

(ii) For EM actual loss loans, will not be changed from the rate in the original note.

(iii) For EM annual operating loans or EM major adjustment loans for Subtitle B (operating) purposes, will be the current rate specified in Subpart A of Part 1810 of this Chapter (FmHA Instruction 440.1 Exhibit B available in any FmHA office) at the time of consolidation and rescheduling.

2. § 1951.40, paragraph (d)(1) is revised to read as follows:

§ 1951.40 Deferment and reamortization of FO, SW, RL, EE or EM loans made for real estate purposes.

(d) *Interest.* (1) The interest rate for other than limited resource loans will be the current interest rate in effect at the time the reamortization is granted except for EM actual loss loans in which case the interest rate will not be changed.

This document has been reviewed in accordance with 7 CFR Part 1901, Subpart G, "Environmental Impact Statements." It is the determination of FmHA that the proposed action does not constitute a major federal action significantly affecting the quality of human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

Note.—This final rule has been reviewed under the USDA criteria established to implement Executive Order 12044, "Improving Government Regulations." A determination has been made that this section should not be classified "significant" under those criteria.

A copy of the final Impact Statement has been prepared and is available from the office of the Chief, Directives Management Branch, Farmers Home Administration, Room 6346, South Agriculture Building, Washington, D.C. 20250.

(7 U.S.C. 1889; 5 U.S.C. 301; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Asst. Sec. for Rural Development, 7 CFR 2.70)

Dated: November 30, 1979.

Gordon Cavanaugh,
Administrator, Farmers Home
Administration.

[FR Doc. 79-38921 Filed 12-18-79; 8:45 am]

BILLING CODE 3410-07-M

FEDERAL TRADE COMMISSION

16 CFR Part 305

Rule for Using Energy Costs and Consumption Information Used in Labeling and Advertising for Consumer Appliances Under the Energy Policy and Conservation Act

AGENCY: Federal Trade Commission.

ACTION: Technical corrections to final rule.

SUMMARY: On November 19, 1979, the Federal Trade Commission issued a final rule which requires the disclosure, for seven categories of appliances, of energy efficiency ratings or energy costs, and related information, in labeling and in retail sales catalogs; mandates that the energy costs or energy efficiency ratings be based on standardized test procedures; requires a general disclosure on certain point-of-sale promotional materials of the availability of energy cost or energy efficiency rating information; and requires that any claims concerning energy consumption made in writing or in broadcast advertisements be based on the results of standardized test procedures. This notice corrects §§ 305.11(a)(3) and 305.11(a)(5)(i)(H) of the final rule.

EFFECTIVE DATE: These corrections are effective on December 19, 1979.

FOR FURTHER INFORMATION CONTACT: Andrew I. Wolf, 202-724-1453, Lucerne D. Winfrey, 202-724-1560, or Kent C. Howerton, 202-724-1514, Attorneys, Federal Trade Commission, 414 11th Street, NW., Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: The Commission published the final rule on November 19, 1979 [44 FR 66466]. The rule contained two technical errors. Section 305.11(a)(3) of the rule failed to specify the white background color of the table(s) displaying yearly cost. Section 305.11(a)(5)(i)(H) of the rule did not clearly refer to the yearly cost table(s).

Section 305.11(a)(3) of the rule is corrected to read as follows:

§ 305.11 Labeling for covered products.

(a) * * *

(3) *Colors.* The basic colors of all labels shall be process yellow or equivalent and process black. The label shall be printed full bleed process yellow with a window dropped out (showing as white) over the table(s) displaying yearly cost. The window shall flush left and right, top and bottom with the table rules. All type including chart or table rules shall be print process black.

* * * * *

The first sentence of § 305.11(a)(5)(i)(H) of the rule is corrected to read as follows: "Yearly cost text and tables are found in section 2 of the appropriate appendices accompanying this part." The remainder of § 305.11(a)(5)(i)(H) remains unchanged.

Carol M. Thomas,
Secretary.

[FR Doc. 79-38895 Filed 12-18-79; 8:45 am]

BILLING CODE 6750-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-16421]

Applications for Extension of Unlisted Trading Privileges

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending Rules 12f-1 and 12f-3 [17 CFR 240.12f-1, f-3] under the Securities Exchange Act of 1934 (the "Act") to conform the text of those rules to Section 12(f) of the Act, as amended by the Securities Acts Amendments of 1975. Rule 12f-1 sets forth the items of information required to be filed by a national securities exchange in applying for unlisted trading privileges in a security pursuant to Section 12(f) of the Act. Rule 12f-3 sets forth items of information required to be filed by an interested person in applying for the termination or suspension of unlisted trading privileges in a particular security.

EFFECTIVE DATE: January 18, 1980.

FOR FURTHER INFORMATION CONTACT: Curt H. Mueller, Office of the General Counsel, Securities and Exchange Commission, Washington, D.C. 20549, (202) 272-2448.

SUPPLEMENTARY INFORMATION: Rule 12f-1 requires a national securities exchange, in applying to the Commission for unlisted trading privileges in a security pursuant to Section 12(f) of the Act,¹ to include in its

¹ Sections 12(f) (1), (2) of the Act, 15 U.S.C. 78(f) (1), (2), provide that:

(f)(1) Notwithstanding the foregoing provisions of this section, any national securities exchange, subject to the terms and conditions hereinafter set forth—

(A) may continue unlisted trading privileges to which a security had been admitted on such exchange prior to July 1, 1964;

(B) upon application to and approval of such application by the Commission, may extend unlisted trading privileges to any security listed

Footnotes continued on next page

application information concerning, among other things, the public distribution and volume of public trading of such security in the geographical vicinity of the applicant exchange.² The rule also requires an exchange to furnish in its application "[a]ny other information which is deemed pertinent to the question of whether the * * * extension of unlisted trading privileges in [a] security is necessary or appropriate in the public interest or for the protection of investors."³

Rule 12f-3(a) requires an interested person, in applying for the termination or suspension of unlisted trading privileges in a security pursuant to Section 12(f)(4) of the Act,⁴ to set forth,

Footnotes continued from last page and registered on any other national securities exchange; and

(C) upon application to and approval of such application by the Commission, may extend unlisted trading privileges to any security registered pursuant to section 12 of this title or which would be required to be so registered except for the exemption from registration provided in subsection (g)(2)(B) or (g)(2)(C) of that section.

If an extension of unlisted trading privileges to a security is based upon its listing and registration on another national securities exchange, such privileges shall continue in effect only so long as such security remains listed and registered on a national securities exchange.

(2) No application pursuant to this subsection shall be approved unless the Commission finds, after notice and opportunity for hearing, that the extension of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors. In considering an application for the extension of unlisted trading privileges to a security not listed and registered on a national securities exchange, the Commission shall, among other matters, take account of the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such securities, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system and shall not grant any such application if any rule of the national securities exchange making application under this subsection would unreasonably impair the ability of any dealer to solicit or effect transactions in such security for his own account, or would unreasonably restrict competition among dealers in such security or between such dealers acting in the capacity of market makers who are specialists and such dealers who are not specialists.

² Rules 12f-1(a) (3), (4).

³ Rule 12f-1(a)(5).

⁴ Section 12(f)(4) of the Act, 15 U.S.C. 78(f)(4), provides that: "(4) On the application of the issuer of any security for which unlisted trading privileges on any exchange have been continued or extended pursuant to this subsection, or of any broker or dealer who makes or creates a market for such security, or of any other person having a bona fide interest in the question of termination or suspension of such unlisted trading privileges, or on its own motion, the Commission shall by order terminate, or suspend for a period not exceeding twelve months, such unlisted trading privileges for such security if the Commission finds, after appropriate notice and

among other things, in its application "information in the applicant's possession, and the sources thereof, with respect to * * * the extent of public distribution of such security in the vicinity of such exchange and the geographical area which is deemed to constitute such vicinity."⁵

Since the Commission's last amendments to Rules 12f-1 and 12f-3 in 1955,⁶ Congress has twice amended Section 12(f) of the Act. First, in 1964, Congress deleted the "geographical vicinity" standard which had, in part, governed the grant of unlisted trading privileges, and required instead that the Commission simply find the grant of unlisted trading privileges to be "necessary or appropriate in the public interest or for the protection of investors."⁷ Second, in the Securities Acts Amendments of 1975,⁸ Congress replaced the "necessary or appropriate" standard with the requirement that the Commission find the extension of unlisted trading privileges to be "consistent with the maintenance of fair and orderly markets and the protection of investors."⁹

In view of these statutory changes, the Commission is amending Rules 12f-1 and 12f-3 so that the procedural filing requirements of those rules reflect the current standards set forth in Section 12(f) of the Act. Accordingly, the Commission is amending Rules 12f-1 and 12f-3 to delete the requirement that information concerning the distribution or trading volume of a security in the "geographical vicinity" of an exchange be furnished in applications for the extension, termination or suspension of unlisted trading privileges. In addition, the Commission is amending Rule 12f-1 by deleting the requirement that an applicant exchange set forth information bearing on whether the grant of unlisted trading privileges is "necessary or appropriate in the public interest or for the protection of investors." Instead, Rule 12f-1 is amended to require an

opportunity for hearing, that such termination or suspension is necessary or appropriate in the public interest or for the protection of investors."

⁵ Rule 12f-3(a)(6)(i).

⁶ Securities Exchange Act Release No. 5221 (August 31, 1955), 20 FR 6701 (September 13, 1955).

⁷ Securities Acts Amendments of 1964, Pub. L. No. 88-467, section 3(b), 78 Stat. 565-566. Prior to 1964, Section 12(f) required applicants for unlisted trading privileges to: "Establish to the satisfaction of the Commission that there exists in the vicinity of such exchange sufficiently widespread public distribution of such security and sufficient public trading activity therein to render the extension of unlisted trading privileges * * * necessary or appropriate in the public interest or for the protection of investors."

Pub. L. No. 821, section 1, 49 Stat. 1375.

⁸ Pub. L. No. 94-29 (June 4, 1975).

⁹ Section 12(f)(2), 15 U.S.C. 78(f)(2).

applicant exchange to furnish any other information addressing whether the grant of unlisted trading privileges would be "consistent with the maintenance of fair and orderly markets and the protection of investors." Finally, the Commission is amending Rule 12f-1 to require that an exchange set forth in its application for unlisted trading privileges in a particular security (1) the name of each exchange on which such security is listed or admitted to unlisted trading privileges, and (2) whether transactions in such security are reported in the consolidated transaction reporting system established pursuant to Rule 17a-15 under the Act.

The Commission finds, in accordance with 5 U.S.C. 553(b)(A) of the Administrative Procedure Act, that the foregoing action relates solely to agency organization, procedure, or practice and that notice and public procedures in accordance with 5 U.S.C. 553(b) are not necessary. Further, in accordance with Section 23(a)(2) of the Securities Exchange Act, 15 U.S.C. 78w(a)(2), the Commission perceives no impediment to competition arising from adoption of these procedural rule amendments.

Amendments

Accordingly, the Commission, acting pursuant to the Securities Exchange Act, and particularly Sections 12(f) and 23 thereof, 15 U.S.C. 78(f) and 78w, adopts these amendments to Rules 12f-1 and 12f-3 [17 CFR 240.12f-1, 12f-3] effective January 18, 1980. Part 240 of Title 17 of the Code of Federal Regulations is amended as follows:

Section 240.12f-1 is revised to read as follows:

§ 240.12f-1 Applications for permission to extend unlisted trading privileges.

(a) An application may be made to the Commission by any national securities exchange for the extension of unlisted trading privileges to any security, pursuant to section 12(f). One copy of such application, executed by a duly authorized officer of the exchange, shall be filed and shall set forth:

(1) Name of issuer;

(2) Title of security;

(3) The name of each national securities exchange, if any, on which such security is listed or admitted to unlisted trading privileges; and

(4) Whether last sale information concerning such security is reported in the consolidated transaction reporting system established pursuant to § 240.17a-15 (Rule 17a-15 under the Act); and

(5) Any other information which is deemed pertinent to the question of whether the continuation or extension of

unlisted trading privileges in such security is consistent with the maintenance of fair and orderly markets and the protection of investors.

Paragraph (a)(8) of § 240.12f-3 is revised to read as follows:

§ 240.12f-3 Termination or suspension of unlisted trading privileges.

(a) * * *

(8) A brief statement of the information in the applicant's possession, and the sources thereof, with respect to (i) the extent of public trading in such security on such exchange, and (ii) the character of trading in such security on such exchange.

* * * * *

By the Commission.

George A. Fitzsimmons,
Secretary.

December 12, 1979.

[FR Doc. 79-38918 Filed 12-18-79; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

19 CFR Part 159

[T.D. 80-2]

Dextrines and Soluble or Chemically Treated Starches Derived From Potato Starch From the European Community; Final Countervailing Duty Determination

AGENCY: U.S. Customs Service, Treasury Department.

ACTION: Final Countervailing Duty Determination.

SUMMARY: This notice is to inform the public that a countervailing duty investigation has resulted in a final determination that the European Community and the Government of the Netherlands have given benefits which constitute bounties or grants within the meaning of the countervailing duty law on the manufacture, production, or exportation of dextrines and soluble or chemically treated starches derived from potato starch. The deposit of countervailing duties in the amount of these benefits will be required at the time of entry in addition to duties normally collected on dutiable shipments of this merchandise.

EFFECTIVE DATE: December 19, 1979.

FOR FURTHER INFORMATION CONTACT: Stephen Nyschot, Trade Analysis Division, U.S. Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229; telephone (202) 566-5492.

SUPPLEMENTARY INFORMATION: On June 26, 1979, a notice of "Preliminary

Countervailing Duty Determination" was published in the *Federal Register* (44 FR 37363). The notice stated that it had been preliminarily determined that benefits bestowed by the European Community (EC) and the Government of the Netherlands upon the manufacture, production, or exportation of dextrines and soluble or chemically treated starches derived from potato starch constitute the payment of bounties or grants within the meaning of section 303, Tariff Act of 1930, as amended (19 U.S.C. 1303) (referred to as "the Act").

The EC comprises Belgium, Denmark, the Federal Republic of Germany, France, Ireland, Italy, Luxembourg, the Netherlands, and the United Kingdom. Imports covered by this investigation are classified under item 493.30, Tariff Schedules of the United States Annotated (TSUSA), and include only those dextrines and soluble or chemically treated starches derived from potato starch.

The preliminary determination stated that bounties or grants are paid by the EC in the form of "production refund payments", which are made to processors who establish contracts in accordance with the minimum price set for potatoes, and "premium payments", a further unconditional payment made to processors.

On the basis of additional information, it has been determined that, in addition to the payments mentioned above, the EC gives "export restitution payments" to exporters of the subject merchandise. These payments, made based on an established formula for each unit of eligible merchandise exported from the EC, also constitute a bounty or grant because they simply confer a direct benefit on the exported merchandise.

The total bounty or grant associated with the subject merchandise is equal to the sum of the various payments made through all stages of the production process from potato, to potato starch, to dextrine and soluble or chemically treated starches derived from potato starch. The net value of these payments, in terms of the U.S. import value on a Customs valuation basis, is equal to 34.4% *ad valorem*.

The preliminary determination also stated that the Government of the Netherlands provides financial assistance to the sole potato starch producer in that country. The assistance is given under a general government program for regional economic development and not for the purposes alleged by the petitioner. However, these payments are in the form of a grant which confers a direct benefit on the production of potato starch and,

therefore, constitute a bounty or grant to the Dutch manufacturer. The average value of this bounty or grant has been calculated to be 1.6% *ad valorem*. This figure represents the average annual benefit bestowed on the Dutch manufacturer in the last three years divided by the value of firm's production in the most recent year for which data is available.

Under traditional Treasury practice, whether a domestic program providing a benefit had a trade distorting effect would be examined in determining whether a bounty or grant had been paid or bestowed. This would be determined by the size of the *ad valorem* benefit found and, except where that benefit was of significant size, the proportion of production of the subject merchandise that was exported. In the instant case, analysis of proportion exported is unnecessary in view of the magnitude of the benefits. On November 29, 1979, the Court of Customs and Patent Appeals overturned Treasury's administrative practice. *ASG Industries v. United States*, C.A.D. 1237. If this holding remains in effect, Treasury could not, in any circumstance, consider the level of exportation in determining whether a bounty or grant was paid or bestowed under the programs investigated. Thus, whatever standard is used, it is determined that a bounty or grant is provided in the instant case.

Accordingly, notice is hereby given that dextrines and soluble or chemically treated starches derived from potato starch which are imported directly or indirectly from the EC, if entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the *Federal Register* will be subject to the payment of countervailing duties equal to the net amount of any bounty or grant determined or estimated to have been paid or bestowed.

In accordance with section 303 of the Act and until further notice, the net amount of the bounties or grants bestowed on the merchandise subject to this investigation has been ascertained and determined to be 34.4% *ad valorem* for imports of the subject merchandise from all countries of the EC other than the Netherlands (i.e., Belgium, Denmark, the Federal Republic of Germany, France, Ireland, Italy, Luxembourg and the United Kingdom), and 36.0% *ad valorem* for imports of the subject merchandise from the Netherlands.

In order to allow Customs officials to distinguish the merchandise subject to it, those officials may take whatever administrative actions are necessary, such as, but not limited to, requiring

manufacturer's certification of the material origin of shipments and/or a detailed invoice description of the merchandise.

Effective on or after the publication date of this notice, and until further notice, upon the entry, or withdrawal from warehouse, for consumption of such dextrines and soluble or chemically treated starches derived from potato starch, imported directly or indirectly from the EC, which benefit from these bounties or grants, there shall be collected, in addition to any other duties estimated or determined to be due, countervailing duties in the amount ascertained in accordance with the above declaration. To the extent that it can be established to the satisfaction of the Commissioner of Customs that imports of the subject merchandise from the EC are benefiting from a bounty or grant smaller than the amount which otherwise would be applicable under the above declaration, the smaller amount so established shall be assessed and collected.

Any merchandise subject to the terms of this order shall be deemed to have benefited from a bounty or grant if such bounty or grant has been or will be credited or bestowed, directly or indirectly, upon the manufacture, production or exportation of dextrines and soluble or chemically treated starches derived from potato starch from the EC.

PART 159—LIQUIDATION OF DUTIES

§ 159.47 [Amended]

The table in § 159.47(f), Customs Regulations (19 CFR 159.47(f)), is amended by inserting after the last entry for "European Community", the words "dextrines and soluble or chemically treated starches derived from potato starch" in the column headed "Commodity"; the number of this Treasury Decision in the column headed "Treasury Decision"; and the words "Bounty declared-rate", in the column headed "Action".

(R.S. 251, as amended, secs. 303, as amended, 624, 46 Stat. 687, as amended, 759 (19 U.S.C. 66, 1303, 1624))

This final determination is published pursuant to section 303(a), Tariff Act of 1930, as amended (19 USC 1303(a)).

Pursuant to Reorganization Plan No. 26 of 1950 and Treasury Department Order No. 101-5, May 16, 1979, the provisions of Treasury Order No. 165, Revised, November 2, 1954, and § 159.47 of the Customs Regulations (19 CFR 159.47), insofar as they pertain to the issuance of a final countervailing duty

determination by the Commissioner of Customs, are hereby waived.

Robert H. Mundheim,
General Counsel of the Treasury.

December 13, 1979.

[FR Doc. 79-38873 Filed 12-18-79; 8:45 am]

BILLING CODE 4810-22-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 571

[Docket No. R-79-741]

Community Development Block Grants for Indian Tribes and Alaska Natives; Allocation of Funds

AGENCY: Community Planning and Development, HUD.

ACTION: Interim Rule and Request for Comments.

SUMMARY: This Interim Rule will revise the allocation of funds to Regional Offices for the Community Development Block Grant Program for Indian Tribes and Alaska Natives. The new funding formula will phase out the weight given to past funding while increasing the weight given to population.

EFFECTIVE DATE: February 11, 1980.

COMMENT DUE DATE: January 8, 1980.

ADDRESS: Send comments to: Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410. Each person submitting a comment should include his/her name and address, refer to the document by the docket number indicated by the headings, and give reasons for any recommendation. Copies of all written comments received will be available for examination by interested persons in the Office of the Rules Docket Clerk, at the address listed above. The Rule may be changed in light of comments received.

FOR FURTHER INFORMATION CONTACT: William Jacobson, Office of Policy Planning, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410, phone No. (202) 755-8092.

SUPPLEMENTARY INFORMATION: The new allocation formula is being published as an Interim Rule rather than a Proposed Rule in order to resolve some inequities in the current allocation formula prior to the Fiscal Year 1980 allocations to the Regions. It is therefore impracticable to afford an opportunity for public

comment prior to publication of the rule. However, as indicated above, there will be a period of 20 days after publication of the Rule during which interested persons may submit comments on the Rule. Special efforts will be made to solicit comments from potential applicants. All comments received by the comment due date will be considered by HUD before the Interim Rule becomes effective.

Recent examination of the current formula revealed that funds have not been allocated equitably. Allocations have been biased towards those Regions with Tribes who, at the time the formula was established, had greater success in receiving grants than other Tribes. In trying to determine what Regional allocation formula would insure the most equitable distribution of funds, many variables which measure need were examined. Population, however, proved to be the only one available at the current time which has a clear relationship to need.

Accordingly, 24 CFR 571.101 is amended as follows:

§ 571.101 Allocation of funds to Regional and Field Offices.

The following provisions apply to the allocation of funds to Regional and Field Offices:

(a) For Fiscal Year 1980, sixty-six and two-thirds percent (66⅔%) of funds available under this part shall be allocated among all Regions according to the percentage of the total eligible Indian population that resides in each Region. In Fiscal Year 1981, this percentage shall be seventy-five percent (75%).

(b) For Fiscal Year 1980, thirty-three and one-third percent (33⅓%) of funds available under this part shall be allocated to each Region according to the ratio of: previous Community Development Block Grant funding to and for Indian Tribes in that Region, to the total of all previous Community Block Grant funding to and for all Indian Tribes which were eligible recipients. In Fiscal Year 1981, this percentage shall be twenty-five percent (25%).

(Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.); Title I, Housing and Community Development Act of 1977 (42 U.S.C. 5301 et seq.); and sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)))

Issued at Washington, D.C., November 8, 1979.

Walter G. Farr, Jr.,

Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 79-38812 Filed 12-18-79; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[T.D. 7660]

Employment Taxes With Respect to Employees of Related Corporations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to employment taxes with respect to employees of related corporations. Provisions for treating certain related corporations as one employer for purposes of the social security and Federal unemployment taxes were added by the Social Security Amendments of 1977. The final regulations provide related corporations and their employees with the guidance needed to comply with the new law. The regulations affect related corporations and individuals who are employed by two or more related corporations one of which is the common paymaster of the corporations.

DATE: The amendments apply to wages paid after December 31, 1978.

FOR FURTHER INFORMATION CONTACT: Eileen Murphy of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attention: CC:LR:T, 202-566-3297).

SUPPLEMENTARY INFORMATION:

Background

On December 13, 1978, the Federal Register published proposed amendments to the Employment Tax Regulations (26 CFR Part 31) under sections 3121(s) and 3306(p) of the Internal Revenue Code of 1954. The amendments were proposed to conform the regulations to section 314 of the Social Security Amendments of 1977 (19 Stat. 1536). A public hearing was held on April 5, 1979. After consideration of all comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision.

The effectiveness of these regulations will be evaluated on the basis of

comments and information received from the public, other Government agencies, and offices within the Treasury Department and Internal Revenue Service.

Explanation of Provisions

Section 314 of the Social Security Amendments of 1977 added sections 3121(s) and 3306(p) to the Internal Revenue Code of 1954 to provide, in effect, for the treatment of certain related corporations as one employer for the purposes of the social security tax and the Federal unemployment tax. These new provisions state that when two or more related corporations concurrently employ the same individual, and compensate that individual through a common paymaster which is one of the related corporations for which the individual performs services, each of the corporations is considered to have paid only the remuneration it actually disburses to that individual. The regulations define the terms related corporations, common paymaster, and concurrent employment. The regulations also provide rules for the allocation of employment taxes, and for liability for those taxes.

Comments

The proposed regulations were revised in several ways to reflect comments received from the public. Several comments requested that guidance be provided regarding treatment of reporting and filing requirements under the new sections. Accordingly, the regulations were expanded to include such guidance.

Under the regulations, no additional reporting or filing requirements have been imposed. One comment stated that the regulations are unclear as to the intended consequences when two corporations are related (under the tests provided in the regulations) to the common paymaster but not related to each other. An example has been added to clarify this situation. Several comments stated that one of the proposed tests for the definition of related corporations, dealing with nonstock corporations, should be revised to encompass some mutual insurance companies which, due to the way they were organized, could not meet the test. Since the test was designed to include mutual insurance companies (among other nonstock corporations), the test was accordingly revised. Several comments asked for clarification whether the tests for the definition of related corporations, requiring a certain percentage of common officers or employees, required the applicable percentage of officers or

employees to exist in one corporation or in both corporations. An example has been revised to clarify this point. One comment suggested that a common paymaster should include a corporation which pays common employees with checks drawn on separate bank accounts of each employing corporation. The final regulations include this suggestion, with the limitation that the common paymaster must be the drawer of the checks.

Section 3121(s) applies only to concurrently employed individuals who are remunerated by a common paymaster that is one of the employing corporations. Several comments were received regarding the definition of concurrent employment. The comments requested that this definition be changed so that the performance of services for the employing corporation, and, in particular, the common paymaster corporation, was not a requirement. The definition of concurrent employment has not been changed in the final regulations, however, because the statute clearly indicates the individual must be employed by the common paymaster, and there is no indication that Congress intended the word "employment" to mean other than the normal definition of the term, which includes the concept of performance of services in exchange for wages. In addition, the suggested definition could cause administrative difficulties in determining who was concurrently employed. Recognizing that additional guidance was needed in this area, the final regulations have been revised and expanded to clarify the definition of concurrent employment, and the examples have been revised to illustrate common fact patterns.

The provisions of the proposed regulations dealing with allocation of employment taxes is unchanged in the Treasury decision. One comment was received suggesting that, in the case of insurance companies, an allocation method based on intercompany reinsurance agreements would be desirable. One method of allocation included in the proposed regulations for allocation in an appropriate manner varying according to the circumstances encompasses this suggestion.

Drafting Information

The principal author of this regulation is Eileen Murphy of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.