, or disposition of the property

or the property shall be presumed to have been sold for use, consumption, or disposition in the United States. A taxpayer who sells personal property to a related person shall be presumed to have sold the property for use, consumption, or disposition in the United States unless the taxpayer establishes the use made of the property by the related person; once he has established that the related person has disposed of the property, the rules in the two immediately preceding sentences relating to sales to an unrelated person shall apply at the first stage in the chain of distribution at which a sale is made by a related person to an unrelated person. Notwithstanding the preceding provisions of this subdivision (a), a taxpayer who sells personal property to any person whose principal business consists of selling from inventory to retail customers at retail outlets outside the United States may assume at the time of the sale to that person that the property will be used, consumed, or disposed of outside the United States. For purposes of this (a), a person is related to another person if either person owns or controls directly or indirectly the other, or if any third person or persons own or control directly or indirectly both. For this purpose, the term "control" includes any kind of control, whether or not legally enforceable, and however exercised or exercisable. For illustrations of the principles of this subdivision, see paragraph (a)(3)(iv) of § 1.954-3.

(b) *Fungible goods.* For purposes of this subparagraph, a taxpayer who sells to a purchaser personal property which because of its fungible nature cannot reasonably be specifically traced to other purchasers and to the countries of ultimate use, consumption, or disposition shall, unless the taxpayer establishes a different disposition as being proper, treat that property as being sold, for ultimate use, consumption, or disposition in those countries, and to those other purchasers, in the same proportions in which property from the fungible mass of the first purchaser is sold in the ordinary course of business by such first purchaser. No apportionment is required to be made, however, on the basis of sporadic sales by the first purchaser. This (b) shall apply only in a case where the taxpayer knew, or should have known from the facts and circumstances surrounding the transaction, the manner in which the first purchaser disposes of property from the fungible mass.

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

Example. Foreign corporation M has a sales office in the United States during the taxable year through which it sells outside the United States for use in foreign countries industrial electrical generators which such corporation manufactures in a foreign country. M is not a controlled foreign corporation within the meaning of section 957 and the regulations thereunder, and, by reason of its activities in the United States, is engaged in business in the United States during the taxable year. The generators require specialized installation and continuous

adjustment and maintenance services. M has an office in foreign country X which is the only organization qualified to perform these installation, adjustment, and maintenance services. During the taxable year M sells several generators through its U.S. office for use in foreign country Y under sales contracts which also provide for installation, adjustment, and maintenance by its office in country X. The generators are installed in country Y by employees of M's office in country X, who also are responsible for the servicing of the equipment. Since the office of M in country X performs significant services incident to these sales which are necessary for their consummation and are not the subject of a separate agreement between M and the purchaser, the U.S. office of M is not considered to be a material factor in the realization of the income from the sales and, for purposes of paragraph (a) of this section, such income is not attributable to the U.S. office of that corporation.

(c) *Amount of income, gain, or loss allocable to U.S. office—(1) In general.* If, in accordance with paragraph (b) of this section, an office or other fixed place of business which a nonresident alien individual or a foreign corporation has in the United States at some time during the taxable year is a material factor in the realization for that year of an item of income, gain, or loss specified in paragraph (b) of § 1.864-5, such item of income, gain, or loss shall be considered to be allocable in its entirety to that office or other fixed place of business. In no case may any income, gain, or loss for the taxable year from sources without the United States, or part thereof, be allocable under this paragraph to an office or other fixed place of business which a nonresident alien individual or a foreign corporation has in the United States if the taxpayer is at no time during the taxable year engaged in a trade or business in the United States.

(2) *Special limitation in case of sales of goods or merchandise through U.S. office.* Notwithstanding subparagraph (1) of this paragraph, in the case of a sale of goods or merchandise specified in paragraph (b)(3) of § 1.864-5, which is not a sale to which paragraph (b)(3)(i) of this section applies, the amount of income which shall be considered to be allocable to the office or other fixed place of business which the nonresident alien individual or foreign corporation has in the United States shall not exceed the amount which would be treated as income from sources within the United States if the taxpayer had sold the goods or merchandise in the United States. See, for example, section 863(b)(2) and paragraph (b) of § 1.863-3, which prescribes, as available methods for determining the income from sources within the United States, the independent factory or production price method, the gross sales and property apportionment method, and any other method regularly employed by the taxpayer which more clearly reflects taxable income from such sources than those specifically authorized.

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

Example (1). Foreign corporation M, which is not a controlled foreign corporation within the meaning of section 957 and the regulations thereunder, manufactures machinery in a foreign country and sells the machinery outside the United States through its sales office in the United States for use in foreign countries. Title to the property which is sold is transferred to the foreign purchaser outside the United States, but no office or other fixed place of business of M in a foreign country participates materially in the sale made through its U.S. office. During the taxable year M derives a total taxable income (determined as though M were a domestic corporation) of \$250,000 from these sales. If the sales made through the U.S. office for the taxable year had been made in the United States and the property had been sold for use in the United States, the taxable income from sources within the United States from such sales would have been \$100,000, determined as provided in section 863 and 882(c) and the regulations thereunder. The taxable income which is allocable to M's U.S. sales office pursuant to this paragraph and which is effectively connected for the taxable year with the conduct of a trade or business within the United States by that corporation is \$100,000.

Example (2). Foreign corporation N, which is not a controlled foreign corporation within the meaning of section 957 and the regulations thereunder, has an office in a foreign country which purchases merchandise and sells it through its sales office in the United States for use in various foreign countries, such sales being made outside the United States and title to the property passing outside the United States. No other office of N participates materially in these sales made through its U.S. office. By reason of its sales activities in the United States, N is engaged in business in the United States during the taxable year. During the taxable year N derives taxable income (determined as though N were a domestic corporation) of \$300,000 from these sales made through its U.S. sales office. If the sales made through the U.S. office for the taxable year had been made in the United States and the property had been sold for use in the United States, the taxable income from sources within the United States from such sales would also have been \$300,000, determined as provided in sections 861 and 882(c) and the regulations thereunder. The taxable income which is allocable to N's U.S. sales office pursuant to this paragraph and which is effectively connected for the taxable year with the conduct of a trade or business in the United States by that corporation is \$300,000.

Example (3). The facts are the same as in example (2), except that N has an office in a foreign country which participates materially in the sales which are made through its U.S. office. The taxable income which is allocable to N's U.S. sales office is not effectively connected for the taxable year with the conduct of a trade or business in the United States by that corporation.

§ 1.864-7 Definition of office or other fixed place of business.

(a) *In general.* (1) This section applies for purposes of determining whether a nonresident alien individual or a foreign corporation that is engaged in a trade or business in the United States at some time during a taxable year beginning after December 31, 1966, has an office or other fixed place of business in the United States for purposes of applying section 864(c)(4)(B) and § 1.864-6 to income, gain, or loss specified in

paragraph (b) of § 1.864-5 from sources without the United States or has an office or other fixed place of business outside the United States for purposes of applying section 864(c) (4) (B) (iii) and paragraph (b) (3) (i) of § 1.864-6 to sales of goods or merchandise for use, consumption, or disposition outside the United States.

(2) In making a determination under this section due regard shall be given to the facts and circumstances of each case, particularly to the nature of the taxpayer's trade or business and the physical facilities actually required by the taxpayer in the ordinary course of the conduct of his trade or business.

(3) The law of a foreign country shall not be controlling in determining whether a nonresident alien individual or a foreign corporation has an office or other fixed place of business.

(b) *Fixed facilities*—(1) *In general.* As a general rule, an office or other fixed place of business is a fixed facility, that is, a place, site, structure, or other similar facility, through which a nonresident alien individual or a foreign corporation engages in a trade or business. For this purpose an office or other fixed place of business shall include, but shall not be limited to, a factory; a store or other sales outlet; a workshop; or a mine, quarry, or other place of extraction of natural resources. A fixed facility may be considered an office or other fixed place of business whether or not the facility is continuously used by a nonresident alien individual or foreign corporation.

(2) *Use of another person's office or other fixed place of business.* A nonresident alien individual or a foreign corporation shall not be considered to have an office or other fixed place of business merely because such alien individual or foreign corporation uses another person's office or other fixed place of business, whether or not the office or place of business of a related person, through which to transact a trade or business, if the trade or business activities of the alien individual or foreign corporation in that office or other fixed place of business are relatively sporadic or infrequent, taking into account the overall needs and conduct of that trade or business.

(c) *Management activity.* A foreign corporation shall not be considered to have an office or other fixed place of business merely because a person controlling that corporation has an office or other fixed place of business from which general supervision and control over the policies of the foreign corporation are exercised. The fact that top management decisions affecting the foreign corporation are made in a country shall not of itself mean that the foreign corporation has an office or other fixed place of business in that country. For example, a foreign sales corporation which is a wholly owned subsidiary of a domestic corporation shall not be considered to have an office or other fixed place of business in the United States merely because of the presence in the United States of officers of the domestic parent

corporation who are generally responsible only for the policy decisions affecting the foreign sales corporation, provided that the foreign corporation has a chief executive officer, whether or not he is also an officer of the domestic parent corporation, who conducts the day-to-day trade or business of the foreign corporation from a foreign office. The result in this example would be the same even if the executive officer should (1) regularly confer with the officers of the domestic parent corporation, (2) occasionally visit the U.S. office of the domestic parent corporation, and (3) during such visits to the United States temporarily conduct the business of the foreign subsidiary corporation out of the domestic parent corporation's office in the United States.

(d) *Agent activity*—(1) *Dependent agents*—(i) *In general.* In determining whether a nonresident alien individual or a foreign corporation has an office or other fixed place of business, the office or other fixed place of business of an agent who is not an independent agent, as defined in subparagraph (3) of this paragraph, shall be disregarded unless such agent (a) has the authority to negotiate and conclude contracts in the name of the nonresident alien individual or foreign corporation, and regularly exercises that authority, or (b) has a stock of merchandise belonging to the nonresident alien individual or foreign corporation from which orders are regularly filled on behalf of such alien individual or foreign corporation. A person who purchases goods from a nonresident alien individual or a foreign corporation shall not be considered to be an agent for such alien individual or foreign corporation for purposes of this paragraph where such person is carrying on such purchasing activities in the ordinary course of its own business, even though such person is related in some manner to the nonresident alien individual or foreign corporation. For example, a wholly owned domestic subsidiary corporation of a foreign corporation shall not be treated as an agent of the foreign parent corporation merely because the subsidiary corporation purchases goods from the foreign parent corporation and resells them in its own name. However, if the domestic subsidiary corporation regularly negotiates and concludes contracts in the name of its foreign parent corporation or maintains a stock of merchandise from which it regularly fills orders on behalf of the foreign parent corporation, the office or other fixed place of business of the domestic subsidiary corporation shall be treated as the office or other fixed place of business of the foreign parent corporation unless the domestic subsidiary corporation is an independent agent within the meaning of subparagraph (3) of this paragraph.

(ii) *Authority to conclude contracts or fill orders.* For purposes of subdivision (i) of this subparagraph, an agent shall be considered regularly to exercise au-

thority to negotiate and conclude contracts or regularly to fill orders on behalf of his foreign principal only if the authority is exercised, or the orders are filled, with some frequency over a continuous period of time. This determination shall be made on the basis of the facts and circumstances in each case, taking into account the nature of the business of the principal; but, in all cases, the frequency and continuity tests are to be applied conjunctively. Regularity shall not be evidenced by occasional or incidental activity. An agent shall not be considered regularly to negotiate and conclude contracts on behalf of his foreign principal if the agent's authority to negotiate and conclude contracts is limited only to unusual cases or such authority must be separately secured by the agent from his principal with respect to each transaction effected.

(2) *Independent agents.* The office or other fixed place of business of an independent agent, as defined in subparagraph (3) of this paragraph, shall not be treated as the office or other fixed place of business of his principal who is a nonresident alien individual or a foreign corporation, irrespective of whether such agent has authority to negotiate and conclude contracts in the name of his principal, and regularly exercises that authority, or maintains a stock of goods from which he regularly fills orders on behalf of his principal.

(3) *Definition of independent agent*—(i) *In general.* For purposes of this paragraph, the term "independent agent" means a general commission agent, broker, or other agent of an independent status acting in the ordinary course of his business in that capacity. Thus, for example, an agent who, in pursuance of his usual trade or business, and for compensation, sells goods or merchandise consigned or entrusted to his possession, management, and control for that purpose by or for the owner of such goods or merchandise is an independent agent.

(ii) *Related persons.* The determination of whether an agent is an independent agent for purposes of this paragraph shall be made without regard to facts indicating that either the agent or the principal owns or controls directly or indirectly the other or that a third person or persons own or control directly or indirectly both. For example, a wholly owned domestic subsidiary corporation of a foreign corporation which acts as an agent for the foreign parent corporation may be treated as acting in the capacity of independent agent for the foreign parent corporation. The facts and circumstances of a specific case shall determine whether the agent, while acting for his principal, is acting in pursuance of his usual trade or business and in such manner as to constitute him an independent agent in his relations with the nonresident alien individual or foreign corporation.

(iii) *Exclusive agents.* Where an agent who is otherwise an independent agent within the meaning of subdivision

(i) of this subparagraph acts in such capacity exclusively, or almost exclusively, for one principal who is a nonresident alien individual or a foreign corporation, the facts and circumstances of a particular case shall be taken into account in determining whether the agent, while acting in that capacity, may be classified as an independent agent.

(e) *Employee activity.* Ordinarily, an employee of a nonresident alien individual or a foreign corporation shall be treated as a dependent agent to whom the rules of paragraph (d)(1) of this section apply if such employer does not in and of itself have a fixed facility (as defined in paragraph (b) of this section) in the United States or outside the United States, as the case may be. However, where the employee, in the ordinary course of his duties, carries on the trade or business of his employer in or through a fixed facility of such employer which is regularly used by the employee in the course of carrying out such duties, such fixed facility shall be considered the office or other fixed place of business of the employer, irrespective of the rules of paragraph (d)(1) of this section. The application of this paragraph may be illustrated by the following example:

Example. M, a foreign corporation, opens a showroom office in the United States for the purpose of promoting its sales of merchandise which it purchases in foreign country X. The employees of the U.S. office, consisting of salesmen and general clerks, are empowered only to run the office, to arrange for the appointment of distributing agents for the merchandise offered by M, and to solicit orders generally. These employees do not have the authority to negotiate and conclude contracts in the name of M, nor do they have a stock of merchandise from which to fill orders on behalf of M. Any negotiations entered into by these employees are under M's instructions and subject to its approval as to any decision reached. The only independent authority which the employees have is in the appointment of distributors to whom M is to sell merchandise, but even this authority is subject to the right of M to approve or disapprove these buyers on receipt of information as to their business standing. Under the circumstances, this office used by a group of salesmen for sales promotion is a fixed place of business which M has in the United States.

(f) *Office or other fixed place of business of a related person.* The fact that a nonresident alien individual or a foreign

corporation is related in some manner to another person who has an office or other fixed place of business shall not of itself mean that such office or other fixed place of business of the other person is the office or other fixed place of business of the nonresident alien individual or foreign corporation. Thus, for example, the U.S. office of foreign corporation M, a wholly owned subsidiary corporation of foreign corporation N, shall not be considered the office or other fixed place of business of N unless the facts and circumstances show that N is engaged in trade or business in the United States through that office or other fixed place of business. However, see paragraph (b)(2) of this section.

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

Example (1). S, a foreign corporation, is engaged in the business of buying and selling tangible personal property. S is a wholly owned subsidiary of P, a domestic corporation engaged in the business of buying and selling similar property, which has an office in the United States. Officers of P are generally responsible for the policies followed by S and are directors of S, but S has an independent group of officers, none of whom are regularly employed in the United States. In addition to this group of officers, S has a chief executive officer, D, who is also an officer of P but who is permanently stationed outside the United States. The day-to-day conduct of S's business is handled by D and the other officers of such corporation, but they regularly confer with the officers of P and on occasion temporarily visit P's offices in the United States, at which time they continue to conduct the business of S. S does not have an office or other fixed place of business in the United States for purposes of this section.

Example (2). The facts are the same as in example (1) except that, on rare occasions, an employee of P receives an order which he, after consultation with officials of S and because P cannot fill the order, accepts on behalf of S rather than on behalf of P. P does not hold itself out as a person which those wishing to do business with S should contact. Assuming that orders for S are seldom handled in this manner and that they do not constitute a significant part of that corporation's business, S shall not be considered to have an office or other fixed place of business in the United States because of these activities of an employee of P.

Example (3). The facts are the same as in example (1) except that all orders received

by S are subject to review by an officer of P before acceptance. S has a business office in the United States.

Example (4). S, a foreign corporation organized under the laws of Puerto Rico, is engaged in the business of manufacturing dresses in Puerto Rico and is entitled to an income tax exemption under the Puerto Rico Industrial Incentive Act of 1963. S is a wholly owned subsidiary of P, a domestic corporation engaged in the business of buying and selling dresses to customers in the United States. S sells most of the dresses it produces to P, the assumption being made that the income from these sales is derived from sources without the United States. P in turn sells these dresses in the United States in its name and through the efforts of its own employees and of distributors appointed by it. S does not have a fixed facility in the United States, and none of its employees are stationed in the United States. On occasion, employees of S visit the office of P in the United States, and executives of P visit the office of S in Puerto Rico, to discuss with one another matters of mutual business interest involving both corporations, including the strategy for marketing the dresses produced by S. These matters are also regularly discussed by such persons by telephone calls between the United States and Puerto Rico. S's employees do not otherwise participate in P's marketing activities. Officers of P are generally responsible for the policies followed by S and are directors of S, but S has a chief executive officer in Puerto Rico who, from its office therein, handles the day-to-day conduct of S's business. Based upon the facts presented, and assuming there are no other facts which would lead to a different determination, S shall not be considered to have an office or other fixed place of business in the United States for purposes of this section.

Example (5). The facts are the same as in example (4) except that the dresses are manufactured by S in styles and designs furnished by P and out of goods and raw materials purchased by P and sold to S. Based upon the facts presented, and assuming there are no other facts which would lead to a different determination, S shall not be considered to have an office or other fixed place of business in the United States for purposes of this section.

Example (6). The facts are the same as in example (5) except that, pursuant to the instructions of P, the dresses sold by P are shipped by S directly to P's customers in the United States. Based upon the facts presented, and assuming there are no other facts which would lead to a different determination, S shall not be considered to have an office or other fixed place of business in the United States for purposes of this section.

[FR Doc.72-18868 Filed 11-2-72;8:45 am]

Proposed Rule Making

DEPARTMENT OF JUSTICE

Bureau of Narcotics and
Dangerous Drugs

[21 CFR Part 308]

SCHEDULES OF CONTROLLED SUBSTANCES

Excluded Nonnarcotic Substances

The Director of the Bureau of Narcotics and Dangerous Drugs has received an application pursuant to § 308.21 of Title 21 of the Code of Federal Regulations requesting that a product, Rynal, containing a nonnarcotic controlled substance (methamphetamine) be excluded from all schedules pursuant to section 201(g)(1) of the Controlled Substances Act and § 308.21 of Title 21 of the Code of Federal Regulations. The Bureau has been informed by the Food and Drug Administration that Rynal may be sold over the counter without a prescription.

Therefore, under the authority vested in the Attorney General by sections 201(g)(1) and 501(b) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 811(g)(1) and 871(b)) and redelegated to the Director of the Bureau of Narcotics and Dangerous Drugs by § 0.100 of Title 28 of the Code of Federal Regulations, the Director hereby proposes that Part 308 of Title 21 of the Code of Federal Regulations be amended as follows:

By amending § 308.22 by adding the following product:

§ 308.22 Excluded substances.

Trade name of other designation	Composition	Manu- facturer or supplier
***	***	***
Rynal.....	Solution for Spray: dl- Desoxyephedrine HCl 0.22%; antipyrine 0.28%; pyrilamine maleate 0.01%; methyl dodecylbenzyltri- methyl ammonium chloride 0.02%; gly- cerine dehydrated 1.50%.	Blaine Co.
***	***	***

All interested persons are invited to submit their comments and objections in writing regarding this proposal. Comments and objections should be submitted in quintuplicate to the Office of Chief Counsel, Bureau of Narcotics and Dangerous Drugs, Department of Justice, Attention: Hearing Clerk, Room 611, 1405 I Street NW., Washington, DC 20537, and must be received no later than November 30, 1972.

Dated: October 30, 1972.

JOHN E. INGERSOLL,
Director, Bureau of Narcotics
and Dangerous Drugs.

[FR Doc.72-18822 Filed 11-2-72; 8:50 am]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 971]

LETTUCE GROWN IN LOWER RIO GRANDE VALLEY IN SOUTH TEXAS

Proposed Limitation of Shipments

Consideration is being given to the issuance of a limitation of shipments regulation, hereinafter set forth, which was recommended by the South Texas Lettuce Committee. The committee has been established pursuant to Marketing Agreement No. 144 and Marketing Order No. 971 (7 CFR Part 971) which regulates the handling of lettuce grown in the Lower Rio Grande Valley in South Texas. This program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

During 1971-72, a strong U.S. winter lettuce market extended from early December through mid-February. Temporary supply gaps caused by irregular weather patterns in the West resulted in sharp price advances in January and February.

Texas harvested 5,000 acres of winter lettuce in 1972, with a production of 850,000 hundredweight, for which they received a seasonal average price of \$8.20 per hundredweight. The 1971 comparison was 7,200 harvested acres, 900,000 hundredweight production and a \$5.12 price.

There is presently no official estimate of 1973 U.S. winter lettuce production. The committee estimates that planted acreage in the Lower Rio Grande Valley will amount to 7,000 acres compared to 3,969 acres last year.

It is not likely that the favorable combination of marketing factors that existed for south Texas lettuce during the 1972 winter season will be repeated in 1973. Their 1973 season average price is not expected to exceed parity.

This proposal is in accord with the committee's recommendations and marketing policy and reflects its appraisal of the composition of the 1972-73 crop of lettuce in the Lower Valley and marketing prospects for the season.

The south Texas lettuce industry as well as other lettuce shipping areas are accustomed to operating on a 6-day shipping week. The experience has been that a 6-day shipping week is adequate for 5 days distribution in terminal markets. Experience has shown that these "packaging holidays" on Sundays and Christmas contribute to the improvement of growers prices and are beneficial in promoting more orderly marketing.

The pack and container requirements are needed to maintain the accepted

commercial practices of the south Texas lettuce industry of packing specified numbers of heads of lettuce in specific sized containers limited to those found acceptable to the trade for safe transportation of the lettuce and to avoid deceptive practices.

No purpose would be served by regulating the pack or requiring the inspection and assessment of insignificant quantities of lettuce. Therefore quantities up to two cartons of lettuce per day may be handled without regard to such requirements.

Provision with respect to special purpose shipments, including export, are designed to meet the different requirements for other than commercial channels of trade. Because of the production area's proximity to the Mexican border, Mexican buyers have been accustomed to acquiring small lots of production area lettuce for their home market; these buyers can utilize lettuce which fails to meet the domestic pack and container regulations. Inasmuch as such shipments have negligible effect on the domestic market, they should be permitted provided certain safeguard requirements are met.

All persons who desire to submit written data, views, or arguments in connection with these proposals shall file the same with the Hearing Clerk, Room 112-A, U.S. Department of Agriculture, Washington, D.C. 20250, not later than November 8, 1972.

All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)). The proposal is as follows:

§ 971.313 Limitation of shipments.

During the period November 15, 1972, through March 31, 1973, no person shall handle any lot of lettuce grown in the production area unless such lettuce meets the requirements of paragraphs (a), (b), (c), and (d) of this section, or unless such lettuce is handled in accordance with paragraph (e) or (f) of this section. Further, no person may package lettuce during the above period on any Sunday or on Christmas Day.

(a) [Reserved]

(b) *Pack.* (1) Lettuce heads, packed in container No. 7303, 7306, or 7313, if wrapped may be packed only 18, 20, 22, 24, or 30 heads per container; if not wrapped, only 18, 24, or 30 heads per container.

(2) Lettuce heads in container No. 85-40 may be packed only 24 or 30 heads per container.

(c) *Containers.* Containers may be only—

(1) Cartons with inside dimensions of 10 inches by 14 1/4 inches by 21 1/16 inches (designated as carrier container No. 7303), or