

tested and not less than 70 percent of the labeled amount of tetracycline hydrochloride in 60 minutes for each capsule. The 500-milligram capsules shall dissolve: (i) Not less than 50 percent of the labeled amount of tetracycline hydrochloride in 30 minutes for the average of all capsules tested; (ii) not less than 70 percent in 60 minutes for the average of all capsules tested; (iii) not less than 60 percent of the labeled amount of tetracycline hydrochloride in 60 minutes for each capsule; and (iv) not less than 85 percent of the labeled amount of tetracycline hydrochloride in 90 minutes for the average of all capsules tested. The tetracycline hydrochloride used conforms to the standards prescribed by § 446.81(a)(1).

(3) ***

(i) ***

(b) The batch for potency, loss on drying, 4-epianhydrotetracycline content, and dissolution.

(b) ***

(4) *Dissolution.* Proceed as directed in § 436.541 of this chapter.

SUBCHAPTER E—ANIMAL DRUGS, FEEDS, AND RELATED PRODUCTS

PART 546—TETRACYCLINE ANTIBIOTIC DRUGS FOR ANIMAL USE

3. Part 546 is amended in § 546.110d by revising the fourth sentence in paragraph (a)(1), revising paragraph (a)(5)(ii)(a), and adding new paragraph (b)(4) to read as follows:

§ 546.110d Chlortetracycline hydrochloride tablets.

(a) ***

(1) *** Chlortetracycline hydrochloride or tetracycline tablets not exceeding 15 millimeters in diameter or not intended solely for use in preparing solutions shall disintegrate in 1 hour. Tetracycline hydrochloride tablets not exceeding 15 millimeters in diameter or not intended solely for use in preparing solutions shall dissolve not less than 60 percent of the labeled amount of tetracycline hydrochloride in 30 minutes and not less than 85 percent in 60 minutes for an average of all tablets tested and not less than 70 percent of the labeled amount of tetracycline hydrochloride in 60 minutes for each tablet. ***

(5) ***

(ii) ***

(a) The batch: average potency per tablet, average moisture, disintegration time if it is chlortetracycline hydrochloride or tetracycline tablets,

and dissolution if it is tetracycline hydrochloride tablets.

(b) ***

(4) *Dissolution.* Proceed as directed in § 436.541 of this chapter.

Effective date. This regulation is effective for all lots submitted for certification after September 17, 1979.

(Secs. 507, 512(n), 59 Stat. 463 as amended, 82 Stat. 350-351 (21 U.S.C. 357, 360b(n)))

Dated: August 8, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-25282 Filed 8-16-79; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 1010

[Docket 78N-0375]

Performance Standards for Electronic Products: General; Variances From Performance Standards

AGENCY: Food and Drug Administration

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) amends the administrative procedures for ruling on applications for variances from performance standards for electronic products. As a result of this amendment, the procedures no longer include formal publication of variance approvals in the *Federal Register* because experience has shown that such notices are not necessary for adequate protection of the public health. The agency will, however, publish notices of availability of approved variances in the *Federal Register*.

EFFECTIVE DATE: September 17, 1979.

FOR FURTHER INFORMATION CONTACT: Melvyn R. Altman, Bureau of Radiological Health (HFX-460), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3426.

SUPPLEMENTARY INFORMATION: In the *Federal Register* of February 6, 1979 (44 FR 7149), FDA proposed to amend the administrative procedures in § 1010.4 (21 CFR 1010.4) for ruling on variance applications. The agency proposed to delete the requirement that variance approvals be published in the *Federal Register* with a 30-day objection period before the variance could become effective.

The agency received five comments on the proposal—four from manufacturers of electronic products

and one from a manufacturer's consultant. The following is a summary of the comments received and FDA's responses to them:

1. Two comments stated that the current regulation caused unnecessary delays and costs. Both comments fully endorsed the proposed amendment to the regulation. Two other comments supported the proposal but urged that concerned parties be informed of approved variances. One of the comments suggested announcement in the newsletter published by the Bureau of Radiological Health (as was discussed in the proposal). Another comment asked that the Bureau adopt a policy of informing interested manufacturers of approved variances.

The agency accepts the suggestion that manufacturers and other interested parties be informed but has decided to inform them routinely by issuing notices of availability of approved variances in the *Federal Register*. The notice will include only basic information on the variance and will indicate availability of the complete variance from the office of the Hearing Clerk. The notice of availability differs from the present notice of variance approval in that the latter notice contains all the details of the variance and provides a 30-day objection period. The new procedure provides for a brief notice of availability and the effective date of the variance would not depend on it. The new procedure would therefore inform concerned parties of approved variances while expediting the variance approval process and eliminating what experience has shown to be the needless expenditure of agency resources on the publication of the details of all variances. Accordingly, the final regulation has been changed to provide for the routine issuance of a notice of availability.

2. One comment opposed the proposal on the ground that informing interested parties of approved variances by means other than the *Federal Register* would not be as prompt and reliable as the current procedures.

The agency believes that this comment has merit and, as discussed in paragraph 1, the final regulation has been modified to provide for publication of a notice of availability of approved variances. The effective date of a variance will not depend on this *Federal Register* notice, and variances will not be delayed unnecessarily.

Minor editorial changes are being made in § 1010.4(c)(3) and (4) for purposes of clarification.

Therefore, under the Public Health Service Act, as amended by the

Radiation Control for Health and Safety Act of 1968 (sec. 358, 82 Stat. 1177-1179 (42 U.S.C. 263f)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Part 1010 is amended by revising § 1010.4(c) to read as follows:

§ 1010.4 Variances.

(c) *Ruling on applications.* (1) The director, Bureau of Radiological Health, may approve or deny, in whole or in part, a requested variance or any amendment or extension thereof, and the director shall inform the applicant in writing of this action on a requested variance or amendment or extension. The written notice will state the manner in which the variance differs from the standard, the effective date and the termination date of the variance, a summary of the requirements and conditions attached to the variance, any other information that may be relevant to the application or variance, and, if appropriate, the number of units or other similar limitations for which the variance is approved. Each variance will be assigned an identifying number.

(2) A notice of availability of an approved variance or any amendment or extension thereof will be published in the **Federal Register**. The notice will state the name of the applicant, the identifying number, the effective date and the termination date of the variance, the product for which the variance is approved, and the specific requirements of the applicable standard from which the variance is approved.

(3) The director, Bureau of Radiological Health, shall amend or withdraw a variance whenever the Director determines that this action is necessary to protect the public health or otherwise is justified by this subchapter. Such action will become effective on the date specified in the written notice of the action sent to the applicant, except that it will become effective immediately upon notification to the applicant when the Director determines that such action is necessary to prevent an imminent health hazard.

(4) All applications for variances and for amendments and extensions thereof and all correspondence (including written notices of approval) on these applications will be available for public disclosure in the office of the Hearing Clerk, except for information regarded as confidential under section 360A(e) of the act.

Effective date. This regulation is effective September 17, 1979.

(Sec. 358, 82 Stat. 1177-1179 (42 U.S.C. 263f).)

Dated: August 10, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-25448 Filed 8-16-79; 8:45 am]

BILLING CODE 4110-03-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 7638; EE-9-78]

Income Tax; Mergers and Consolidations of Plans and Transfers of Plan Assets or Liabilities

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to mergers and consolidations of retirement plans and transfers of plan assets or liabilities. Changes in the applicable tax law were made by the Employee Retirement Income Security Act of 1974. The regulations will provide the public with the guidance needed to comply with that Act and will apply to all participants involved in a merger, consolidation or transfer of plan assets or liabilities.

DATE: The regulations are effective for mergers, consolidations and transfers of assets or liabilities which occur after September 2, 1974.

FOR FURTHER INFORMATION CONTACT:

Norman J. Misher of the Employees Plans and Exempt Organizations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.E., 20224, (Attention: CC:LR:T) 202-566-3433, not a toll-free call.

SUPPLEMENTAL INFORMATION:

Background

On July 1, 1977, proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 401(a) (12) and 414(l) of the Internal Revenue Code of 1954 were published in the **Federal Register** (42 FR 33770). The amendments were proposed to conform the regulations to section 1021(b) of the Employee Retirement Income Security Act of 1974 ("ERISA") (88 Stat. 937) and to section 1015 of that Act (88 Stat. 925). A public hearing was held on September 30, 1977. After consideration of all comments regarding the proposed amendments, those amendments are

adopted as revised by this Treasury decision.

General Rule

Section 414(l) of the Internal Revenue Code of 1954 provides a rule for a merger or consolidation of a plan with another plan after September 2, 1974. This rule also applies to a transfer of assets or liabilities after that date. Under this section, if one of these events occurs, a trust which forms a part of a pension, profit-sharing or stock bonus plan will not be qualified under section 401, unless each participant in the plan would receive a minimum benefit if the plan terminated immediately after the merger, consolidation or transfer. This benefit must be equal to or greater than the benefit the participant would have been entitled to receive immediately before the merger, consolidation or transfer if the plan in which he was a participant had then terminated. The same rules apply to an annuity or bond purchase plan described in section 403 (a) or 405. Under the regulations, the benefits which the participants would receive if the plan terminated are those provided exclusively by the plan assets pursuant to section 4044 of the Employee Retirement Income Security Act of 1974. Those benefits do not include benefits that might be provided by plan termination insurance under ERISA.

The regulations make it clear that, except to the extent provided by regulations of the Pension Benefit Guaranty Corporation ("PBGC"), section 414(l) does not apply to any transaction to the extent that participants either before or after that transaction are covered under a multiemployer plan within the meaning of section 414(f). Two commentators suggested that the regulations should be expanded to provide that the exception from section 414(l) for multiemployer plans is also applicable to so-called "multiple employer plans," which have some but not all the characteristics of a multiemployer plan as defined in section 414(f).

As section 414 (l) excepts only multiemployer plans, and as "multiemployer plan" is a term defined in the statute, it has been concluded that there is no legal authority for adopting this suggestion. Therefore, the final regulations do not expand this exception so as to include multiple employer plans.

The final regulations also make it clear that sections 401 (a) (12) and 414 (l) do not apply to a governmental plan, a church plan for which there has not been made the election to have the participation, vesting, funding, etc.,

requirements apply, or a plan which at no time after September 2, 1974, provided for employer contributions.

Single Plan

Under the proposed regulations, a plan was considered a "single plan" if and only if all of the plan assets were available to pay benefits to employees who were covered by the plan. In accordance with the view expressed by several commentators, the final regulations have expanded this definition to make it clear that a single plan may also pay benefits to beneficiaries of employees who were covered by the plan.

The final regulations also make it clear that the determination of whether all of the plan assets are available to pay benefits to employees who are covered by the plan and their beneficiaries is to be made on an ongoing basis. However, in determining whether a plan is a single plan, all of the facts and circumstances of the particular situation may be taken into account.

Furthermore, it is intended that the concept of a single plan contained in these regulations will be applied for other purposes where it is necessary to determine whether an arrangement involves one plan or more than one plan. Thus, for example, if a plan is a single plan within the meaning of the regulations, it will also be considered a single plan for purposes of section 404 (relating to deductions for employer contributions), section 411 (d) (3) (relating to complete and partial terminations) and section 412 (relating to minimum funding standards).

Benefits on a Termination Basis

As discussed above, the regulations provide that "benefits on a termination basis" means the benefits that would be provided exclusively by plan assets pursuant to section 4044 of ERISA. The regulations further provide that, for purposes of determining these benefits, the allocation of assets to the various section 4044 categories must be made on the basis of reasonable actuarial assumptions and that the assumptions used by the PBGC are considered reasonable for this purpose.

Several commentators pointed out that because the PBGC assumptions are generally published retroactively rather than prospectively, it is difficult for parties to a transaction to compute the amount of assets and liabilities to be transferred at the time of the transaction. Accordingly, the final regulations provide that the assumptions used by the PBGC as of the date of the merger or spinoff are considered

reasonable for purposes of allocating assets to the various priority categories under section 4044.

Date of Merger or Spinoff

Several commentators suggested that the regulations clarify which date will be the controlling date of a merger or spinoff for purposes of applying the regulations. Because each case has its own unique set of facts, the final regulations provide that the actual date of a merger or spinoff will be determined on the basis of all the facts and circumstances. The final regulations set forth several factors which are considered relevant for purposes of this determination. In applying a facts and circumstances analysis, the date on which the actual transfer of assets and liabilities occurs will not necessarily be controlling.

Other Clarifying Definitions

For clarification, the final regulations provide that the present value of an accrued benefit must be determined on the basis of reasonable actuarial assumptions and that the assumptions used by the PBGC are considered reasonable.

In another clarifying change, the final regulations provide that the standards set forth in regulations prescribed by the PBGC for the valuation of a plan's assets will be applied for this purpose.

Merger or Spinoff of Defined Contribution Plan

In connection with a merger or two or more defined contribution plans, the regulations provide that if several conditions are satisfied, the merger will satisfy the requirements of section 414(l). One of these conditions is that the sum of the account balances in each plan equals the fair market value of the entire plan assets. A similar condition is stated in the context of a spinoff of a defined contribution plan.

Several commentators recommended that because this condition cannot be satisfied when a "leveraged" Employee Stock Ownership Plan ("ESOP") is involved, the regulations should be modified so as to make it possible for a "leveraged" ESOP to merge with another defined contribution plan or to engage in a spinoff. Such a modification has not been made. The conditions set forth in the regulations provide a "safe harbor" rule with respect to mergers and spinoffs of defined contribution plans. Therefore, the fact that certain types of defined contribution plans do not literally satisfy the "safe harbor" rule of the regulations will not necessarily preclude the issuance of a favorable

determination letter in connection with a merger or spinoff of one or more of these plans.

Merger of Defined Benefit Plans

Several commentators stated that in the case of a merger which normally would require the creation of a special schedule of benefits, although the data maintenance alternative already provided in the regulations is quite helpful, the regulations should be modified to provide an additional rule which could be used as an alternative to the establishment of the special schedule. The alternative rule suggested by the commentators would require the maintenance of special records for a five-year period following the merger date from which the merger could be "undone" if the plan terminated within that period.

The final regulations have not adopted this suggested alternative. It was felt that it did not adequately protect the benefits of those participants involved in the merger. Furthermore, the rule was not adopted because it is not workable in the context of successive mergers within a five-year period.

Actuarial Certification in Connection With Data Maintenance Alternative

In connection with the data maintenance alternative to the establishment of a special schedule, the proposed regulations provided that care should be taken to insure that all data necessary to determine the schedule be maintained and an enrolled actuary must so certify to the plan administrator.

Many commentators suggested that the regulations make it clear what the enrolled actuary must certify to the plan administrator. Accordingly, the final regulations provide that the enrolled actuary must certify to the plan administrator that each element of data necessary to determine the schedule as of the date of the merger is maintained. The final regulations further provide that this certification must be based either upon the enrolled actuary's independent examination of the data, or upon the actuary's reliance upon a written statement of the plan administrator concerning what data is actually being maintained. If the actuary bases his certification upon his reliance on the plan administrator's written statement, the reliance must be reasonable under the circumstances of the particular situation.

Spinoff of Defined Benefit Plan

In the case of a spinoff of a defined benefit plan, the regulations require that in order for the spinoff to satisfy section

414 (l), a computation under section 4044 of ERISA must be made. One commentator suggested that because of the expense of a section 4044 computation in this context, a special rule along the lines of the data maintenance alternative available in connection with a merger of a defined benefit plan should be adopted. Under this special rule, a section 4044 computation would not be required if records available for such computation are retained for at least five years after the spinoff. Additionally, to take advantage of this rule, the commentator stated that the parties involved in the spinoff should be required to agree to obligate themselves to make a contribution to either the spun off or remaining plan to the extent that there is a deficiency of assets in connection with the termination of either plan within five years from the spinoff.

The final regulations have not adopted the suggested rule. It was felt that the rule might not adequately protect the benefits of those participants involved in the spinoff, especially in view of the fact that a contribution is required only after it is determined that an insufficient amount of assets exist. Furthermore, in cases which only involve a transfer of a small amount of assets in connection with a spinoff, a section 4044 calculation can be avoided entirely by the use of the *de minimis* rule contained in the regulations. Accordingly, it has been decided that where the *de minimis* rule is not applicable to a spinoff, the only way to assure that a sufficient amount of assets are actually allocated to the spun off plans is to require a section 4044 computation at the time the spinoff occurs.

Special Temporary Rule

The regulations provide a special temporary rule which applies to a spinoff taking place on or before July 1, 1978, if the participants are covered under a defined benefit plan which is a single plan maintained for different groups of employees under which there has been separate accounting of assets for each group. Under these circumstances, section 414 (l) is considered satisfied if all the liabilities with respect to each group of employees are transferred to another plan, together with the assets separately accounted for with respect to that group.

Several commentators suggested that the regulations clarify the extent to which assets for each group of employees have to be separately accounted for in order for the special temporary rule to be available.

Accordingly, the final regulations specify that the separate accounting of assets requirement will not be satisfied if the assets allocated to each single plan are determined by an historical re-creation of benefits, contributions, investment gains, etc.

A few commentators suggested that the July 1, 1978, deadline for using the special temporary rule be extended. This suggestion has not been adopted. The purpose of the special temporary rule was to provide a one-year transitional period for plans whose sponsors or administrators were not aware of the "single plan" concept before the publication of the proposed regulations. One year is considered an adequate transitional rule for this purpose, and there does not appear to be a justification for making the rule permanent, as recommended by one commentator or for extending the July 1, 1978, deadline.

Transfer of Assets or Liabilities

Several commentators suggested that the regulations should be modified so as to provide an exemption for the transfer of funds in connection with the transfer of individual employees in the normal course of their service with an employer (for example pursuant to a reciprocity agreement), even though the transferred employees may be covered by a different plan as the result of the transfer.

The final regulations do not reflect this suggested modification. It was decided that a failure to subject a transfer of individual employees pursuant to a reciprocity agreement to the regulations might adversely affect the benefits that the transferred employee would otherwise be entitled to if the transfer had not occurred. Furthermore, in many instances, the *de minimis* rule for spinoffs is available in connection with the transfer of individual employees, thereby providing a simplified rule for satisfying the requirements of section 414(l).

One commentator stated that under certain reciprocity arrangements, all that occurs is a transfer of a participant and his accrued benefit from one plan to another plan. This constitutes a transfer of a liability, thereby subjecting the transfer to the regulations. However, the *de minimis* rule for spinoffs is not applicable to this type of transfer, because the *de minimis* rule only applies if there is a transfer of assets between plans so as to assure that the benefits of participants are adequately safeguarded.

In view of the fact that this type of reciprocity arrangement only involves a transfer of a liability, the Internal

Revenue Service was concerned that abusive situations might develop if these transfers were not subject to the general requirements of the regulations. The Service explored the development of another *de minimis* rule to preserve abuse-free reciprocity agreements while preventing potential abuse. It was concluded however, that a rule along this line would be inherently complex and, in many cases, unworkable. Furthermore, it is believed that, with relatively minor changes, reciprocity agreements in existence could be revised to achieve the desired result without involving section 414(l) and the regulations. Therefore, the final regulations do not contain a special rule for transfers of liabilities, unaccompanied by transfers of assets, pursuant to reciprocity agreements.

Drafting Information

The principal author of this regulation is Norman J. Misher of the Employee Plans and Exempt Organizations 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.

Adoption of amendments to the regulations

Accordingly, the proposed amendments to 26 CFR Part 1 are hereby adopted subject to the changes set forth below:

Paragraph 1. Paragraph (a) of § 1.414(l)-1, as set forth in the notice of proposed rulemaking, is changed to read as follows:

§ 1.414(l)-1 Mergers and consolidations of plans or transfers of plan assets.

(a) *In general*—(1) *Scope of the regulations.* Sections 401(a)(12) and 414(l) apply only to plans to which section 411 applies without regard to section 411(e)(2). Thus, for example, these sections do not apply to a governmental plan within the meaning of section 414(d); a church plan, within the meaning of section 414(e), for which there has not been made the election under section 410(d) to have the participation, vesting, funding, etc. requirements apply; or a plan which at no time after September 2, 1974, provided for employer contributions.

(2) *General rule.* Under section 414(l),

(i) A trust which forms a part of a plan will not constitute a qualified trust under section 401, and

(ii) A plan will not be treated as being qualified under section 403(a) and 405(a), unless, in the case of a merger or consolidation (as defined in paragraph (b)(2) of this section), or a transfer of assets or liabilities (as defined in paragraph (b)(3) of this section), the following condition is

satisfied. This condition requires that each participant receive benefits on a termination basis (as defined in paragraph (b)(5) of this section) from the plan immediately after the merger, consolidation or transfer which are equal to or greater than the benefits the participant would receive on a termination basis immediately before the merger, consolidation, or transfer.

Par. 2. Paragraph (b) of § 1.414(l)-1, as set forth in the notice of proposed rulemaking, is changed by (1) revising the first sentence of subparagraph (1), (2) revising the last sentence of subparagraph (2), (3) revising subparagraph (5)(ii) and (4) adding new subparagraphs (9), (10), and (11) immediately following subparagraph (8). The revised and added provisions read as follows:

§ 1.414(l)-1 *Mergers and consolidations of plans or transfers of plan assets.*

(b) *Definitions.* * * *

(1) *Single plan.* A plan is a "single plan" if and only if, on an ongoing basis, all of the plan assets are available to pay benefits to employees who are covered by the plan and their beneficiaries. * * *

(2) *Merger or consolidation.* * * * Furthermore, a merger or consolidation will not occur if two plans are not combined into a single plan, such as by using one trust which limits the availability of assets of one plan to provide benefits to participants and beneficiaries of only that plan.

(5) *Benefits on a termination basis.* * * *

(ii) For purposes of determining the benefits on a termination basis, the allocation of assets to various priority categories under section 4044 of ERISA must be made on the basis of reasonable actuarial assumptions. The assumptions used by the Pension Benefit Guaranty Corporation as of the date of the merger or spinoff are deemed reasonable for this purpose.

(9) *Present value of accrued benefit.* For purposes of this section, the present value of an accrued benefit must be determined on the basis of reasonable actuarial assumptions. For this purpose, the assumptions used by the Pension Benefit Guaranty Corporation as of the date of the merger or spinoff are deemed reasonable.

(10) *Valuation of plan assets.* In determining the value of a plan's assets, the standards set forth in regulations prescribed by the Pension Benefit Guaranty Corporation (29 CFR Part 2611) shall be applied.

(11) *Date of merger or spinoff.* The actual date of a merger or spinoff shall be determined on the basis of the facts and circumstances of the particular situation. For purposes of this determination, the following factors, none of which is necessarily controlling, are relevant:

(i) The date on which the affected employees stop accruing benefits under one plan and begin coverage and benefit accruals under another plan.

(ii) The date as of which the amount of assets to be eventually transferred is calculated.

(iii) If the merger or spinoff agreement provides that interest is to accrue from a certain date to the date of actual transfer, the date from which such interest will accrue.

Par. 3. Paragraph (c) of § 1.414(l)-1, as set forth in the notice of proposed rulemaking, is changed by (1) substituting the words "a single" for "one" in the first and second sentences of subparagraph (1) and (2) revising subparagraph (2)(i) to read as follows:

§ 1.414(l)-1 *Mergers and consolidations of plans or transfers of plan assets.*

(c) *Application of section 414(l).* * * *

(2) *Multiemployer plans.* * * *

(i) A multiemployer plan is split into two or more plans, one or more of which are not multiemployer plans, or

Par. 4. Paragraph (h) of § 1.414(l)-1, as set forth in the notice of proposed rulemaking is changed by (1) revising the first sentence of subparagraph (1) and (2) revising subparagraph (4). The revised provisions read as follows:

§ 1.414(l)-1 *Mergers and consolidations of plans or transfers of plan assets.*

(h) *De minimis rule for merger of defined benefit plan—(1) In general.* In the case of a merger of a defined benefit plan ("smaller plan") whose liabilities (i.e., the present value of accrued benefits, whether or not vested) are less than 3 percent of the assets of another defined benefit plan ("larger plan") as of at least one day in the larger plan's plan year in which the merger of the two plans occurs, section 414(l) will be deemed satisfied if the following condition is met.

(4) *Liabilities of the smaller plan.* For purposes of subparagraphs (2) and (3) of this paragraph, mergers satisfying paragraphs (e), (f) or (g) of this section will be ignored in determining the sum of the liabilities assumed by the larger plan.

Par. 5. Paragraph (i)(2) of § 1.414(l)-1, as set forth in the notice of proposed rulemaking, is changed to read as follows:

§ 1.414(l)-1 *Mergers and consolidations of plans or transfers of plan assets.*

(i) *Data maintenance.* * * *

(2) *Required data.* The data that must be maintained depends on the plan, and care should be taken to ensure that all necessary data is maintained. Furthermore, in order to take advantage of the data maintenance alternative provided in this paragraph, an enrolled actuary must certify to the plan administrator that each element of data necessary to determine the schedule as of the date of the merger is maintained. This

certification must be based either upon the enrolled actuary's independent examination of the data, or upon his reliance, which under the circumstances of the particular situation must be reasonable, upon a written statement of the plan administrator concerning what data is actually being maintained.

Par. 6. Paragraph (n) of § 1.414(l)-1, as set forth in the notice of proposed rulemaking, is changed by (1) revising subparagraph (2) and (2) adding a sentence at the end of subparagraph (3). The revised and added provisions read as follows:

§ 1.414(l)-1 *Mergers and consolidations of plans or transfers of plan assets.*

(n) *Spinoff of a defined benefit plan.* * * *

(2) *De minimis rule.* In the case of a spinoff, the requirements of section 414(l) will be deemed to be satisfied if the value of the assets spun off—

(i) Equals the present value of the accrued benefits spun off (whether or not vested), and

(ii) In conjunction with other assets spun off during the plan year in which the spinoff occurs in accordance with this subparagraph, is less than 3 percent of the assets as of at least one day in that year.

Spinoffs occurring in previous or subsequent plan years are ignored if they are not part of a single spinoff designed to occur in steps over more than one plan year.

(3) *Special temporary rule.* * * * For purposes of this subparagraph, a separate accounting of assets will not be considered to have occurred to the extent that the assets allocated to each single plan are determined by an historical re-creation of benefits, contributions, investment gains, etc.

Par. 7. The second sentence of paragraph (o) of § 1.414(l)-1, as set forth in the notice of proposed rulemaking, is changed to read as follows:

§ 1.414(l)-1 *Mergers and consolidations of plans or transfers of plan assets.*

(o) *Transfers of assets or liabilities.* * * *

Thus, for example, if in accordance with the transfer of one or more employees, a block of assets and liabilities are transferred from Plan A to Plan B, each of which is a defined benefit plan, the transaction will be considered as a spinoff from Plan A and a merger of one of the spinoff plans with Plan B. * * *

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

Jerome Kurtz,
Commissioner of Internal Revenue.

Approved: August 7, 1979.
Donald C. Lubick,
Assistant Secretary of the Treasury.

Paragraph 1. The following new section is added immediately after § 1.401(a)-11:

§ 1.401(a)-12 Mergers and consolidations of plans and transfers of plan assets.

A trust will not be qualified under section 401 unless the plan of which the trust is a part provides that in the case of any merger or consolidation with, or transfer of assets or liabilities to, another plan after September 2, 1974, each participant in the plan would receive a minimum benefit if the plan terminated immediately after the merger, consolidation, or transfer. This benefit must be equal to or greater than the benefit the participant would have been entitled to receive immediately before the merger, consolidation, or transfer if the plan in which he was a participant had then terminated. This section applies to a multiemployer plan only to the extent determined by the Pension Benefit Guaranty Corporation. For additional rules concerning mergers or consolidations of plans and transfers of plan assets, see section 414(l) and § 1.414(l)-1.

Par. 2. The following new section is inserted immediately after § 1.414(g)-1:

§ 1.414(l)-1 Mergers and consolidations of plans or transfers of plan assets.

(a) *In general*—(1) *Scope of the regulations.* Sections 401(a)(12) and 414(l) apply only to plans to which section 411 applies without regard to section 411(e)(2). Thus, for example, these sections do not apply to a governmental plan within the meaning of section 414(d); a church plan, within the meaning of section 414(e), for which there has not been made the election under section 410(d) to have the participation, vesting, funding, etc. requirements apply; or a plan which at no time after September 2, 1974, provided for employer contributions.

(2) *General rule.* Under section 414(l),

(i) A trust which forms a part of a plan will not constitute a qualified trust under section 401, and

(ii) A plan will not be treated as being qualified under section 403 (a) and 405 (a), unless, in the case of a merger or consolidation (as defined in paragraph (b)(2) of this section), or a transfer of assets or liabilities (as defined in paragraph (b)(3) of this section), the following condition is satisfied. This condition requires that each participant receive benefits on a termination basis (as defined in paragraph (b)(5) of this section) from the plan immediately after the merger, consolidation or transfer which are equal to or greater than the benefits the participant would receive on a termination basis immediately before the merger, consolidation, or transfer.

(b) *Definitions.* For purposes of this section:

(1) *Single plan.* A plan is a "single plan" if and only if, on an ongoing basis, all of the plan assets are available to pay benefits to employees who are covered by the plan and their beneficiaries. * * * For purposes of the preceding sentence, all the assets of a plan will not fail to be available to provide all the benefits of a plan merely because the plan is funded in part or in whole with allocated insurance instruments. A plan will not fail to be a single plan merely because of the following:

(i) The plan has several distinct benefit structures which apply either to the same or different participants,

(ii) The plan has several plan documents,

(iii) Several employers, whether or not affiliated, contribute to the plan,

(iv) The assets of the plan are invested in several trusts or annuity contracts, or

(v) Separate accounting is maintained for purposes of cost allocation but not for purposes of providing benefits under the plan.

However, more than one plan will exist if a portion of the plan assets is not available to pay some of the benefits. This will be so even if each plan has the same benefit structure or plan document, or if all or part of the assets are invested in one trust with separate accounting with respect to each plan.

(2) *Merger or consolidation.* The terms "merger" or "consolidation" means the combining of two or more plans into a single plan. A merger or consolidation will not occur merely because one or more corporations undergo a reorganization (whether or not taxable). Furthermore, a merger or consolidation will not occur if two plans are not combined into a single plan, such as by using one trust which limits the availability of assets of one plan to provide benefits to participants and beneficiaries of only that plan.

(3) *Transfer of assets or liabilities.* A "transfer of assets or liabilities" occurs when there is a diminution of assets or liabilities with respect to one plan and the acquisition of these assets or the assumption of these liabilities by another plan. For example, the shifting of assets or liabilities pursuant to a reciprocity agreement between two plans in which one plan assumes liabilities of another plan is a transfer of assets or liabilities. However, the shifting of assets between several funding media used for a single plan (such as between trusts, between

annuity contracts, or between trusts and annuity contracts) is not a transfer of assets or liabilities.

(4) *Spinoff.* The term "spinoff" means the splitting of a single plan into two or more plans.

(5) *Benefits on a termination basis.* (i) The term "benefits on a termination basis" means the benefits that would be provided exclusively by the plan assets pursuant to section 4044 of the Employee Retirement Income Security Act of 1974 ("ERISA") and the regulations thereunder if the plan terminated. Thus, the term does not include benefits that are guaranteed by the Pension Benefit Guaranty Corporation, but not provided by the plan assets.

(ii) For purposes of determining the benefits on a termination basis, the allocation of assets to various priority categories under section 4044 of ERISA must be made on the basis of reasonable actuarial assumptions. The assumptions used by the Pension Benefit Guaranty Corporation as of the date of the merger or spinoff are deemed reasonable for this purpose.

(iii) If a change in the benefit structure of a plan in conjunction with a merger, consolidation, or transfer of assets or liabilities alters the benefits on a termination basis, the change should be designated, at the time the merger, consolidation, or transfer occurs, to be effective either immediately before or immediately after that occurrence. In the event that no designation is made, the change in the benefit structure will be deemed to occur immediately after the merger, consolidation, or transfer of assets or liabilities.

(6) *Lower funded plan.* (i) The term "lower funded plan" generally means the plan which, immediately prior to the merger, would have its assets exhausted in a higher priority category than the other plan.

(ii) Where two plans, immediately prior to the merger, would have their assets exhausted in the same priority category of section 4044 of ERISA in the event of termination, the lower funded plan is the one in which the assets would satisfy a lesser proportion of the liability allocated to that priority category.

(7) *Priority category.* The term "priority category" means the category of benefits described in each paragraph of section 4044(a) of ERISA. References to higher or highest priority categories refer to those priority categories which receive the first allocation of assets, i.e. the lowest paragraph numbers in section 4044(a).

(8) *Separate accounting of assets.* The term "separate accounting of assets"

means the maintenance of an asset account with respect to a given group of participants which is:

(i) Credited with contributions made to the plan on behalf of the participants and with its allocable share of investment income, if any, and

(ii) Charged with benefits paid to the participants, and with its allocable share of investment losses or expenses.

(9) *Present value of accrued benefit.* For purposes of this section, the present value of an accrued benefit must be determined on the basis of reasonable actuarial assumptions. For this purpose, the assumptions used by the Pension Benefit Guaranty Corporation as of the date of the merger or spinoff are deemed reasonable.

(10) *Valuation of plan assets.* In determining the value of a plan's assets, the standards set forth in regulations prescribed by the Pension Benefit Guaranty Corporation (29 CFR Part 2611) shall be applied.

(11) *Date of merger or spinoff.* The actual date of a merger or spinoff shall be determined on the basis of the facts and circumstances of the particular situation. For purposes of this determination, the following factors, none of which is necessarily controlling, are relevant:

(i) The date on which the affected employees stop accruing benefits under one plan and begin coverage and benefit accruals under another plan.

(ii) The date as of which the amount of assets to be eventually transferred is calculated.

(iii) If the merger or spinoff agreement provides that interest is to accrue from a certain date to the date of actual transfer, the date from which such interest will accrue.

(c) *Application of section 414(l)—(1) Two or more plans.* (i) Section 414(l) does not apply unless more than a single plan is involved. It also does not apply unless at least a single plan assumes liabilities from another plan or obtains assets from another plan (as in a merger or spinoff). For purposes of section 414(l), a transfer of assets or liabilities will not be deemed to occur merely because a defined contribution plan is amended to become a defined benefit plan. This rule will apply even if, under the facts and circumstances of a particular case, a termination of the defined contribution plan will be considered to have occurred for purposes of other provisions of the Code.

(ii) The requirements of this subparagraph may be illustrated as follows:

Example. After acquiring Corporation B, Corporation A amends Corporation B's defined benefit plan (Plan B) to provide the same benefits as Corporation A's defined benefit plan (Plan A). The assets of Plan B are transferred to the trust containing the assets of Plan A in such a manner that the assets of each plan: (1) are separately accounted for, and (2) are not available to pay benefits of the other plan. Because of condition (2) there are still two plans and, therefore, a merger did not occur. As a result, section 414(l) does not apply. If at some later date Corporation A were to sell Corporation B and transfer the assets of Plan B that were separately accounted for to another trust or to an annuity contract solely for the purpose of providing Plan B's benefits, this transfer would also not involve section 414(l). This is so because Plan B was a separate plan before the entire transaction and because no plan assumed liabilities or obtained assets from another plan. If, on the other hand, Corporation A merged Plan A and Plan B at the time of the acquisition of Corporation B by deleting condition (2) above, then section 414(l) would apply both to the merger of Plan A and Plan B and to the spinoff of Plan B from the merged plan. The spinoff would have to satisfy the requirements of paragraph (n) of this section, even if the assets attributable to Plan A and Plan B were separately accounted for in order to allocate funding costs.

(2) *Multiemployer plans.* Except to the extent provided by regulations of the Pension Benefit Guaranty Corporation, section 114(l) does not apply to any transaction to the extent that participants either before or after that transaction are covered under a multiemployer plan within the meaning of section 414(f). Until these regulations are issued, section 414(l) does not apply to any of the following situations:

(i) A multiemployer plan is split into two or more plans, one or more of which are not multiemployer plans, or (ii) A single employer plan is merged into a multiemployer plan.

Therefore, if some (but not all) of the participants in a single employer plan become participants in a multiemployer plan under an agreement in which the multiemployer plan assumes all the liabilities of the single employer plan with respect to these participants and in which some or all of the assets of the single employer plan are transferred to the multiemployer plan, section 414(l) applies, but only with respect to the participants in the single employer plan who did not transfer to the multiemployer plan.

(d) *Merger of defined contribution plans.* In the case of a merger of two or more defined contribution plans, the requirements of section 414(l) will be satisfied if all of the following conditions are met:

(1) The sum of the account balances in each plan equals the fair market value (determined as of the date of the merger) of the entire plan assets.

(2) The assets of each plan are combined to form the assets of the plan as merged.

(3) Immediately after the merger, each participant in the plan as merged has an account balance equal to the sum of the account balances the participant had in the plans immediately prior to merger.

(e) *Merger of defined benefit plans—*
(1) *General rule.* Section 414(l) compares the benefits on a termination basis before and after the merger. If the sum of the assets of all plans is not less than the sum of the present values of the accrued benefit (whether or not vested) of all plans, the requirements of section 414(l) will be satisfied merely by combining the assets and preserving each participant's accrued benefits. This is so because all the accrued benefits of the plan as merged are provided on a termination basis by the plan as merged. However, if the sum of the assets of all plans is less than the sum of the present values of the accrued benefits (whether or not vested) in all plans, the accrued benefits in the plan as merged are not provided on a termination basis.

(2) *Special schedule of benefits.* Generally, for some participants, the benefits provided on a termination basis for the plan as merged would be different from the benefits provided on a termination basis in the plans prior to merger if the assets were merely combined and if each participant retained his accrued benefit. Some participants would, therefore, receive greater benefits on a termination basis as a result of the merger and some other participants would receive smaller benefits. Accordingly, the requirements of section 414(l) would not be satisfied unless the distribution on termination were modified in some manner to prevent any participant from receiving smaller benefits on a termination basis as a result of the merger. This is accomplished through modifying the application of section 4044 of ERISA by inserting a special schedule of benefits.

(f) *Operational rules for the special schedule.* The application of section 4044 of ERISA as modified by the schedule of benefits is accomplished by the following steps:

(1) Section 4044 is applied in the plan as merged through the priority categories fully satisfied by the assets of the lower funded plan immediately prior to the merger.

(2) The assets in the plan as merged are then allocated to the next priority category as a percentage of the value of

the benefits that would otherwise be allocated to that priority category. That percentage is the ratio of (i) the assets allocated to the first priority category not fully satisfied by the lower funded plan immediately prior to the merger to (ii) the assets that would have been allocated had that priority category been fully satisfied.

(3) A schedule of benefits is formed listing participants and scheduled accrued benefits. The scheduled accrued benefit is the excess of the benefits provided on a termination basis with respect to any participant from the plans immediately prior to the merger, over the benefits provided on a termination basis in subparagraphs (1) and (2) of this paragraph immediately after the merger. After allocating the assets in accordance with subparagraph (2) of this paragraph, the assets are allocated to the schedule of benefits as follows:

(i) First the assets are allocated to the scheduled benefits to the extent that the participant would have benefits provided in subparagraph (4) of this paragraph if there were no scheduled benefits.

(ii) Then the assets are allocated to the scheduled benefits to the extent that the participant would have benefits provided pursuant to subparagraph (5) of this paragraph if there were no scheduled benefits.

These assets should be allocated first to those scheduled benefits that are in the highest priority category under section 4044.

(4) The assets are then allocated to those benefits in the priority category described in subparagraph (2) of this paragraph with respect to which assets were not allocated. This allocation is made to the extent that these benefits are not associated with benefits in the schedule.

(5) Finally, the assets are allocated in accordance with section 4044 with respect to priority categories lower than the priority category described in subparagraph (4) of this paragraph. This allocation is made to the extent that these benefits are not associated with benefits in the schedule.

(g) *Successive mergers*—(1) *In general.* In the case of a current merger of a defined benefit plan with another defined benefit plan which as a result of a previous merger has a special schedule, the rules of paragraphs (e) and (f) of this section apply as if the schedule were considered a category described in section 4044 of ERISA. Thus, a second schedule may be formed as a result of the current merger. The second schedule will be inserted in the

priority category of section 4044 described in paragraph (f)(2) of this section as of the date of the current merger. This priority category may be higher, lower, or within the schedule of benefits existing on account of a previous merger. If this priority schedule is inserted within a schedule of benefits, a new single schedule of benefits replacing the old schedule of benefits would in effect be created.

(2) *Allocation of assets.* Assets in the new schedule of benefits are allocated as follows:

(i) First to the benefits remaining in the old schedule to the extent that there are assets immediately prior to the second merger to satisfy the original benefits,

(ii) Then to the benefits provided on a termination basis from the plans immediately prior to the second merger to the extent that they are not provided before the schedule after the second merger or in subdivision (i) of this subparagraph,

(iii) Then to benefits remaining in the original schedule not included in subdivision (i) of this subparagraph.

(h) *De minimis rule for merger of defined benefit plan*—(1) *In general.* In the case of a merger of a defined benefit plan ("smaller plan") whose liabilities (*i.e.*, the present value of accrued benefits, whether or not vested) are less than 3 percent of the assets of another defined benefit plan ("larger plan") as of at least one day in the larger plan's plan year in which the merger of the two plans occurs, section 414(l) will be deemed to be satisfied if the following condition is met. The condition requires that a special schedule of benefits (consisting of all the benefits that would be provided by the smaller plan on a termination basis just prior to the merger) be payable in a priority category higher than the highest priority category in section 4044 of ERISA. Assets will be allocated to that schedule in accordance with the allocation of assets to scheduled benefits in paragraph (f)(3) of this section.

(2) *Application to a series of mergers.* In the case of a series of such mergers in a given plan year of the larger plan, the rule described in subparagraph (1) of this paragraph will apply only if the sum of the liabilities (whether or not vested) assumed by the larger plan are less than 3 percent of the assets of the larger plan as of at least one day in the plan year of the larger plan in which the mergers occurred.

(3) *Application to a merger occurring over more than one plan year.* In the case of a merger of a smaller plan or a portion thereof with a larger plan

designed to occur in steps over more than one plan year of the larger plan, the entire transaction will be deemed to occur in the plan year of the larger plan which contains the first of these steps.

(4) *Liabilities of the smaller plan.* For purposes of subparagraphs (2) and (3) of this paragraph, mergers satisfying paragraphs (e), (f) or (g) of this section will be ignored in determining the sum of the liabilities assumed by the larger plan.

(i) *Data maintenance*—(1) *Alternative to the special schedule.* In the case of a merger which would require the creation of a special schedule in order to satisfy section 414(l), the schedule need not be created at the time of the merger if data sufficient to create the schedule is maintained. The schedule would only have to be created in the event of a subsequent plan termination or a subsequent spinoff. In that case the schedule must be determined as of the date of the merger.

(2) *Required data.* The data that must be maintained depends on the plan, and care should be taken to ensure that all necessary data is maintained. Furthermore, in order to take advantage of the data maintenance alternative provided in this paragraph, an enrolled actuary must certify to the plan administrator that each element of data necessary to determine the schedule as of the date of the merger is maintained. This certification must be based either upon the enrolled actuary's independent examination of the data, or upon his reliance, which under the circumstances of the particular situation must be reasonable, upon a written statement of the plan administrator concerning what data is actually being maintained.

(j) *Five year rule*—(1) *Limitation on the required use of the special schedule.* A plan will not fail to satisfy the requirements of section 414(l) merely because the effects of the special schedule created pursuant to paragraphs (e)(2) or (h) of this section are ignored 5 years after the date of a merger. Furthermore, the date maintained pursuant to paragraph (i) of this section need not be maintained for more than 5 years after the merger, if the plan does not have a spinoff or a termination within 5 years.

(2) *Illustration.* If Plans A and B merge to form Plan AB and if Plan AB merges with Plan C 3 years later to form Plan ABC and if Plan ABC terminates 4 years later, the data relating to the merger of Plans A and B need not be maintained for more than 5 years after the merger of Plans A and B. In addition, after 5 years have elapsed after the merger of Plans A and B, the effect of any special schedule

created by the merger of Plans A and B on the schedule created by the merger of Plans AB and C may be ignored in determining the later schedule.

(k) *Examples.* The provisions of paragraphs (e) through (j) of this section may be illustrated by the following examples:

Example (1). Plan A, whose assets are \$220,000, is to be merged with Plan B, whose assets are \$200,000. Plan A has three employees. Plan B has two employees. If Plans A and B were to terminate just prior to the merger, the benefits provided on a termination basis would be as follows:

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Plan A

Priority Category of Section 4044 of ERISA	(1) Annual Accrued Benefits			(2) Present Value of Accrued Benefits			(3) Fair Market Value of Assets Allocated to Priority Category			(4) Benefits on a Termination Basis		
	EE ₁	EE ₂	EE ₃	EE ₁	EE ₂	EE ₃	EE ₁	EE ₂	EE ₃	EE ₁	EE ₂	EE ₃
3	\$10,000			\$120,000			\$120,000			\$10,000		
4	2,000	\$4,000		24,000	\$44,000		68,000			2,000	\$4,000	
5	3,000	\$4,000		33,000	\$40,000		32,000			1,315*	\$1,753**	
6			1,000			10,000						
<p>* \$3,000 x $\frac{\\$32,000}{\\$73,000}$</p> <p>** \$4,000 x $\frac{\\$32,000}{\\$73,000}$</p>												

Assets available for
Priority category 5
i.e. Accrued Benefit x
Total present value of
accrued benefits in
category 5

Plan B

Priority Category	EE ₄		EE ₅		EE ₄		EE ₅	
	EE ₄	EE ₅						
3	\$15,000		\$195,000		\$15,000		\$15,000	
4		\$5,000		\$50,000				\$500*
5		8,000		80,000				
<p>* \$5,000 x $\frac{\\$5,000}{\\$50,000}$</p>								

Because Plan B's assets are exhausted in a higher priority category than Plan A's assets, Plan B is the lower funded plan. A schedule will, therefore, be inserted in Priority

Category 4 of the plan as merged after providing 10% of the benefits provided in category 4, i.e. the ratio of \$5,000 assets in Plan B allocated to category 4 to the \$50,000

liability in category 4. The schedule would be constructed as follows:

EE	(1) Benefits on a Termination Basis Before Merger	(2) Benefits Provided from Priority Categories Higher Than Category 4	(3) 10% of Benefits Provided in Priority Category 4	(4) Benefits Provided Before Schedule (2) + (3)	(5) Schedule of Benefits (1) - (4)
1	\$12,000	\$10,000	\$200	\$10,200	\$1,800
2	5,315		400	400	4,915
3	1,753				1,753
4	15,000	15,000		15,000	
5	500		500	500	

Example (2). The facts are the same as in Example (1). The plan, however, terminates one year later. Furthermore, no employee has accrued additional benefits during the year except that the \$2,000 benefit of EE₁ that was originally in category 4 is now in category 3. The assets would be allocated to the priority categories to the extent that there are assets to cover the following benefits.

Priority Termination Category	EE ₁	EE ₂	EE ₃	EE ₄	EE ₅
3	\$12,000			\$15,000	
10% of 4		\$ 400			\$ 500
Schedule of Benefits Included in balance of Category 4		3,600			
Schedule of Benefits Included in Category 5		1,315	\$1,753		
Schedule of Benefits Included in Category 6					
Balance of Category 4 Not included in schedule					4,500
Balance of Category 5 Not included in schedule		1,685	2,247		8,000
Balance of Category 6 Not included in schedule			1,000		

(l) *Merger of defined benefit and defined contribution plan.* In the case of a merger of a defined benefit plan with a defined contribution plan, one of the plans before the merger should be converted into the other type of plan (*i.e.*, the defined benefit converted into a defined contribution or the defined contribution converted into a defined benefit) and either paragraph (d) or paragraphs (e) through (j) of this section, whichever is appropriate, should be applied.

(m) *Spinoff of a defined contribution plan.* In the case of a spinoff of a defined contribution plan, the requirements of section 414(l) will be satisfied if after the spinoff—

(1) The sum of the account balances for each of the participants in the resulting plans equals the account balance of the participant in the plan before the spinoff, and

(2) The assets in each of the plans immediately after the spinoff equals the sum of the account balances for all participants in that plan.

(n) *Spinoff of a defined benefit plan—*
(1) *General rule.* In the case of a spinoff of a defined benefit plan, the requirements of section 414(l) will be satisfied if—

(i) All of the accrued benefits of each participant are allocated to only one of the spun off plans, and

(ii) The value of the assets allocated to each of the spun off plans is not less than the sum of the present value of the benefits on a termination basis in the plan before the spin off for all participants in that spun off plan.

(2) *De minimis rule.* In the case of a spin off the requirements of section 414(l) will be deemed to be satisfied if the value of the assets spun off—

(i) Equals the present value of the accrued benefits spun off (whether or not vested), and

(ii) In conjunction with other assets spun off during the plan year in which the spinoff occurs in accordance with this subparagraph, is less than 3 percent of the assets as of at least one day in that year.

Spinoffs occurring in previous or subsequent plan years are ignored if they are not part of a single spinoff designed to occur in steps over more than one plan year.

(3) *Special temporary rule.* In the case of a defined benefit plan maintained for different groups of employees, which is a single plan (as defined in paragraph (b)(1) of this section) and under which there has been separate accounting of assets for each group, a spinoff of the plan on or before July 1, 1978, into a

separate plan for each group will be deemed to satisfy section 414 (l) if—

(i) All the liabilities with respect to each group of employees are allocated to a separate plan for that group of employees, and

(ii) The assets that are separately accounted for with respect to each group of employees are allocated to the separate plan for that group of employees.

For purposes of this subparagraph, a separate accounting of assets will not be considered to have occurred to the extent that the assets allocated to each single plan are determined by an historical re-creation of benefits, contributions, investment gains, etc.

(o) *Transfers of assets or liabilities.* Any transfer of assets or liabilities will for purposes of section 414 (l) be considered as a combination of separate mergers and spinoffs using the rules of paragraphs (d), (e) through (j), (l), (m), or (n) of this section, whichever is appropriate. Thus, for example, if in accordance with the transfer of one or more employees, a block of assets and liabilities are transferred from Plan A to Plan B, each of which is a defined benefit plan, the transaction will be considered as a spinoff from Plan A and a merger of one of the spinoff plans with Plan B. The spinoff and merger described in the previous sentence would be subject to the requirements of paragraphs (n) and (e) through (j) of this section respectively.

(p) *Effective date.* The provisions of this section apply to mergers, consolidations and transfers of assets or liabilities which occur after September 2, 1974.

[FR Doc. 79-25582 Filed 8-16-79; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

29 CFR Part 89

Senior Community Service Employment Program Regulations; Correction

AGENCY: Employment and Training Administration, Labor.

ACTION: Final Rule: Correction.

SUMMARY: This document corrects a final rule relating to the eligibility requirements for the Senior Community Service Employment Program in accordance with Section 507 of Title V of the Older Americans Act of 1965 (42

U.S.C. 3056e), as amended by the Comprehensive Older American Act Amendments of 1978 (Pub. L. 95-478).

EFFECTIVE DATE: May 18, 1979.

ADDRESSES: Comments may be addressed to: Chief, Older Worker Work Group, Employment and Training Administration, U.S. Department of Labor, Room 6122, 601 D Street, NW., Washington, D.C. 20213.

FOR FURTHER INFORMATION CONTACT: Paul A. Mayrand, telephone (202) 376-6232.

SUPPLEMENTARY INFORMATION: The Department of Labor published at 44 FR 29048 (May 18, 1979) final rules amending § 89.19 of the Senior Community Service Employment Program (SCSEP) regulations at 29 CFR Part 89. The intent of the amendments to § 89.19 was to incorporate 125 per centum of the poverty level determined in accordance with criteria established by the U.S. Office of Management and Budget into the eligibility requirements for SCSEP. Although this intent was clear in the amendments, because of prior amendments to § 89.19, the amendatory language in the final rules appearing at 44 FR 29048 did not properly mesh with the most recent wording of § 89.19 as of May 18, 1979. Thus, this document is meant to provide the proper wording of § 89.19 and to clarify any possible confusion as to the eligibility requirements for SCSEP.

In FR Doc. 79-15618, appearing at 44 FR 29048 (May 18, 1979) make the following correction: On page 29049 at § 89.19 [Amended] Number 1 is changed to read:

§ 89.19 [Amended]

1. Paragraph (b)(3)(i) is amended to read:

(b) * * *

(3) * * *

(i) *Regular economic status criterion.* Applicants for enrollment in a project who have not previously been enrolled in a project and applicants for re-enrollment in a project whose last previous enrollment was terminated for reasons other than extended illness or placement into unsubsidized employment must be members of a family which receives regular cash welfare payments or whose annual income in relation to family size does not exceed 125 per centum of the poverty level determined in accordance with criteria established and updated by the U.S. Office of Management and Budget.