

named country or that the reserve estimates include reserves other than proved.

3. If these reserves are located entirely within the registrant's home country, that fact shall be disclosed. If some or all of the reserves are located in foreign countries, the disclosure of net quantities of reserves of oil and gas shall be separately reported for the entity's home country (if significant reserves are located there) and each foreign geographic area in which significant reserves are located. Foreign geographic areas are individual countries or groups of countries, as appropriate, for meaningful disclosure in the circumstances.

4. Disclosure shall be given of the effect on ownership of reserves of any takeover or nationalization within the most recent fiscal year by foreign governments of properties owned by the registrant, including any change of a property interest into a long-term supply, purchase, or similar agreement.

[end of Instructions to paragraph (a)]

(b) *Production.* Net quantities of oil (including condensate and natural gas liquids) and of gas produced for each of the last three fiscal years (but not for fiscal years ending prior to December 31, 1979) and the net quantities of each received during each of these years applicable to long-term supply or similar agreements with foreign governments or authorities in which the registrant acts as producer, by areas no larger than the geographic areas used for estimated reserves in paragraph (a) above.

#### Instructions

1. Generally, net production should include only production that is owned by the registrant and produced to its interest, less royalties and production due others. However, in special situations (e.g., foreign production) net production before royalties may be provided if more appropriate. If "net before royalty" production figures are furnished, the change from the common usage of "net production" shall be noted.

2. Any part of natural gas liquids production obtained through or from plant ownership rather than through leasehold ownership should be reported separately, if material.

45. By revising § 249.318 to read as follows:

#### § 249.318 Form 18-K, annual report for foreign governments and political subdivisions thereof.

This form shall be used for the annual reports of foreign governments or political subdivisions thereof.

#### PART 260—GENERAL RULES AND REGULATIONS, TRUST INDENTURE ACT OF 1939

46. By revising paragraphs (b) (1)(i) and (2) and (c)(3) of § 260.0-11 to read as follows:

#### § 260.0-11 Projections of future economic performance by issuers.

- (b) \* \* \*
- (1) \* \* \*

(i) At the time such statements are made or reaffirmed, either the issuer is subject to the reporting requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934 and has complied with the requirements of Rule 13a-1 or 15d-1 thereunder, if applicable, to file its most recent annual report on Form 10-K or Form 20-F; or if the issuer is not subject to the reporting requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934, the statements are made in a registration statement filed under the Securities Act of 1933 or pursuant to section 12 (b) or (g) of the Securities Exchange Act of 1934, and

(2) Information relating to the effects of changing prices on the business enterprise presented voluntarily or pursuant to Item 303 of Regulation S-K (§ 229.303 of this chapter) or Item 9 of Form 20-F (§ 249.220f of this chapter), management's discussion and analysis of financial condition and results of operations, or Item 302 of Regulation S-K (§ 229.302 of this chapter), supplementary financial information, or Rule 3-20(c) of Regulation S-X (§ 210.3-20(c) of this chapter), and disclosed in a document filed with the Commission, in Part I of a quarterly report on Form 10-Q, or in an annual report to shareholders meeting the requirements of Rules 14a-3 (b) and (c) or 14c-3 (a) and (b) under the Securities Exchange Act of 1934.

(c) \* \* \*

(3) A statement of future economic performance contained in management's discussion and analysis of financial condition and results of operations included pursuant to Item 303 of Regulation S-K (§ 229.303 of this chapter) or Item 9 of Form 20-F; or

#### Statutory Basis

These amendments are adopted pursuant to authority in Sections 6, 7, 8, 10, and 19(a) of the Securities Act of 1933; Sections 12, 13, 15(d), and 23(a) of the Securities Exchange Act of 1934; Sections 8, 30, 31(c) and 38(a) of the Investment Company Act of 1940.

(Secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 301, 54 Stat. 857; sec. 8, 68 Stat. 685; sec. 1, 79 Stat. 1051; sec. 308(a)(2), 90 Stat. 57; secs. 12, 13, 15(d), 23(a), 48 Stat. 892, 894, 895, 901; secs. 1, 3, 8, 49 Stat. 1375, 1377, 1379, sec. 203(a), 49 Stat. 704; sec. 202, 68 Stat. 686; secs. 3, 4, 6, 78 Stat. 565-568, 569, 570-574; secs. 1, 2, 82 Stat. 454, sec. 28(c), 84 Stat. 1435; secs. 1, 2, 84 Stat. 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 18, 89 Stat. 117, 118, 119, 155; sec. 308(b), 90 Stat. 57; secs. 202, 203, 204, 91 Stat. 1494, 1498, 1499, 1500; secs. 8, 30, 31(c), 38(a), 54 Stat. 803, 836, 838, 841; 74 Stat. 201; 84 Stat. 1415; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 78l, 78m,

78o(d), 78w(a), 80a-8, 80a-29, 80a-30(c), 80a-37(a).]

By the Commission.

George A. Fitzsimmons,  
Secretary.

November 19, 1982.

[FR Doc. 82-32991 Filed 12-3-82; 8:45 am]

BILLING CODE 8010-01-M

#### DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

#### Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 200, 203, 204, 213, 220, 221, 222, 226, 227, 233, 235, 237, 240, 804, 805, 812 and 841

[Docket No. N-82-1172]

#### Announcement of Effective Dates

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Notice of announcement of effective dates for certain recent interim and final rules.

**SUMMARY:** This notice announces the effective dates for certain recently published interim and final rules. Earlier-announced effective dates were stayed pursuant to an unanticipated early recess of Congress.

**FOR FURTHER INFORMATION CONTACT:** Grady J. Norris, Assistant General Counsel for Regulations, Department of Housing and Urban Development, Room 10278, 451 7th Street SW., Washington, D.C. 20410, telephone No. (202) 755-7055. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** On October 7, 1982 (47 FR 44247), the Department published a Notice of Postponement of Effective Dates for certain interim and final rules. Pursuant to Section 7(o)(3) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(o)(3), no interim or final rule issued by the Department may become effective until 30 calendar days of continuous session of Congress have passed following the rule's date of publication in the *Federal Register*. The Department recently published in the *Federal Register* the rules listed below. Effective dates were announced at the time of publication based on a projection of the necessary Congressional session-days and on an October 7, 1982 adjournment of the Congress. The Congress, however, recessed on October 1, 1982, and resumed its session on November 29, 1982. This unanticipated early recess of

Congress interrupted the necessary 30-day period required by Section 7(o)(3) for the rules listed below. Accordingly, the effective dates listed in these rules were stayed.

The purpose of this notice is to announce new effective dates for the rules listed below:

**24 CFR Part 200:** Intermediate Minimum Property Standards for Solar Heating and Domestic Hot Water Interim rule published August 17, 1982, (47 FR 35760), Docket No. R-82-1004. Effective Date: December 2, 1982.

**24 CFR Parts 203, 204, 213, 220, 221, 222, 226, 227, 233, 235, 237, and 240:** Single Family Waiver Authority Final rule published August 18, 1982, (47 FR 35957), Docket No. R-82-952. Effective Date: December 3, 1982.

**24 CFR Part 812:** Definition of Family Income Final rule published August 31, 1982, (47 FR 38282), Docket No. R-82-772. Effective Date: December 6, 1982.

**24 CFR Parts 804, 805 and 841:** Low Rent Housing Homeownership Opportunities (Turnkey III); Indian Housing; Public Housing Development Phase; Maximum Limit on Total Development Cost Final rule published September 8, 1982, (47 FR 39480), Docket No. R-82-856. Effective Date: December 6, 1982.

Dated: December 1, 1982.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 82-33158 Filed 12-3-82; 8:45 am]

BILLING CODE 4210-27-M

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[T.D. 7857]

#### Income Tax; Taxable Years Beginning After December 31, 1953; Requirements for Taxpayers Electing 11-Percent Investment Credit

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document provides final regulations relating to investment credit employee stock ownership plans ("TRASOP's"). Changes in the applicable tax law were made by the Tax Reduction Act of 1975 ("1975 TRA") and the Tax Reform Act of 1976 ("1976 TRA"). These final regulations are intended to provide guidance for the public in complying with the law. They affect all employees who participate in TRASOP's and employers who establish TRASOP's. This document does not

reflect changes made by the Revenue Act of 1978, or subsequent legislation regarding TRASOP's.

**DATE:** The regulations are generally effective for taxable years ending after January 21, 1975.

**FOR FURTHER INFORMATION CONTACT:** John Khil of the Employee Plans and Exempt Organizations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-6212, not a toll-free call).

#### SUPPLEMENTARY INFORMATION:

##### Background

On July 30, 1976, the Internal Revenue Service published proposals in the *Federal Register* to amend the Income Tax Regulations (26 CFR Part 1) under section 46(a) of the Internal Revenue Code of 1954 and section 301(d) of the 1975 TRA (41 FR 31828).

By a notice published in the *Federal Register* on October 19, 1976, the public was invited to comment orally or in writing not only upon issues addressed in the proposals, but also upon issues addressed by section 803(h) of the Tax Reform Act of 1976 (90 Stat. 1590), and by the Conference Report of the Committee of Conference on H.R. 10612 (H.R. Rep. No. 94-1515, 94th Cong., 2d Sess. 539-542 (1976)). A public hearing was held on November 12, 1976.

After consideration of all comments, some of the proposals were revised and adopted as final regulations on January 19, 1979, under Treasury Decision 7590. Others were re-proposed on that date, together with proposals relating to the 1976 TRA. A hearing on these proposals was held on June 28, 1979. Most of the proposed provisions also appeared as temporary regulations. The January 19, 1979, proposals are revised and adopted as final regulations under this Treasury decision.

The final regulations change the proposals both substantively and structurally. Certain provisions are added or restructured. However, certain changes are designed solely to simplify the final regulations. Therefore, no substantive inference should be drawn solely from the fact that a particular proposal is either deleted or restructured.

##### Discussion of Issues

**1. Determination of applicable years.** Several comments requested elaboration on the applicable years concept. The regulations define a corporation's applicable year, generally, as the year in which qualified investment is made. However, under a carryover option, a

corporation may identify its applicable year as the year in which the qualified investment is made or, if later, the year in which all or part of the TRASOP credit is claimed for that qualified investment. This option permits, but does not require, the deferral of certain necessary actions until the year in which the credit is used. This provision is unchanged from the proposals.

Questions have arisen concerning whether a corporation must apply the same method to determine applicable years for all years' qualified investment. The final regulations provide that a corporation may apply either one of the two methods for determining applicable years with respect to the additional credit for each year's qualified investment. All applicable years attributable to the additional credit for each year's qualified investment must be determined under the same method, but different methods may be used for different years' qualified investment.

**2. Section 415 priority rule.** The final regulations have been modified to simplify allocation procedures where an employer maintains a TRASOP and another defined contribution plan. Under the prior rule, TRASOP securities were to be fully allocated for an applicable year before allocations could be made under any other defined contribution plan for that year. The regulations now provide that no amount may be allocated under another defined contribution plan after the date on which the section 415 limitation would preclude TRASOP allocations, until all allocations have been made from an unallocated TRASOP suspense account. Thus, TRASOP securities may remain unallocated for an applicable year when allocations under other defined contribution plans have caused the annual additions to employees' accounts to reach the limits of section 415. However, after the date on which the accounts actually reach the section 415 limits, allocations must be made first from the unallocated TRASOP securities for a prior applicable year. Allocations would then be made under any other defined contribution plan and the TRASOP (for the current applicable year), again utilizing the suspense account if the employees' 415 limits are again reached. This rule is designed to accommodate a typical pattern of contributions to plans, to simplify plan administration, and to minimize the use of suspense accounts.

The final rule would not prevent the use of the allocation method required by the rule specified in temporary regulations for years prior to adoption of the final regulations.

3. *Identity of plan assets.* A TRASOP must be designed to invest primarily in employer securities. If trust assets are primarily invested in qualifying employer securities, the TRASOP will meet the investment requirements of section 301(d) of the 1975 Act. However, as a condition of receiving the credit, an employer must agree to transfer to the plan employer securities having a value equal to one percent of qualified investment for the applicable year. Thus, the minimum amount required to be transferred to the plan must be invested solely in employer securities. Amounts in excess of the required transfer may be contributed, and any such additional contributions may, but need not, be invested in employer securities.

As the required investment in employer securities is a continuing obligation, a change in the identity of plan assets may be appropriate in certain situations. The final rules provide that if a TRASOP disposes of employer securities, a failure to comply will have occurred if the plan assets derived from the disposed securities are not reinvested in employer securities on or before the 90th day following the disposition or within such other period as the Commissioner may find reasonable. A transitional rule is provided for years preceding publication of final regulations. Of course, the determination of the proper identity of plan assets remains subject to fiduciary responsibilities imposed by Title I of ERISA.

A plan is not excused from holding employer securities merely because of a change in corporate ownership. The investment and holding period requirements are imposed as a condition of receiving a TRASOP credit. Thus, as outlined above, plan assets must be retained and invested in employer securities to the extent that those assets are attributable to a TRASOP credit.

4. *Revocation of Certain Elections.* Before introduction of the carryover option, some corporations may have attached an election to their returns for taxable years in which qualified investment was made, thereby choosing that year as the first applicable year even though no part of the credit would be allowable until a succeeding year. The corporation would be required to fund its plan although no credit would be allowable for the first applicable year. While a corporation may choose to be bound by the general rule even though no TRASOP credit is allowable for the year in which qualified investment was made, the carryover option permits the deferral of an

election until the first taxable year for which the TRASOP credit is allowable for a year's qualified investment. Therefore, a new rule provides that with respect to certain elections made prior to publication of the proposals, a corporation will not fail to comply with these regulations merely by revoking the election. The provision is designed to permit the revocation of elections which were made merely as an attempt to preserve the employer's right to fund a plan and first claim a credit in a year later than the year of qualified investment. A taxpayer that revokes an election could, but need not, later elect the carryover option with respect to qualified investment made in the years for which elections were revoked.

5. *Pro rata use of credit.* Under the final regulations, a corporation will not be deemed to have failed to comply with the regulations merely because, in an unused credit year, it applied a proportional method to claim part of the regular 10-percent credit and part of the additional 1-percent TRASOP credit, rather than using the entire regular credit first. This rule applies to returns filed before January 19, 1979. Taxpayers that applied such a proportional method would elect the remaining available credits for a year's qualified investment on a carry-over basis by treating subsequent tax years as "applicable years" with respect to qualified investment for which less than the entire TRASOP credit was elected.

6. *Change of employer security status.* The regulations clarify the extent to which "new employer securities" may be substituted for "old employer securities" in the event of a transaction which changes the identity of the participants' employer. A partial recapture of the investment credit which gave rise to the plan's acquisition of "old employer securities" will not preclude the substitution of some amount of new securities. A recapture will preclude substitution only to the extent that old securities represented the recaptured credit; the prohibition is designed to permit the plan to acquire employer securities to the extent that they represent an underlying TRASOP credit.

7. *Failures to comply—transitional rule.* Several comments concern the actions which must be taken when a plan is apparently in noncompliance with a temporary or final regulation.

Under a new portion of the final regulations, the Commissioner may determine that retroactive correction of an operational defect is not required for certain plans even though they do not conform to the final regulations. It is

anticipated that such a determination may be made, for instance, in a situation in which (1) an operational defect was based on a plan provision which was adopted prior to January 19, 1979, on the basis of a good faith interpretation of guidance then available and (2) correction of the defect would be unnecessarily burdensome in light of the benefits to be derived from such correction.

8. *Relation to subsequent legislation.* These provisions are generally effective for taxable years ending after January 21, 1975. While the regulations do not reflect changes mandated by the Revenue Act of 1978 or subsequent, they remain effective except to the extent that they are superseded by the later legislation.

It is anticipated that the following sections will remain effective in substance under the 1978 Act:

- § 1.46-8 (b) (2)-(3); (5); (8)
- § 1.46-8 (c) (1)-(6); (7) (i); (8) (iii)-(vi); (9)-(10)
- § 1.46-8 (d) (1), (3)-(5); (6) (i), (iii), (v)-(xii); (8) (ii) (9)
- § 1.46-8 (e) (1)-(2); (4)-(7); (9) (ii)-(vi); (10)
- § 1.46-8 (g) (4), (6)
- § 1.46-8 (h)

If any provisions of regulations issued under the 1978 Act are less favorable to taxpayers than the rules listed above, the 1978 Act provisions will be effective only for periods after the date of adoption. No implication is to be drawn from the omission of any regulation provision presently applicable under the statute.

#### Non-Applicability of Executive Order 12291

The Treasury Department has determined that this regulation is not subject to review under Executive Order 12291 or the Treasury and OMB implementation of the Order dated April 28, 1982.

#### Regulatory Flexibility Act

The notice of proposed rulemaking relating to these regulations was published prior to January 1, 1981. Accordingly, these regulations are not subject to the Regulatory Flexibility Act and no regulatory flexibility analysis is required.

#### Drafting Information

The principal author of this regulation is Joel Horowitz 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 regulations, both on matters of substance and style.

#### List of Subjects in 26 CFR 1.0-1 through 1.58-8

Income taxes, Tax liability, Tax rates, Credits.

#### Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended by revising §§ 1.46-7 and 1.46-8 to read as follows:

#### § 1.46-7 Statutory provisions; plan requirements for taxpayers electing additional investment credit, etc.

As amended by sections 802(b)(7), and 803 (c), (d), and (e) of the Tax Reform Act of 1976 (90 Stat. 1520), section 301 (d), (e), and (f) of the Tax Reduction Act of 1975 (89 Stat. 38) provides as follows:

Sec. 301. Increase in investment credit

(d) *Plan requirements for taxpayers electing additional credit.* In order to meet the requirements of this subsection—

(1) Except as expressly provided in subsections (e) and (f), a corporation (hereinafter in this subsection referred to as the "employer") must establish an employee stock ownership plan (described in paragraph (2)) which is funded by transfers of employer securities in accordance with the provisions of paragraph (6) and which meets all other requirements of this subsection.

(2) The plan referred to in paragraph (1) must be a defined contribution plan established in writing which—

(A) Is a stock bonus plan, a stock bonus and a money purchase pension plan, or a profit-sharing plan,

(B) Is designed to invest primarily in employer securities, and

(C) Meets such other requirements (similar to requirements applicable to employee stock ownership plans as defined in section 4975(e)(7) of the Internal Revenue Code of 1954) as the Secretary of the Treasury or his delegate may prescribe.

(3) The plan must provide for the allocation of all employer securities transferred to it or purchased by it (because of the requirements of section 46(a)(2)(B) of the Internal Revenue Code of 1954) to the account of each participant (who was a participant at any time during the plan year, whether or not he is a participant at the close of the plan year) as of the close of each year in an amount which bears substantially the same proportion to the amount of all such securities allocated to all participants in the plan for that plan year as the amount of compensation paid to such participant (disregarding any compensation in excess of the first \$100,000 per year) bears to the compensation paid to all such participants during that year (disregarding any compensation in excess of the first \$100,000 with respect to any participant). Notwithstanding the first sentence of this paragraph, the allocation to participants' accounts may be extended over whatever

period may be necessary to comply with the requirements of section 415 of the Internal Revenue Code of 1954. For purposes of this paragraph, the amount of compensation paid to a participant for a year is the amount of such participant's compensation within the meaning of section 415(c)(3) of such Code for such year.

(4) The plan must provide that each participant has a nonforfeitable right to any stock allocated to his account under paragraph (3), and that no stock allocated to a participant's account may be distributed from that account before the end of the eighty-fourth month beginning after the month in which the stock is allocated to the account except in the case of separation from the service, death, or disability.

(5) The plan must provide that each participant is entitled to direct the plan as to the manner in which any employer securities allocated to the account of the participant are to be voted.

(6) On making a claim for credit, adjustment, or refund under section 38 of the Internal Revenue Code of 1954, the employer states in such claim that it agrees, as a condition of receiving any such credit, adjustment, or refund—

(A) In the case of a taxable year beginning before January 1, 1977, to transfer employer securities forthwith to the plan having an aggregate value at the time of the claim of 1 percent of the amount of the qualified investment (as determined under section 46 (c) and (d) of such Code) of the taxpayer for the taxable year, and

(B) In the case of a taxable year beginning after December 31, 1976—

(i) To transfer employer securities to the plan having an aggregate value at the time of the claim of 1 percent of the amount of the qualified investment (as determined under section 46 (c) and (d) of such Code) of the employer for the taxable year,

(ii) Except as provided in clause (iii), to effect the transfer not later than 30 days after the time (including extensions) for filing its income tax return for a taxable year, and

(iii) In the case of an employer whose credit (as determined under section 46(a)(2)(B) of such Code) for a taxable year beginning after December 31, 1976, exceeds the limitations of paragraph (3) of section 46(a) of such Code—

(I) To effect that portion of the transfer allocable to investment credit carrybacks of such excess credit at the time required under clause (ii) for the unused credit year (within the meaning of section 46(b) of such Code), and

(II) To effect that portion of the transfer allocable to investment credit carryovers of such excess credit at the time required under clause (ii) for the taxable year to which such portion is carried over.

For purposes of meeting the requirements of this paragraph, a transfer of cash shall be treated as a transfer of employer securities if the cash is, under the plan, used to purchase employer securities.

(7) Notwithstanding any other provision of law to the contrary, if the plan does not meet the requirements of section 401 of the Internal Revenue Code of 1954—

(A) Stock transferred under paragraph (6) or subsection (e)(3) and allocated to the

account of any participant under paragraph (3) and dividends thereon shall not be considered income of the participant or his beneficiary under the Internal Revenue Code of 1954 until actually distributed or made available to the participant or his beneficiary and, at such time, shall be taxable under section 72 of such Code (treating the participant or his beneficiary as having a basis of zero in the contract).

(B) No amount shall be allocated to any participant in excess of the amount which might be allocated if the plan met the requirements of section 401 of such Code, and

(C) The plan must meet the requirements of sections 410 and 415 of such Code.

(8)(A) Except as provided in subparagraph (B)(iii), if the amount of the credit determined under section 46(a)(2)(B) of the Internal Revenue Code of 1954 is recaptured or redetermined in accordance with the provisions of such Code, the amounts transferred to the plan under this subsection and subsection (e) and allocated under the plan shall remain in the plan or in participant accounts, as the case may be, and continue to be allocated in accordance with the plan.

(B) If the amount of the credit determined under section 46(a)(2)(B) of the Internal Revenue Code of 1954 is recaptured in accordance with the provisions of such Code—

(i) The employer may reduce the amount required to be transferred to the plan under paragraph (6) of this subsection, or under paragraph (3) of subsection (e), for the current taxable year or any succeeding taxable years by the portion of the amount so recaptured which is attributable to the contribution to such plan,

(ii) Notwithstanding the provisions of paragraph (12), the employer may deduct such portion, subject to the limitations of section 404 of such Code (relating to deductions for contributions to an employees' trust or plan), or

(iii) If the requirements of subsection (f)(1) are met, the employer may withdraw from the plan an amount not in excess of such portion.

(C) If the amount of the credit claimed by an employer for a prior taxable year under section 38 of the Internal Revenue Code of 1954 is reduced because of a redetermination which becomes final during the taxable year, and the employer transferred amounts to a plan which were taken into account for purposes of this subsection for that prior taxable year, then—

(i) The employer may reduce the amount it is required to transfer to the plan under paragraph (6) of this subsection, or under paragraph (3) of subsection (e), for the taxable year or any succeeding taxable year by the portion of the amount of such reduction in the credit or increase in tax which is attributable to the contribution to such plan, or

(ii) Notwithstanding the provisions of paragraph (12), the employer may deduct such portion subject to the limitations of section 404 of such Code.

(9) For purposes of this subsection, the term—

(A) "Employer securities" means common stock issued by the employer or a corporation

which is a member of a controlled group of corporations which includes the employer (within the meaning of section 1563 (a) of the Internal Revenue Code of 1954, determined without regard to section 1563 (a)(4) and (e)(3)(C) of such Code) with voting power and dividend rights no less favorable than the voting power and dividend rights of other common stock issued by the employer or such controlling corporation, or securities issued by the employer or such controlling corporation, convertible into such stock, and

(B) "Value" means the average of closing prices of the employer's securities, as reported by a national exchange on which securities are listed, for the 20 consecutive trading days immediately preceding the date of transfer or allocation of such securities or, in the case of securities not listed on a national exchange, the fair market value as determined in good faith and in accordance with regulations issued by the Secretary of the Treasury or his delegate.

(10) The Secretary of the Treasury or his delegate shall prescribe such regulations and require such reports as may be necessary to carry out the provisions of this subsection and subsections (e) and (f).

(11) If the employer fails to meet any requirement imposed under this subsection or subsection (e) or (f) or under any obligation undertaken to comply with the requirement of this subsection or subsection (e) or (f), he is liable to the United States for a civil penalty of an amount equal to the amount involved in such failure. The preceding sentence shall not apply if the taxpayer corrects such failure (as determined by the Secretary of the Treasury or his delegate) within 90 days after notice thereof. For purposes of this paragraph, the term "amount involved" means an amount determined by the Secretary or his delegate, but not in excess of 1 percent of the qualified investment of the taxpayer for the taxable year under section 46(a)(2)(B) and not less than the product of one-half of one percent of such amount multiplied by the number of months (or parts thereof) during which such failure continues. The amount of such penalty may be collected by the Secretary of the Treasury in the same manner in which a deficiency in the payment of Federal income tax may be collected.

(12) Notwithstanding any provision of the Internal Revenue Code of 1954 to the contrary, no deductions shall be allowed under section 162, 212, or 404 of such Code for amounts transferred to an employee stock ownership plan and taken into account under this subsection.

(13)(A) As reimbursement for the expense of establishing the plan, the employer may withhold from amounts due the plan for the taxable year for which the plan is established, or the plan may pay, so much of the amounts paid or incurred in connection with the establishment of the plan as does not exceed the sum of 10 percent of the first \$100,000 that the employer is required to transfer to the plan for that taxable year under paragraph (6) (including any amounts transferred under subsection (e)(3)) and 5 percent of any amount in excess of the first \$100,000 of such amount.

(B) As reimbursement for the expense of administering the plan, the employer may

withhold from amounts due the plan, or the plan may pay, so much of the amounts paid or incurred during the taxable year as expenses of administering the plan as does not exceed the smaller of—

(i) The sum of 10 percent of the first \$100,000 and 5 percent of any amount in excess of \$100,000 of the income from dividends paid to the plan with respect to stock of the employer during the plan year ending with or within the employer's taxable year, or

(ii) \$100,000.

(14) The return of a contribution made by an employer to an employee stock ownership plan designed to satisfy the requirements of this subsection or subsection (e) (or a provision for such a return) does not fail to satisfy the requirements of this subsection, subsection (e), section 401(a) of the Internal Revenue Code of 1954, or section 403(c)(1) of the Employee Retirement Income Security Act of 1974 if—

(A) The contribution is conditioned under the plan upon determination by the Secretary of the Treasury that such plan meets the applicable requirements of this subsection, subsection (e), or section 401(a) of such Code.

(B) The application for such a determination is filed with the Secretary not later than 90 days after the date on which the credit under section 38 is allowed, and

(C) The contribution is returned within one year after the date on which the Secretary issues notice to the employer that such plan does not satisfy the requirements of this subsection, subsection (e), or section 401 (a) of such Code.

(e) *Plan requirements for taxpayers electing additional one-half percent credit.*

(1) *General rule.* For purposes of clause (ii) of section 46(a)(2)(B) of the Internal Revenue Code of 1954, the amount determined under this subsection for a taxable year is an amount equal to the sum of the matching employee contributions for the taxable year which meet the requirements of this subsection.

(2) *Election; basic plan requirements.* No amount shall be determined under this subsection for the taxable year unless the corporation elects to have this subsection apply for that year. A corporation may not elect to have the provisions of this subsection apply for a taxable year unless the corporation meets the requirements of subsection (d) and the requirements of this subsection.

(3) *Employer contribution.* On making a claim for credit, adjustment, or refund under section 38 of the Internal Revenue Code of 1954, the employer shall state in such claim that the employer agrees, as a condition of receiving any such credit, adjustment, or refund attributable to the provisions of section 46(a)(2)(B)(ii) of such Code, to transfer at the time described in subsection (d)(6)(B) employer securities (as defined in subsection (d)(9)(A)) to the plan having an aggregate value at the time of the transfer of not more than one-half of one percent of the amount of the qualified investment (as determined under subsections (c) and (d) of section 46 of such Code) of the taxpayer for the taxable year. For purposes of meeting the requirements of this paragraph, a transfer of

cash shall be treated as a transfer of employer securities if the cash is, under the plan, used to purchase employer securities.

(4) *Requirements relating to matching employee contributions.*

(A) An amount contributed by an employee under a plan described in subsection (d) for the taxable year may not be treated as a matching employee contribution for that taxable year under this subsection unless—

(i) Each employee who participates in the plan described in subsection (d) is entitled to make such a contribution,

(ii) The contribution is designated by the employee as a contribution intended to be used for matching employer amounts transferred under paragraph (3) to a plan which meets the requirements of this subsection, and

(iii) The contribution is in the form of an amount paid in cash to the employer or plan administrator not later than 24 months after the close of the taxable year in which the portion of the credit allowed by section 38 of such Code (and determined under clause (ii) of section 46 (a)(2)(B) of such Code which the contribution is to match) is allowed, and is invested forthwith in employer securities (as defined in subsection (d)(9)(A)).

(B) The sum of the amounts of matching employee contributions taken into account for purposes of this subsection for any taxable year may not exceed the value (at the time of transfer) of the employer securities transferred to the plan in accordance with the requirements of paragraph (3) for the year for which the employee contributions are designated as matching contributions.

(C) The employer may not make participation in the plan a condition of employment and the plan may not require matching employee contributions as a condition of participation in the plan.

(D) Employee contributions under the plan must meet the requirements of section 401(a)(4) of such Code (relating to contributions).

(5) A plan must provide for allocation of all employer securities transferred to it or purchased by it under this subsection to the account of each participant (who was a participant at any time during the plan year, whether or not he is a participant at the close of the plan year) as of the close of the plan year in an amount equal to his matching employee contributions for the year. Matching employee contributions and amounts so allocated shall be deemed to be allocated under subsection (d)(3).

(f) *Recapture.*

(1) *General rule.* Amounts transferred to a plan under subsection (d)(6) or (e)(3) may be withdrawn from the plan by the employer if the plan provides that while subject to recapture—

(A) Amounts so transferred with respect to a taxable year are segregated from other plan assets, and

(B) Separate accounts are maintained for participants on whose behalf amounts so transferred have been allocated for a taxable year.

(2) *Coordination with other law.* Notwithstanding any other law or rule of law, an amount withdrawn by the employer will

neither fail to be considered to be nonforfeitable nor fail to be for the exclusive benefit of participants or their beneficiaries merely because of the withdrawal from the plan of—

(A) Amounts described in paragraph (1), or

(B) Employer amounts transferred under subsection (e)(3) to the plan which are not matched by matching employee contributions or which are in excess of the limitations of section 415 of such Code,

nor will the withdrawal of any such amount be considered to violate the provisions of section 403(c)(1) of the Employee Retirement Income Security Act of 1974.

(Sec. 301(d) of the Tax Reduction Act of 1975 (89 Stat. 38) as amended by sec. 802(b)(7) and sec. 803 (c) and (e) of the Tax Reform Act of 1976 (90 Stat. 1520); sec. 301 (e) and (f) of the Tax Reduction Act of 1975 as added by sec. 803(d) of the Tax Reform Act of 1976)

#### § 1.46-8 Requirements for taxpayers electing additional one-percent investment credit (TRASOP's).

(a) *Introduction.*—(1) *In general.* A corporation may elect under section 46(a)(2)(B) of the Code to obtain an additional investment credit for property described in section 46(a)(2)(D). This section provides rules for electing to have the provisions of section 46(a)(2)(B) apply and for implementing an employee stock ownership plan under section 301(d) of the Tax Reduction Act of 1975 ("1975 TRA"). The plan must meet the formal requirements of paragraph (d), and the operational requirements of paragraph (e), of this section. An additional credit may be obtained for the periods described in section 46(a)(2)(D). Unless otherwise indicated, statutory references in this section are to the Internal Revenue Code of 1954 as in effect prior to the amendments made by the Revenue Act of 1978.

(2) *Reports.* The returns required by section 6058(a) must be filed on behalf of a plan established under paragraph (c)(7) of this section, whether or not the plan is qualified under section 401(a).

(3) *Cross-references.* The following table indicates where in this section provisions appear relating to each provision of section 301 (d) and (f) of the 1975 TRA.

| Section 301 | Section 1.46-8       | Subject                                                          |
|-------------|----------------------|------------------------------------------------------------------|
| (d)(1)      | (c)(7)(i), (c)(8)(i) | Establishing a TRASOP, in general; funding a TRASOP, in general. |
| (2)(A)      | (c)(7)(ii)           | Type of plan.                                                    |
| (B)         | (d)(3), (e)(10)      | Investment design.                                               |
| (C)         | (d)(1)               | Plan requirements, in general.                                   |
| (3)         | (d)(6)               | Allocation.                                                      |
|             | (b)(8)               | Compensation, definition.                                        |
| (4)         | (d)(7)               | Nonforfeitability.                                               |
|             | (d)(9)               | Distributions.                                                   |
| (5)         | (d)(8)               | Voting rights.                                                   |
| (6)         | (c)                  | Procedures for additional credit.                                |

| Section 301 | Section 1.46-8           | Subject                                   |
|-------------|--------------------------|-------------------------------------------|
| (7)(A)      | (c)(7)(ii)               | Taxability, non-401 (a) TRASOP.           |
| (B)         | (e)(3)                   | Allocations under 401(a).                 |
| (C)         | (e)(3)                   | Section 410 and section 415 requirements. |
| (8)         | (e)(9)                   | Reductions of investment credit.          |
| (9)(A)      | (b)(4)                   | Employer securities, definition.          |
|             | (e)(10), (f)             | Employer securities, requirements.        |
| (B)         | (b)(7)                   | Value, definition.                        |
| (10)        | (a)(2)                   | Reporting requirements.                   |
| (11)        | (h)                      | Failure to comply.                        |
| (12)        | (c)(10)                  | Deductibility.                            |
| (13)        | (e) (6) and (7)          | Reimbursement for expenses.               |
|             |                          | Contingent contributions.                 |
| (14)        | (c)(8)(v) and (d)(7)(i)  | Withdrawals of TRASOP securities.         |
| (f)         | (d)(7), (e)(9)(vii), (f) |                                           |

(b) *Definitions.* When used in this section, the terms listed below have the indicated meanings:

(1) *TRASOP.* A "TRASOP" is an employee stock ownership plan that meets the requirements of section 301(d) of the 1975 TRA. See § 1.46-7. It is a type of plan described in paragraph (d) (1) of this section and may, but need not, be an ESOP under § 54.4975-11 of this chapter (Pension Excise Tax Regulations). See § 1.46-8(d)(5) concerning use of TRASOP assets as collateral for debts and expenses of the plan.

(2) *Additional credit.* An "additional credit" is the additional one-percent investment credit under section 46(a)(2)(B)(i).

(3) *Employer.* An "employer" is a corporation that establishes a TRASOP.

(4) *Employer securities.*—(i) *In general.* "Employer securities" are common stock, and securities convertible into common stock, of the employer or of a corporation that is a member of a controlled group of corporations including the employer. Employer securities must meet the requirements of paragraph (g) of this section. Membership in a controlled group for purposes of this section is determined under section 414(b) of the Code.

(ii) *Pre-1977 employer securities.* In addition, employer securities acquired by a TRASOP before January 1, 1977, include common stock, and securities convertible into common stock, of a corporation in control of the employer within the meaning of section 368(c).

(iii) *Caution.* An employer security under this section is not necessarily a qualifying employer security as defined in section 407(d)(5) of the Employee Retirement Income Security Act of 1974 (ERISA) or section 4975(e)(8). Moreover, sections 406, 407, and 408 of ERISA in certain cases limit the acquisition and disposition of qualifying employer

securities as defined in section 407(d)(5) of ERISA.

(5) *TRASOP securities.* "TRASOP securities" are employer securities that—

(i) Are transferred to a TRASOP, or acquired with cash transferred to a TRASOP, to obtain an additional credit, and

(ii) Except as provided under paragraph (g) (4) and (5) of this section, or as required by applicable law, are subject to no other put, call, or other option, or buy-sell or similar arrangement while held by the plan.

(6) *Publicly traded.* The term "publicly traded" has the meaning specified in § 54.4975-7(b)(1)(iv) of this chapter.

(7) *Value.*—(i) *In general.* With respect to the transfer of TRASOP securities by a corporation to a TRASOP or the acquisition of TRASOP securities with cash transferred by a corporation to a TRASOP, "value" means fair market value determined in good faith and based on all relevant factors as of the date of transfer or acquisition of the TRASOP securities. If the plan acquires TRASOP securities from other than a disqualified person within the meaning of section 4975(e)(2), a good faith determination of value includes a determination of fair market value based on an appraisal independently arrived at by a person who customarily makes such appraisals and who is independent of any person from whom the TRASOP securities are acquired.

(ii) *Twenty-day average rule.* A special 20-day average valuation rule applies to certain publicly traded securities transferred by a corporation to a TRASOP. It does not apply to securities acquired with cash transferred by a corporation to a TRASOP. Under the special rule, the term "value" refers to an average of daily closing prices for a security, as reported on any national securities exchange or as quoted on any system sponsored by a national securities association, over the 20 consecutive trading days immediately preceding the applicable last day described in paragraph (c)(8)(i) of this section. The average is based on the closing prices for each day when the security is in fact traded during the 20-day period. However, the special rule does not apply unless the security is in fact traded for at least 10 of the 20 days.

(iii) *20-day average transitional exception.* If a TRASOP security is transferred before March 20, 1979, the plan may value the security on the basis of the 20 consecutive trading days preceding the date on which the security is transferred or the date as of which the

security is allocated to a participant's account.

(8) *Compensation.* "Compensation" means "participant's compensation" under section 415(c)(3) and § 1.415-2(d). However, except for purposes of applying section 415, compensation must be determined for a plan year, not a limitation year.

(c) *Procedures for additional credit.*—

(1) *Applicable year.*—(i) *General rule.* With respect to a qualified investment, the "applicable year" of a corporation is generally the taxable year in which the investment is made. For purposes of this section, an investment is made either in a year when section 38 property is placed in service or in a year when qualified progress expenditures are incurred.

(ii) *Carryover option.* A corporation may determine the applicable years for qualified investments made in any taxable year beginning after December 31, 1976, under the following method: The first applicable year with respect to the additional credit for a given year's qualified investment is the year the qualified investment is made or, if later, the first taxable year for which any additional credit is allowable if claimed for that qualified investment. If there is an investment credit carryover from the first applicable year, each taxable year to which any part of the additional credit for that qualified investment is carried over is also an applicable year. If the carryover treatment is elected for the additional credit attributable to a year's qualified investment, all applicable years for the additional credit attributable to that investment must be determined under the carryover option.

(iii) *Increased credit.* A taxable year in which a corporation's additional credit is increased because of a redetermination is also an applicable year. See paragraph (c)(9)(iv) of this section.

(iv) *Illustration.* To illustrate the application of paragraph (c)(1)(i) and (ii) of this section, assume that a calendar-year corporation makes a qualified investment in 1977 and that 1977 is an unused credit year described in section 46(b)(1). If the general rule is applied, 1977 is an applicable year. However, because 1977 is an unused credit year (at least with respect to the additional credit), if the corporation does not elect to treat 1977 as an applicable year but carries over its entire additional credit for 1977 to 1978 and uses it in 1978, then 1978 is an applicable year. If part of the additional credit is carried over further to 1979, the year 1979 is also an applicable year.

(v) *Change in method.* The choice between the general rule and carryover option methods of determining the additional credit attributable to applicable years is made with respect to each year's qualified investment, and does not bind the corporation with respect to selection of methods for the additional credit attributable to other years' qualified investment. A failure to comply does not occur merely because a corporation elects to apply either method for the additional credit attributable to separate years' qualified investment.

(2) *Time and manner of electing.* A corporation with a qualified investment must elect to be eligible for an additional credit by attaching a statement of election—

(i) To its income tax return, filed on or before the due date including extensions of time, for a taxable year not later than its first applicable year with respect to a qualified investment, or

(ii) In the case of a return filed before December 31, 1975, to an amended return filed on or before December 31, 1975.

(3) *Statement of election.* The statement of election must contain the name and taxpayer identification number of the corporation. Also, it must declare in the following words, or in words having substantially the same meaning, that:

(i) The corporation elects to have section 46(a)(2)(B)(i) of the Internal Revenue Code of 1954 apply; and

(ii) The corporation agrees to implement (or continue to implement, as appropriate) a TRASOP and to claim the additional credit as required by § 1.46-8 of the Income Tax Regulations.

(4) *Separate election.* A separate election must be made for each taxable year's qualified investment to obtain an additional credit for that qualified investment. If a corporation does not make a timely election to obtain an additional credit for a taxable year, it may not subsequently make the election on an amended return or otherwise.

(5) *No partial election.* An election to obtain an additional credit applies to a corporation's entire qualified investment for a taxable year. Thus, a corporation may not elect to obtain a partial additional credit for any year's qualified investment. However, the partial disallowance of an additional credit will not result in an election being treated as a partial election. Also, an election by a member of a controlled group of corporations that applies only to the electing member's qualified investment is not a partial election. See § 1.46-8(h)(9) with respect to transitional rules

for elections made before January 19, 1979.

(6) *No revocation of election.* After the time for electing the additional credit has expired for a taxable year, a corporation may not revoke its election for that year.

(7) *Establishing a TRASOP.*—(i) *In general.* A corporation electing to obtain an additional credit must establish a TRASOP with accompanying trust on or before the last day for making the election regardless of when in fact the election is made. A TRASOP is considered to be in existence on a particular date if it meets the requirements of § 1.410(a)-2(c)(1). A new plan need not be established if an existing plan qualifies as a TRASOP, or is amended to meet the requirements of this section, on or before the last day for making the election. The requirements of this section are not satisfied merely by establishing and crediting a separate "TRASOP" account on the corporation's books.

(ii) *Type of plan.* A TRASOP need not meet the requirements of section 401(a). However, it must be a stock bonus plan, a combination stock bonus plan and money purchase pension plan, or a profit-sharing plan under § 1.401-1(b)(1) of this chapter. See section 301(d)(7)(A) of the 1975 TRA for the tax consequences relating to a TRASOP that does not meet the requirements of section 401(a). See also Title I of ERISA for additional provisions applicable to a TRASOP as an employee pension benefit plan under section 3(2) of ERISA.

(8) *Funding a TRASOP.*—(i) *In general.* A corporation electing to obtain an additional credit must fund its TRASOP by transferring TRASOP securities or cash to it no later than 30 days after the applicable last day. That day is the last day for electing the additional credit, irrespective of when the election is actually made. However, in the case of an investment credit that was carried over and claimed in a subsequent applicable year by reason of paragraph (c)(1)(ii) of this section, that day is the last day (including extensions) for filing its income tax return for the subsequent applicable year. TRASOP securities may be transferred to a plan at any time during the applicable year, but not before the first day of an applicable year. If TRASOP securities are transferred to the plan within the permissible time period after the close of the applicable year, they are treated as transferred during that applicable year first until all TRASOP securities required by this paragraph (c) for that applicable year are transferred to, and taken into

account under, the TRASOP. Thus, for example, assume that on a return filed on September 17, 1979 (with extensions, the last day for filing a return for 1978), a calendar-year corporation claims an additional credit of \$5,000 for 1978, an applicable year under the TRASOP. No contributions were made in 1978 on account of the 1978 credit, but TRASOP securities with a value of \$6,000 were contributed in 1979. The corporation also expects to be able to claim an additional credit of \$10,000 for 1979. TRASOP securities transferred between January 1, 1979, and October 17, 1979, must be taken into account under the plan for 1978 before they are taken into account for 1979. Accordingly, securities having a value of \$5,000 are applied against the obligation for 1978, and \$1,000 of the contribution is retained to be applied to the eventual obligation for 1979.

(ii) *Cash transfers.* A corporation may transfer cash to the TRASOP instead of TRASOP securities only if the TRASOP uses the cash to acquire TRASOP securities no later than 30 days after the time for funding the TRASOP.

(iii) *Valuation.* The value of the TRASOP securities for an applicable year must equal one percent of the corporation's qualified investment for that year. However, if paragraph (c)(1)(ii) of this section is followed by a corporation, the value of TRASOP securities for an applicable year must equal the amount of additional credit claimed for that year.

(iv) *Cash reserve.* The value of TRASOP securities acquired with cash transferred by a corporation may be reduced by two items. The first item is an amount not more than the value of fractional shares allocable to participants entitled to receive an immediate distribution at the time of the transfer. The second item is start-up expenses and administrative expenses to the extent permitted under section 301(d)(13) of the 1975 TRA and paragraph (e) (6) and (7) of this section.

(v) *Conditional funding.* The funding of a TRASOP may be conditional if the TRASOP satisfies the provisions of section 301(d)(14) of the 1975 TRA. For purposes of section 301(d)(14), an investment credit is considered to be allowed on the date the election for the applicable year is made under paragraph (c)(2) of this section.

(vi) *Certain benefit offset mechanisms.* A TRASOP will be deemed to be not funded to the extent that TRASOP securities are used to offset benefits under a defined benefit plan.

(9) *Claiming additional credit.*—(i) *In general.* Section 46(a)(3) subjects the

amount of investment credit earned with respect to a taxpayer's qualified investment for a taxable year to a limitation based on the corporation's tax liability.

(ii) *Unused credit year.* Section 46(a)(1) provides a first-in-first-out rule for the investment credit in a taxable year. Section 46(b)(1) provides for the carryback and carryover of unused credits. If less than all of a taxpayer's credit earned for a taxable year is allowable, the 10-percent credit determined under section 46(a)(2)(A) earned for a particular year is allowed first. Any portion of the additional credit for a taxable year that is not allowable may be carried back or carried over to the extent permitted by section 46(b)(1). However, an additional credit which is allowed for a taxable year is not reduced by a carryback to that year of an unused credit from a succeeding taxable year.

(iii) *Example.* Paragraph (c)(9)(ii) of this section is illustrated by the following example:

*Example.* A calendar-year corporation begins operation and establishes a TRASOP in 1975. The facts and treatment relating to the corporation's qualified investments and investment tax credits for 1975 and 1976 are as follows:

|                                                                | 1975      | 1976      |
|----------------------------------------------------------------|-----------|-----------|
| <b>Facts:</b>                                                  |           |           |
| 1. Qualified investment.....                                   | \$500,000 | \$500,000 |
| 2. Credits earned:                                             |           |           |
| a. 10% credit.....                                             | 50,000    | 50,000    |
| b. Additional credit.....                                      | 5,000     | 5,000     |
| c. Carryover of additional credit from prior year, line 5..... |           | 3,000     |
| 3. Sec. 46(a)(3) limitation.....                               | 52,000    | 47,000    |
| <b>Treatment of credits:</b>                                   |           |           |
| 4. Credits allowed:                                            |           |           |
| a. Carryover of additional credit.....                         |           | 3,000     |
| b. Current 10% credit.....                                     | 50,000    | 44,000    |
| c. Current additional credit.....                              | 2,000     | 0         |
| 5. Unused credits:                                             |           |           |
| a. 10% credit.....                                             | 0         | 6,000     |
| b. Additional credit.....                                      | 3,000     | 5,000     |

Thus, in 1975 the section 46(a)(3) limitation (\$52,000) is applied first to allow all of the 10-percent investment credit (\$50,000). Accordingly only \$2,000 of the additional credit earned is allowed in 1975 and \$3,000 of the additional credit is carried forward to 1976. In 1976, section 46(a)(1) requires that this \$3,000 of additional credit is allowed first, and then only \$44,000 of the 10-percent credit earned in 1976 is allowed since the section 46(a)(3) limitation for that year is \$47,000. The unused credits from 1976 cannot be carried back since 1975, the only prior year, is an unused credit year.

(iv) *Redeterminations increasing credit.* If a corporation's allowable additional credit is increased because of a redetermination, the increase is treated as if it were an unused credit

carryover for purposes of paragraphs (c)(1)(ii) and (c)(8)(i) of this section. For purposes of this subdivision (iv), the date of the increase is determined under paragraph (e)(9)(iii) of this section as if it were the date of a reduction. Thus, for example, assume that a calendar-year corporation claims an additional credit of \$100,000 in 1978 because of a qualified investment in that year. In 1980, the additional credit attributable to 1978 qualified investment is redetermined to be \$110,000. With respect to the 1978 qualified investment, 1980 is also an applicable year to the extent of \$10,000. The increased credit is reflected on the employer's return for 1980. The corporation must fund the TRASOP with this \$10,000 under paragraph (c)(8) of this section.

(v) *Redeterminations increasing tax liability.* If a corporation's tax liability for a year is increased such that an additional credit carried forward and claimed in a later year is allowable in the earlier year, the claim of the additional credit will be considered timely if it was otherwise timely under this section. Thus, for example, assume that a calendar-year corporation makes qualified investment of \$5,000,000 in 1978 but, based on its income tax liability, is unable to use any of the credit until 1979, when the entire \$50,000 additional credit can be used. The corporation adopts the TRASOP, elects the full \$50,000 credit and funds in a timely manner for tax year 1979. However, as a result of a 1981 redetermination of the 1978 tax liability, the corporation is able to use \$30,000 of the additional credit in 1978 and the remaining \$20,000 in 1979. The allowable credit for 1978 is increased by \$30,000 and the increase is treated as an unused credit carryover, for which the year of redetermination, 1981, is the applicable year. Assuming that no other credits are available, the 1979 credit is reduced from \$50,000 to \$20,000, and this reduction is taken into account in the redetermination year by offsetting the reduction against amounts due the plan or by deducting the amount of the reduction. The adoption of the TRASOP for 1979, rather than 1978, is considered timely.

(10) *Deductions at expiration of carryover period.* Under paragraph (c)(1)(i) of this section, a corporation that uses no additional credit in the year of a qualified investment may nonetheless treat the year in which the qualified investment is made as the first applicable year. If the carryover period under section 46(b)(1)(B) expires before the corporation uses the entire additional credit with respect to the

qualified investment, contributions attributable to the unused credit are deductible, subject to the limitations of section 404(a), as if made in the taxable year when the carryover period expires. The amount deductible is the dollar amount of the unused credit irrespective of the current value of the securities contributed with respect to the credit.

(d) *Formal plan requirements.*—(1) *In general.* To be a TRASOP, a plan must meet the formal requirements of this paragraph (d).

(2) *Plan year.* To be a TRASOP, a plan must specify a plan year that begins with or within the corporation's taxable year.

(3) *Designed to invest primarily in employer securities.* To be a TRASOP, a plan must state that it is designed to invest primarily in employer securities. A TRASOP intended to qualify as an ESOP under § 54.4975-11 must state that it is designed to invest primarily in employer securities. See paragraph (e)(10) of this section concerning the requirement that a plan invest in employer securities on an ongoing basis.

(4) *Separate accounting.* To be a TRASOP, a plan must state that TRASOP securities are to be accounted for separately from any other contributions to the plan.

(5) *Debts and expenses of the TRASOP.* To be a TRASOP, a plan must state that TRASOP securities cannot be used to satisfy a loan made to the TRASOP or be used as collateral for a loan made to a TRASOP. However, if the plan so provides, to the extent permitted under section 301(d)(13) of the 1975 TRA and paragraph (e) (6) and (7) of this section, certain amounts may be used for the TRASOP's start-up expenses and administrative expenses.

(6) *Allocation of TRASOP securities.*—(i) *General rules.* To be a TRASOP, a plan must provide for the allocation of TRASOP securities under section 301(d)(3) of the 1975 TRA and this subparagraph (6).

(ii) *Timing.* TRASOP securities are allocated as of the last day of the plan year beginning with or within the appropriate applicable year.

(iii) *Participants.* Each employee who is a participant at any time during the plan year for which allocation is made must receive an allocation as of the end of that year even though not then employed by the employer. However, to receive allocations, employees must satisfy the minimum participation requirements of the plan (for example, 1,000 hours of service).

(iv) *Compensation considered.* Under section 301(d)(3) of the 1975 TRA, allocations must be based on the proportion that each participant's

compensation bears to all participants' compensation. Compensation in excess of \$100,000 must be disregarded in making these allocations. A plan may have a lower stated ceiling on compensation (from \$0 to \$100,000) and if the plan has such a lower ceiling, compensation in excess of this ceiling must likewise be disregarded. Also, allocations must be based on a participant's compensation while actually employed, not just while actually participating, in the plan year.

(v) *Section 415 priority rule; transitional rule.* For purposes of section 415, this subdivision (v) applies only to limitation years beginning after November 30, 1982. If a TRASOP security is not allocated to a participant's account for a plan year because of section 415 and section 301(d)(3) of the 1975 TRA, no other amount may be allocated for that participant under any defined contribution plan of the same employer after the actual allocation date for that TRASOP plan year, until all unallocated TRASOP securities have been allocated as provided in paragraph (d)(6) (vi) and (vii) of this section. This subdivision (v) applies to a TRASOP when, under section 415(f)(1)(B), the TRASOP is treated along with an employer's other defined contribution plans as one plan for purposes of section 415.

(vi) *Unallocated amounts.* Under section 301(d)(3) of the 1975 TRA, TRASOP securities unallocated for a plan year to participants' accounts because of section 415 must be allocated proportionately to the accounts of other participants until the addition to the account of each participant reaches the limits of section 415.

(vii) *Suspense account.* If, after these allocations, TRASOP securities remain unallocated, they must be held in an unallocated suspense account under the TRASOP. Any income produced by these securities must also be held in the account. A plan with such an account will not fail to qualify under section 401(a) merely because of the account. In each successive TRASOP plan year (whether or not an applicable year), the unallocated assets are released from this account for allocation on a first-in-first-out basis. They are then allocated to the participants' accounts proportionately under paragraph (d)(6) (i)–(vi) of this section for each later year until no TRASOP securities remain unallocated. Value for this allocation is determined under paragraph (b)(7) of this section as of the date of transfer from the suspense account or, if the special 20-day average rule applies, the value is determined on the basis of the 20 consecutive trading days immediately

preceding the date of transfer from the suspense account.

(viii) *Escrow account.* A TRASOP may provide for the establishment of an escrow account instead of a suspense account. The escrow account must satisfy paragraph (d)(6)(vii) of this section. The beneficiary of the escrow account is to be the TRASOP. The corporation may establish the escrow account and contribute stock or cash to it. In such a case, the escrow agent must transfer assets to the plan each year equal to the amount to be allocated proportionately under paragraph (d)(6)(i)–(vi) of this section. Assets held in an escrow account are plan assets.

(ix) *Treatment of certain plan terminations.* To be a TRASOP, a plan must provide that, if a plan terminates because the corporation ceases to exist, unallocated amounts described in paragraph (d)(6)(vi) of this section must be allocated to the extent possible under section 415 for the year of termination. The remaining unallocated amounts must then be withdrawn. These unallocated amounts are treated as recaptured under all the rules of paragraph (e)(9)(vii) of this section except its last sentence. See paragraph (d)(9)(i) of this section concerning distributions of allocated TRASOP securities.

(x) *No integration.* No TRASOP may be integrated, directly or indirectly, with contributions or benefits under Title II of the Social Security Act or any other state or federal law.

(xi) *Fractional securities.* Participants' accounts are to be allocated fractional securities or fractional rights to securities.

(xii) *Accounting for amounts withheld by employer or paid by plan as start-up or administrative expenses.* An employer may withhold certain start-up and administrative expenses from TRASOP securities due the plan. Also, a plan may reduce amounts to be allocated to the extent that certain plan assets are used to reimburse the employer, for example for salaries of employees providing services to the plan, or to pay fees directly to independent contractors for expenses. These expenses do not reduce the amount of additional credit claimed and are not allowable as expenses in computing taxable income. Additional rules concerning these expenses are in paragraph (e) (6) and (7) of this section.

(7) *Nonforfeiture.* To be a TRASOP, a plan must state that each participant has a nonforfeitable right to allocated TRASOP securities. For purposes of this section, forfeitures described in section 411(a)(3) are not

permitted. However, amounts shall not fail to be considered to be nonforfeitable if the plan provides for their return to the corporation—

(i) In the case of conditional contributions, under section 301(d)(14) of the 1975 TRA and paragraph (c)(8)(v) of this section, and

(ii) In the case of investment credit recapture or an event deemed to be a recapture, under section 301(f) of the 1975 TRA and paragraph (f) of this section.

(8) *Voting rights.*—(i) *Provision for pass-through.* To be a TRASOP, a plan must state that each participant is entitled to direct a designated fiduciary how to exercise any voting rights on TRASOP securities allocated to the account of the participant. The plan need not permit participants to direct the voting of unallocated TRASOP or other securities held by the trust. It may authorize the designated fiduciary to exercise voting rights for unallocated securities.

(ii) *Notification by the employer.* To be a TRASOP, the plan must obligate the corporation to furnish the designated fiduciary and participants with notices and information statements when voting rights are to be exercised. The time and manner for furnishing participants with a notice or information statement must comply with both applicable law and the corporation's charter and bylaws as generally applicable to security holders. In general, the content of the statement must be the same for plan participants as for other security holders.

(iii) *Fractional securities.* To be a TRASOP, the plan must allow the participants to vote any allocated fractional securities or fractional rights to securities. This requirement is met if the designated fiduciary votes the combined fractional securities or rights to the extent possible to reflect the direction of the voting participants.

(iv) *Unexercised voting rights.* To be a TRASOP, the plan may not permit the designated fiduciary to exercise voting rights which a participant fails to exercise. However, the plan may permit the solicitation and exercise of participants' voting rights by management and others under a proxy provision applicable to all security holders.

(9) *Distributions.*—(i) *In general.* To be a TRASOP, a plan must permit the distribution of allocated TRASOP securities only as provided under section 301(d)(4) of the 1975 TRA. Also, under § 1.401-1(b)(1)(i) of this chapter, to the extent that a TRASOP is a money purchase pension plan, it can only provide for a distribution in the case of separation from service, death, or

disability. No TRASOP may provide for the distribution of TRASOP securities upon plan termination within the 84-month holding period. For purposes of section 301(d)(4) of the 1975 TRA, the 84-month holding period begins on the date as of which TRASOP securities are allocated.

(ii) *Certain fractional securities.* A stock bonus TRASOP may distribute cash instead of fractional securities.

(e) *Operational plan requirements.*—

(1) *General rule.* To be a TRASOP, a plan in operation must meet the requirements of this paragraph (e). However, the provisions under paragraph (e)(8) of this section apply only to TRASOPs qualified under section 401(a).

(2) *Compliance with plan provisions.* To be a TRASOP, a plan must operate in compliance with its provisions. Failure to operate in compliance with plan provisions constitutes an operational failure to comply. See paragraph (h)(5)(iii) of this section.

(3) *Compliance with certain Code provisions.* To be a TRASOP, a plan must meet the requirements of section 301(d)(7) of the 1975 TRA. Thus, whether or not it is qualified under section 401(a), a TRASOP must meet the requirements of section 401(a) with respect to allocations, section 410 with respect to participation, and section 415 with respect to limitations on contributions and benefits. However, these requirements are modified by paragraph (d)(6) of this section, relating to allocations and section 415.

(4) *Employee contributions.* Under a TRASOP, the participants' receipt of benefits attributable to TRASOP securities contributed for the additional credit (but not the extra additional credit) must not depend on contributions by participants. If a corporation has a plan in existence which requires employee contributions, a portion of the plan may be a TRASOP if employee contributions are not required with respect to that portion of the plan.

(5) *Controlled group of corporations, etc.* Whether or not a TRASOP is qualified under section 401(a), all employees who by reason of section 414 (b) and (c) are treated as employees of an electing corporation are treated as employed by the corporation in determining whether the plan satisfies the requirements of sections 301(d)(7) (B) and (C) of the 1975 TRA. A member of a controlled group under paragraph (b)(4)(i) of this section with a qualified investment but with no actual employees may obtain an additional credit even though the only participants in the corporation's TRASOP are

actually employed by another member of the controlled group.

(6) *Start-up expenses.*—(i) *In general.* For purposes of this section, the term "start-up expense" means any ordinary and necessary amount of a nonrecurring nature paid or incurred by the corporation or by the plan in connection with the establishment of a TRASOP under paragraph (c)(7) of this section. Thus, for example, start-up expenses may include expenses relating to: the drafting or amending of plan documents to establish a TRASOP under section 301(d) or (e) of the 1975 TRA, the seeking of agency approval for these documents and related transactions, the obtaining of shareholder approval for establishing a TRASOP, and the registering of securities for initial funding of a TRASOP.

(ii) *Treatment of start-up expenses.* Start-up expenses may be withheld by the employer from amounts that would otherwise be due the plan under paragraph (c)(8) of this section, to the extent that these amounts are known by the employer when funding first occurs for an applicable year. To the extent that these amounts are not withheld by the employer, the plan may pay remaining amounts from plan assets within a reasonable time after the amounts are known by the plan.

(iii) *Ceiling on start-up expenses.* Reimbursement for start-up expenses is limited to a ceiling. This ceiling is the sum of 10 percent of the first \$100,000 that an employer is first required to transfer under paragraph (c)(8) of this section for an applicable year and 5 percent of that amount in excess of \$100,000. If this first year is an unused credit year from which there is a carryover, amounts required to be transferred in subsequent years for claiming carryovers from this first year are considered in determining this ceiling. Thus, for example, assume that a calendar-year corporation first earns an additional credit in 1977 of \$9,000 and that \$3,000 of this amount is claimed on the income tax return for 1977, for 1978 and for 1979. The corporation's ceiling on start-up expenses is \$300 when its 1977 return is filed. The total ceiling increases to \$600 when its 1978 return is filed and to \$900 when its 1979 return is filed, with the claiming of an additional \$3,000 credit for each of the three years.

(iv) *Special rule for taxable years ending before January 1, 1977.* Special treatment is available for expenses paid or incurred before January 1, 1977, that were not taken into account in the manner provided by section 301(d)(13) of the 1975 TRA. These expenses may be withdrawn under paragraph

(e)(9)(vii) of this section in the same manner as reductions in the corporation's additional credit caused by a recapture. This withdrawal may only be made during the first taxable year ending after March 20, 1979. It is subject to the ceiling of section 301(d)(13) of the 1975 TRA. Expenses previously deducted by a corporation must be reduced on a timely-filed amended return by the amount of this withdrawal.

(7) *Administrative expenses.*—(i) *In general.* For purposes of this section, the term "administrative expense" means any amount, other than a start-up expense, paid or incurred by the corporation or by the plan that is ordinary and necessary in maintaining the TRASOP. Thus, for example, administrative expenses may include expenses relating to: compensating plan fiduciaries and administrators, leasing office space and equipment, reproducing and mailing information to participants and beneficiaries, and filing reports, returns, and amendments relating to a TRASOP. Paragraph (e)(6) (ii) and (iv), relating to treatment of start-up expenses and to a special rule for taxable years ending before January 1, 1977, also applies to administrative expenses.

(ii) *Ceiling on administrative expenses.* Reimbursement for administrative expenses under paragraph (e)(6)(ii) of this section is limited to the smaller of two amounts for each plan year. The first amount is \$100,000. The second amount is the sum of 10 percent of the first \$100,000 of dividend income paid with respect to TRASOP securities held by the plan during the plan year ending with or within the corporation's taxable year and 5 percent of any such dividend income in excess of \$100,000.

(8) *TRASOP qualification under section 401(a).*—(i) *Permanence.* A TRASOP is not required to be a qualified plan under section 401(a). However, to meet the requirements of section 401(a), a TRASOP must be a permanent plan, as described in § 1.401-1(b)(2) of this chapter. Under section 401(a)(21), a plan will not fail to be considered permanent merely because the amount of employer contributions under the plan is determined solely by reference to the amount of additional credit allowable under this section. Thus, for example, it will not fail to be considered permanent merely because employer contributions are not made for a year for which an additional credit is not available by reason of no qualified investment for which an additional credit can be obtained. Section

401(a)(21) applies only to the extent the TRASOP is funded with TRASOP securities and cash in lieu of TRASOP securities.

(ii) *Partial discontinuance of contributions.* A plan that meets the requirements of section 401(a) may receive contributions of TRASOP securities as well as other contributions. If the other contributions continue on a permanent basis, the plan's qualification under section 401(a) will not be adversely affected merely because TRASOP securities cease to be contributed to it. The discontinuance of TRASOP contributions does not alter the requirement that past TRASOP contributions remain invested in employer securities. See paragraph (e)(10) of this section.

(iii) *Income distribution.* Income paid with respect to employer securities acquired by a TRASOP may be distributed at any time after receipt by the plan to participants on whose behalf such securities have been allocated without adversely affecting the qualified status of the plan under section 401(a). (See the last sentence of section 803(h), Tax Reform Act of 1976.) However, under a TRASOP that is a stock bonus or profit-sharing plan, income held by the plan for a 2-year period or longer must be distributed under rules generally applicable to stock bonus and profit-sharing plans qualified under section 401(a). Income distributed by a TRASOP is not subject to the partial exclusion of dividends provided in section 116, whether or not the income is held by the plan for two or more years.

(9) *Reductions in investment credit.*—

(i) *General rule.* Certain reductions in a corporation's investment credit result from either a recapture under section 47 of the corporation's investment credit or a redetermination of the allowable credit. If these reductions are taken into account under a TRASOP, the plan may only use one or more of the methods described in paragraph (e)(9), (v), (vi), and (vii) of this section for taking into account these reductions. Thus, for example, more than one method is permitted upon a recapture with respect to a qualified investment made in a particular year. However, the method described in paragraph (e)(9)(vii) of this section applies only to a recapture and not to a redetermination.

(ii) *Ratable reduction.* A reduction is allocated ratably between the 10-percent credit and the additional credit. Thus, for example, if a calendar-year corporation claims a \$33,000 investment credit for 1976, including \$3,000 additional credit, and \$11,000 of the total credit is recaptured in 1978, the \$3,000

additional credit is reduced by \$1,000. This subdivision (ii) does not apply to a reduction solely of the additional credit as could occur, for example, in the case of a redetermination caused by a mathematical error in computing the additional credit or in the case of a recapture caused by a bad faith failure to comply under paragraph (h) of this section.

(iii) *Date of reduction.* A reduction in investment credit occurs under this paragraph (e)(9) on the earliest of these dates: (A) The date an income tax return (or an amended return) is filed reflecting the reduction; (B) the date a judicial determination affecting the amount of the reduction becomes final; and (C) the date specified in a closing agreement made under section 7121 that is approved by the Commissioner. For purposes of this subdivision (iii), a judicial determination becomes final at the time prescribed in § 1.547-2(b)(1) (ii) or (iii), relating to personal holding company tax.

(iv) *Year for taking reduction into account.* A reduction in investment credit must be taken into account in the earliest year or years possible under the applicable method beginning no later than the year in which the date of the reduction falls.

(v) *Decrease future contributions.* The reduction may be taken into account as a decrease in the value of TRASOP securities to be transferred to the plan. The amount of the decrease is equal to the dollar amount of the reduction.

(vi) *Deduct under section 404.* On the date of the reduction, the amount of the reduction may be treated as an amount paid to the TRASOP for purposes of, and as a deduction to the extent allowed under, section 404.

(vii) *Withdraw TRASOP securities.* If an additional credit allowed for a taxable year is recaptured, the corporation may withdraw from the plan TRASOP securities transferred to, or acquired by, the plan for claiming that year's credit. The withdrawal must only be from assets segregated under paragraph (f)(2) of this section and must be first from assets accounted for in an unallocated suspense account for the particular year. The amount of assets actually withdrawn bears the same proportion to the amount of assets subject to withdrawal as the amount of additional credit recaptured bears to the amount of additional credit claimed. Thus, for example, if the assets subject to withdrawal consist of 300 shares of one class of employer stock and one-third of the additional credit is recaptured, 100 shares of the stock are withdrawn. However, if the current

value of the assets subject to withdrawal exceeds the dollar amount of the additional credit claimed, assets may be withdrawn only to the extent that their current value does not exceed the dollar amount of the recaptured portion of the additional credit. Thus, for example, if the 300 segregated shares in the prior example have a current value of \$9,000 and the dollar value of the additional credit claimed is \$4,500, when one-third of the additional credit is recaptured, only 50 shares, not 100 shares, are withdrawn. Current value is determined under paragraph (b)(7) of this section as of the withdrawal date or, if the special 20-day average rule is applied, it is based on the 20 consecutive trading days immediately preceding the withdrawal date.

Withdrawals from an individual's account for the year with respect to which recapture occurs must bear the same ratio to the total amount withdrawn for that year as the individual's TRASOP account balance for that year bears to the total TRASOP account balances for that year. In the case of a TRASOP security acquired after March 20, 1979, the corporation may not withdraw it unless the plan meets the requirements of paragraph (d)(7)(ii) of this section when the plan acquires the TRASOP security.

(viii) *Prior distribution rule.* If a TRASOP distributes an amount allocated with respect to an investment credit for a taxable year and the credit for that year is later recaptured, withdrawals may not reduce participants' accounts below the level to which they would have been reduced had the prior distribution not occurred. Recaptured amounts above this level may only be deducted under paragraph (e)(9)(vi) of this section. They may not be used to decrease future contributions under paragraph (e)(9)(v).

(ix) *Illustration.* The operation of paragraph (e)(9)(viii) of this section is illustrated as follows:

*Example.* For 1977, a calendar-year corporation claims an additional credit of \$10,000. The corporation's TRASOP meets the requirements of section 301(f) of the 1975 TRA. Each of 10 participants under the plan for that year receives an equal allocation of 10 shares valued at \$1,000. In 1978, one participant terminates employment and receives a distribution of 10 shares. In 1979, a recapture reduces the 1977 additional credit by \$2,000. The value of employer securities has not changed from the allocation date. If the 10 shares had not been distributed, 20 shares would be available for withdrawal, 2 shares from each participant's account. Since 9 participants remain from 1977, only 18 shares are available for withdrawal (2 shares x 9 remaining participants). If these 18 shares are withdrawn, the corporation may take into

account 2 shares by deducting their value to the extent permitted under paragraph (e)(9)(vi) of this section.

(10) *Continued investment in employer securities.* The requirement that a plan be designed to invest primarily in employer securities is a continuing obligation. Therefore, a transaction changing the status of a corporation as an employer may require the conversion of certain plan assets into other securities. See paragraphs (d)(9) and (g)(6) of this section. In general, cash or other assets derived from the disposition of employer securities must be reinvested in employer securities not later than the 90th day following the date of disposition. However, the Commissioner may grant an extension of the period for reinvestment in employer securities depending on the facts and circumstances of each case.

(f) *Section 301(f) withdrawals.*—(1) *In general.* No assets may be withdrawn by a corporation under section 301(f) of the 1975 TRA unless the assets are either TRASOP securities or plan assets into which TRASOP securities have been converted ("withdrawal assets"). See paragraph (e)(10) concerning restrictions on investment of TRASOP assets in assets other than employer securities. Withdrawal assets must meet the segregated accounting requirements of this paragraph. The physical segregation of assets is not required.

(2) *Segregated accounting.* The segregated accounting requirements are that—

(i) Withdrawal assets must be segregated from other plan assets on a taxable-year-by-taxable-year basis; and

(ii) Separate accounts must be maintained on a taxable-year-by-taxable-year basis for each participant on whose behalf withdrawal assets are allocated.

(3) *Aggregate plan year accounting.* Withdrawal assets for taxable years beginning before October 4, 1976, also meet the segregated accounting requirements if they are aggregated and accounted for in one separate account apart from withdrawal assets in separate accounts for later taxable years.

(g) *Requirements for employer securities.*—(1) *General rules.* The term "employer security" does not include stock rights, warrants and options. An employer security that is not common stock must at all times be immediately convertible into common stock that is an employer security at a conversion price which is no greater than the fair market value of that common stock at the time the plan acquires the security.

(2) *Common stock.*—(i) *In general.* To be an employer security, common stock must meet certain voting power and dividend right requirements. For purposes of this paragraph (g), stock held by the TRASOP is not treated as outstanding.

(ii) *Dividend right limitations.* If dividend rights are subject to a limitation, then stock representing at least 50 percent of the fair market value of the employer's outstanding common stock at the time the common stock is transferred to or purchased by the TRASOP must be subject to the same limitation. However, common stock that satisfies paragraph (g)(3)(ii) of this section is not subject to this subdivision (ii).

(3) *Voting power and dividend rights.* To be an employer security, common stock must have voting power and dividend rights which, when taken together, are "no less favorable" than the voting power and dividend rights of any other common stock issued by the employer. Common stock which meets one of the following tests is "no less favorable".

(i) *Ten-percent shareholder test.* The stock is part of, or identical to, a class of outstanding stock of which at least 50 percent is not owned by 10-percent shareholders. For this purpose, a 10-percent shareholder is one who owns at least 10 percent of the outstanding shares in a class, including shares constructively owned under section 318.

(ii) *Substantial proportionality test.* More than one class of common stock is outstanding and an identical percentage of shares from each class is transferred to the TRASOP.

(iii) *Voting power test.* The stock is part of, or identical to, the existing class of stock having the greatest number of votes per unit of fair market value. For example, assume there are only two classes of common stock, Class A and Class B. Their fair market values per share are \$1 and \$.50, respectively, and the owner of each share of each class is entitled to one vote per share. Thus, Class B has two votes per \$1 and Class A has one vote per \$1. Accordingly, the Class B stock has the greatest number of votes per unit of fair market value.

(4) *Right of first refusal.* TRASOP securities may, but need not, be subject to a right of first refusal. However, whether or not the plan is an ESOP, any such right must meet the requirements of § 54.4975-7(b)(9) of this chapter.

(5) *Put option.* A TRASOP security that is transferred to a TRASOP after September 30, 1976, must be subject to a put option if it is not publicly traded when distributed or if it is subject to a

trading limitation when distributed. The provisions of § 54.4975-7(b)(10)-(12) and § 54.4975-11(a)(3) of this chapter apply to such securities whether or not the plan is an ESOP.

(6) *Change of employer security status.* In general, a transaction changing the status of a corporation as an employer, or as a member of a controlled group of corporations including the employer, adversely affects the status as employer securities of common stock and securities held by a plan ("old employer securities"). However, to the extent that the transaction causing the change in status of the old employer securities does not result in a recapture under section 47 of any investment credit underlying the transfer to, or acquisition by, the plan of the old employer securities, common stock and securities ("new employer securities") substituted for old employer securities are treated as if they were the old employer securities if—

- (i) The plan is not terminated,
- (ii) The old employer securities and the new employer securities are of equal value at the time of the transaction changing the status of the old employer securities, and
- (iii) The new employer securities otherwise meet the requirements of this section.

(h) *Failure to comply.*—(1) *General rule.*—(i) *Effect of failure.* If a corporation elects under paragraph (c)(2)–(5) of this section to obtain an additional credit and fails to comply with respect to that credit at any time, it is liable to the United States for a civil penalty equal to the amount involved in the failure to comply. If the corporation fails to comply with respect to an additional credit during the 84-month period described in section 301(d)(4) of the 1975 TRA, the credit is also recaptured. A separate failure to comply occurs for each taxable year in which a failure continues to exist.

(ii) *Illustration of continuing failure's effect.* Assume that in 1975 an additional credit is allowed and a failure to comply occurs in 1975 with respect to that credit. Assume also that in 1976 the 1975 failure continues uncorrected, another additional credit is allowed, and a failure to comply occurs with respect to the 1976 credit. Under these circumstances, on the last day of 1976 three separate failures to comply exist: (A) The 1975 failure with respect to the 1975 credit, (B) the 1976 failure with respect to the 1975 credit, and (C) the 1976 failure with respect to the 1976 credit.

(2) *Assessment and collection.* The civil penalty must be assessed and collected in the same manner in which a

deficiency in the payment of federal income tax is assessed and collected.

(3) *Exception.* If a failure to comply is corrected within the correction period described in paragraph (h)(5) of this section—

- (i) The corporation is not liable for a civil penalty; and
  - (ii) If the corporation establishes that at the time of the failure a good faith effort to comply was made, its additional credit is not disallowed.
- (4) *Failure to comply (penalty classifications).*—(i) *In general.* An electing corporation fails to comply if a defect described in paragraph (h)(4) (ii)–(iv) of this section occurs with respect to an additional credit allowed for a particular taxable year. The characterization of the defect in this subparagraph (4) determines the amount involved under paragraph (h)(8) of this section for the purpose of assessing the civil penalty.

(ii) *Funding defect.* A funding defect occurs if a corporation or its TRASOP fails to satisfy the requirements of paragraph (c) (8) or (9) of this section, relating to funding a TRASOP and claiming an additional credit.

(iii) *Special operational defect.* A special operational defect occurs if a TRASOP fails in operation to satisfy the requirements described in paragraph (d) (5)–(9) of this section, relating to debts and expenses of a TRASOP, allocation of TRASOP securities, nonforfeiture, voting rights, and distributions, or paragraph (e)(3) of this section, relating to compliance with certain Code provisions.

(iv) *De minimis defect.* A de minimis defect occurs if a corporation or its TRASOP fails to satisfy any requirement of this section other than those enumerated either in paragraph (h)(4) (ii) and (iii) of this section or in paragraphs (a)(2) and (c) (2)–(5) of this section. A failure to comply under this subdivision (iv) may be formal or operational in nature.

(5) *Failure to comply (correction rules classifications).*—(i) *In general.* If for an electing corporation a defect described in paragraph (h)(4) of this section occurs, the procedure for correcting the failure to comply depends upon whether the failure is classified as a "formal" failure or an "operational" failure under this subparagraph (5).

(ii) *Formal failure to comply.* Formal failures are corrected by retroactive amendment. If a formal plan requirement is not met, the plan must be retroactively amended by no later than the expiration of the correction period under paragraph (h)(6) of this section. A plan fails to meet a formal plan requirement of paragraph (d) of this

section if, for example, it does not state, as required by paragraph (d)(3) of this section, that it is designed to invest primarily in employer securities.

(iii) *Operational failure to comply.* Operational failures are corrected by undoing the defective transaction and by making the plan and the participants whole. If the value of TRASOP securities transferred to the TRASOP is less than the amount of the additional credit, the corporation must make up any resulting funding deficiency within the correction period. This is done, for example, by contributing additional TRASOP securities plus an amount equal to the dividends or interest that would have been paid between the time that the TRASOP securities should have been transferred and the actual time for the transfer. The contribution of additional TRASOP securities is based on their value under paragraph (b)(7) of this section as of the date by which they were required to be transferred to the plan. An electing corporation fails to meet an obligation undertaken under this section if, for example, it fails to comply with paragraph (c)(8) of this section.

(6) *Correction period.*—(i) *In general.* For purposes of this paragraph (h), the "correction period" begins when the failure to comply occurs and ends 90 days after receipt by the corporation of a notice of deficiency under section 6212 with respect to the civil penalty and the investment credit.

(ii) *Extensions of correction period.* Extensions of the correction period are determined under § 53.4941 (e)–1(d)(2) (i), (ii), and (iv) of this chapter (Foundation Excise Tax Regulations). For this purpose, a failure to comply is treated as an act of self-dealing, the corporation is treated as a foundation, and a civil penalty is treated as a tax under section 4941(a)(1).

(7) *Good faith.* The corporation has the burden of establishing under paragraph (h)(3)(ii) of this section that it made a good faith effort to comply. For example, if a corporation shows that it has made a good faith effort to establish the fair market value of the employer securities transferred to the TRASOP, it may be entitled to the additional credit even if, on later examination of the return, it is determined that more securities should have been transferred. For purposes of this paragraph (h)(7), reasonable reliance on Technical Information Release 1413 (1975–50 I.R.B. 16), questions and answers relating to ESOP's, is a good faith effort to comply.

(8) *Amount involved.*—(i) *In general.* The amount involved in a failure to comply is an amount described in this

subparagraph (8). A maximum amount and a minimum amount are determined with respect to an additional credit allowed for a particular taxable year.

(ii) *Maximum amount involved.* Notwithstanding any other rule in this paragraph (h), all amounts involved with respect to an additional credit allowed for a particular taxable year may not exceed the amount of that credit.

(iii) *Minimum amount involved.* The minimum amount is  $\frac{1}{2}$  of one percent of the additional credit times the number of full months, or parts of full months, during which the failure to comply exists. "Full month" has the meaning assigned in § 1.1250-1(d)(4) (realty depreciation recapture).

(iv) *Funding amount involved.* The amount involved for a funding defect is the greater of the minimum amount involved or the amount required to place the plan in the position it would have been in if no funding defect had occurred.

(v) *Special operational amount involved.* The amount involved for a special operational defect is the maximum amount involved.

(vi) *De minimis amount involved.* The amount involved for a de minimis defect is the minimum amount involved.

(9) *Certain permissible actions.*—(i) *Elections prior to January 19, 1979.* A corporation does not fail to comply (within the meaning of this paragraph (h)) merely because it revokes an election made prior to January 19, 1979, under the general rule described in paragraph (c)(1)(i) of this section and with respect to which no additional credit was claimed in the taxable year for which the election was made. Such a revocation is permitted irrespective of whether the carryover option described in paragraph (c)(1)(ii) is elected with respect to qualified investment made in a year for which a general rule election is revoked.

(ii) *Pro rata use of credit.* A corporation does not fail to comply merely because, for an applicable year ending prior to January 19, 1979, it provides for pro rata use of the regular 10-percent credit and the 1-percent additional credit to the extent that less than all of a taxpayer's credit earned for a taxable year is allowable.

(iii) *Transitional rule.* The Commissioner, based on the particular facts and circumstances of individual cases, may determine that a good faith failure to comply before January 19, 1979, with a final or temporary rule adopted under this section on or after that date does not require retroactive correction under paragraph (h)(5)(ii) of this section.

This Treasury decision is issued under the authority contained in section 301(d)(2)(C) of the Tax Reduction Act of 1975 and section 7805 of the Internal Revenue Code of 1954 (89 Stat. 38, 68A Stat. 917; 26 U.S.C. 7805).

Roscoe L. Egger, Jr.,  
Commissioner of Internal Revenue.

Approved: October 25, 1982.  
David G. Glickman,  
Acting Assistant Secretary of the Treasury.  
[FR Doc. 82-33115 Filed 12-3-82; 8:45 am]  
BILLING CODE 4830-01-M

## 26 CFR Part 1

[T.D. 7856]

### Income Tax; Taxable Years Beginning After December 31, 1953; One-Half Percent TRASOP Credit

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Final regulation

**SUMMARY:** This document provides final regulations relating to investment credit employee stock ownership plans ("TRASOPs") that provide for an extra one-half percent credit. Changes in the applicable tax law were made by the Tax Reform Act of 1976 and are reflected in these regulations; these final regulations do not reflect changes made by the Revenue Act of 1978 or the Energy Tax Act of 1978, or subsequent legislation. These regulations provided necessary guidance to the public for compliance with the law, and affect employees who participated in, and employers who establish, TRASOPs that provide for an extra one-half percent credit.

**DATE:** The regulations are effective for taxable years beginning after December 31, 1976.

**FOR FURTHER INFORMATION CONTACT:** John Khil of the Employee Plans and Exempt Organization's Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-6212) (Not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

On August 17, 1979, the Federal Register published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 46 of the Internal Revenue Code of 1954. These amendments were proposed to conform the regulations to section 301(e) of the Tax Reduction Act of 1975 as added by section 803(d) of the Tax Reform Act of 1976 (90 Stat. 1587).

A public hearing was neither requested nor held. After consideration of all comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision.

#### Discussion of Issues

##### 1. Forfeitability of Employer Contributions

Several comments requested clarification of whether certain employer contributions would be considered forfeitable because, under certain circumstances, they may be withdrawn by the employer. The regulations provide that contributions are not forfeitable merely because they may be returned to the employer if they exceed employee contributions. Also, a contribution is not forfeitable merely because it is transferred from the account of a participant who has not fulfilled a pledge; as employee contributions must be reduced to the extent of unfulfilled pledges, the employer contributions may be reduced to match employee contributions. The reduction may apply only to an individual contributor if the reduction is attributable to that participant's unpaid pledge. This provision is unchanged from the proposals.

##### 2. Supplemental Contributions After Disclosure

Several inquiries from the public concerned supplemental contributions. The final regulations, like the proposed regulations, permit certain employee contributions of supplemental amounts where employees had contributed less than the maximum amount available. This rule does not preclude an employee's indicating the extent to which he or she intends to contribute, if permitted, an amount in excess of a basic amount. If the employee contribution is to be paid by payroll withholding, and if the actual supplemental amount is determined on or before the date on which the credit is claimed, the employer need not disclose the amount of the supplemental contribution for which each employee actually will be responsible. Also in the circumstances described above, the employees need not have the right under the plan to revoke such an agreement to make supplemental contributions. However, these rules should be contrasted with the procedure which must be applied if the determination concerning the availability of supplemental contribution is made after the credit is claimed. In that case (*i.e.*, it is determined that some supplemental

contribution may be made due to another employee's pledge having remained unpaid), the regulations provide that the employee may be obligated to make a supplemental contribution only after disclosure of the available amount, and the employee must have the right to revoke any conditional pledge previously made.

### 3. Transitional Rule for Pledges

The proposed regulations required employee pledges to be made for an applicable year by the last day on which an employer may elect the credit. Generally, this day is the last day for filing the employer's tax return. Several comments suggested that this provision cast doubt on the timing of pledges for applicable years ending before the regulation was proposed. Also, some taxpayers needed to make several changes in their plans to collect pledges before the deadline.

The final regulation provides that employee pledges may be made at any time before the later of the applicable last day or January 15, 1980. If the last day is January 15, 1980, an employer may elect the credit by amended return and transfer employer contributions by that date. Also, payment of pledges for calendar year 1977, which otherwise would have been due on or before December 31, 1979, could be received until January 15, 1980. These transitional rules were previously announced in Internal Revenue Service News Release IR-2161, September 13, 1979.

### Source of Start-Up Expense

Several comments requested clarification of the source and ceiling for payment of start-up expenses. The final regulations provide a new rule for situations in which the first elections of one-percent and one-half percent credits are attributable to different years' qualified investment. If one-half percent start-up expenses are attributable to a later year's qualified investment, withdrawals are limited to employer amounts due under this section. The ceiling for such withdrawals is based upon the full one-half percent amount due to be contributed (as if the contribution were made under the general rule and without regard to possible carryovers).

### 5. Former Employees' Pledges

The proposals permitted a plan to offer different and more limited contribution options to estates of deceased employees and former employees who are participants in the TRASOP. This provision is unchanged from the proposed regulations. A plan may also provide for acceleration of

pledges by employees who terminate employment after making the pledge.

### 6. Conditional Funding

The one-percent TRASOP regulations provide that, under section 301(d)(14) of the 1975 Tax Reduction Act, TRASOP funding may be conditioned on the plan's satisfying the requirements of section 301(d) or 301(e) of the 1975 TRA or section 401(a) of the Internal Revenue Code. Funding of the one-half percent feature alone, as well as the one-percent feature, may be conditioned on satisfaction of section 301(d)(14) of the 1975 TRA.

### 7. Effect of Section 415

The proposals stated that allocations would be considered in the following order in applying limitations on annual additions to participants' accounts: first, one-percent TRASOP allocations; second, one-half percent TRASOP allocations; third, other allocations. The final regulations provide that one-percent amounts are considered before one-half percent amounts, but omit any reference to other allocations. This change reflects a new rule in the final one-percent TRASOP regulations, which provides that other contributions may be considered first in certain situations.

### 8. Basic Amounts

A "basic amount" is an initial employee contribution based on the total expected one-half percent credit. Under the proposals, a plan could have computed basic amount contributions in such a manner as to allow an employer to make a partial election of the credit. The final regulations provide that this computation must be based on the total expected one-half percent amount. This provision does not change the rule that employee contributions may be limited to basic amounts although they in fact yield less than the one-half percent available.

### 9. Carryover Option

The proposals stated that the carryover option for determination of applicable years is available for both the one-percent and one-half percent credits or for the one-half percent credit alone. This provision is unchanged in the final rules. Several comments requested clarification of the applicability of the option to the one-half percent credit alone. Using the option, a taxpayer may in some cases establish a new contributory one-half percent feature under the carryover option in a year subsequent to the year in which qualified investment is made. This may occur even though a corporation determined applicable years

under the general rule for the one-percent credit attributable to that qualified investment. Thus, in the carryover situation, a corporation may elect to establish and fund the one-percent and one-half percent features in different years even though the credits are attributable to the same qualified investment. A change to the text of the regulations to reflect this interpretation has been judged unnecessary.

### 10. Apportionment of Reductions

Generally, if a reduction of the total employee contribution is necessary, the account of each contributor for an applicable year is reduced by a percentage of the total reduction of matching employee contributions. In certain situations, a distribution may have been made between the allocation and reduction. The final regulation provides that reductions may not yield an account balance below zero. Reductions are made on the basis of account balances at the time of the reduction.

### 11. Relation to Revenue Act of 1978

These provisions are generally effective for taxable years beginning after December 31, 1976. While the regulations do not specifically reflect changes mandated by the Revenue Act of 1978, they remain effective except to the extent that they are superseded by the 1978 Act and subsequent legislation.

It is anticipated that the following sections will substantially remain effective under the 1978 Act:

§ 1.46-9(a)(2);  
§ 1.46-9(b) (1)(i)-(iv), (2), (4)-(5);  
§ 1.46-9(c) (1)-(3), (5);  
§ 1.46-9 (d) (1)-(2), (4)-(6);  
§ 1.46-9 (e) (1)-(2);  
§ 1.46-9 (f) (1), (2)(iv), (3), (5);  
§ 1.46-9 (g).

If any provisions of regulations issued under the 1978 Act are less favorable to taxpayers than the rules listed above, the later provisions will be effective only for periods after the date of adoption. No implication is to be drawn from the omission of any regulation provision presently applicable under the statute.

### 12. Limitation on Voluntary Contributions

The preamble to the proposed regulation referred to published Internal Revenue Service rulings which have stated that an employee's total voluntary contributions to all plans of an employer must be within reasonable bounds. The preamble stated that matching employee TRASOP contributions will not be considered

"voluntary" within the meaning of those revenue rulings, which were specifically cited. Several inquiries from the public related to this preamble statement.

Rev. Rul. 81-234, 1981-41 I.R.B. 7, clarifies issues arising under the rulings cited in the preamble to the proposed regulations. That ruling indicates that the matching contributions, to which employer contributions are geared, are considered mandatory rather than voluntary contributions. Thus, the matching employee TRASOP contributions are not considered when applying a ten percent limitation on voluntary contributions. No such limitation applies to mandatory contributions.

#### Non-Applicability of Executive Order 12291

The Treasury Department has determined that this regulation is not subject to review under Executive Order 12291 or the Treasury and OMB implementation of the Order dated April 28, 1982.

#### Regulatory Flexibility Act

The notice of proposed rulemaking relating to these regulations was published prior to January 1, 1981. Accordingly, these regulations are not subject to the Regulatory Flexibility Act and no regulatory flexibility analysis is required.

#### Drafting Information

The principal author of this regulation is Joel E. Horowitz 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.

#### List of Subjects in 26 CFR 1.0-1 through 1.58-8

Income taxes, Tax liability, Tax rates, Credits.

#### Adoption of Amendments to the Regulations

Accordingly, the proposed amendments to 26 CFR Part 1 published at 44 FR 48269, August 17, 1979 are hereby adopted with changes set forth below:

#### PART 1—[AMENDED]

Part 1 of Title 26 of the Code of Federal Regulations is amended by adding § 1.46-9 to read as follows:

#### § 1.46-9 Requirements for taxpayers electing an extra one-half percent additional investment credit.

(a) *Introduction*—(1) *In general.* A corporation that qualifies for an additional credit under § 1.46-8 may elect under section 46(a)(2)(B)(ii) of the Code to obtain an extra one-half percent additional investment credit for property described in section 46(a)(2)(D). Paragraph (c) of this section provides additional procedures for electing this extra credit. This section also provides rules for implementing an employee stock ownership plan that meets the requirements of sections 301 (d) and (e) of the Tax Reduction Act of 1975 ("1975 TRA"). The plan must meet the additional formal requirements of paragraph (d), and the additional operational requirements of paragraph (e) of this section. Unless otherwise indicated, statutory references in this section are to the Internal Revenue Code of 1954, as applicable for the year in which a qualified investment is made.

(2) *Applicability of one-percent TRASOP provisions.* Subject to the exceptions and additional rules of this section, the provisions of § 1.46-8 apply to an election made, and to a plan implemented, under this section. However, this section does not change the requirements of § 1.46-8 for purposes of obtaining an additional one-percent credit.

(3) *Effective date.* This section applies only to taxable years beginning after December 31, 1976. See section 803(j)(2)(A) of the Tax Reform Act of 1976.

(b) *Definitions*—(1) *One-percent terms.* When used in this section, the terms listed below have the same meanings as in § 1.46-8(b):

- (i) TRASOP. See § 1.46-8(b)(1).
- (ii) Employer. See § 1.46-8(b)(3).
- (iii) Employer securities. See § 1.46-8(b)(4).
- (iv) TRASOP securities. See § 1.46-8(b)(5).
- (v) Publicly traded. See § 1.46-8(b)(6).
- (vi) Value. See § 1.46-8(b)(7).
- (vii) Compensation. See § 1.46-8(b)(8).

(2) *Additional credit.* An "additional credit" or "extra additional credit" is the extra one-half percent additional investment credit under section 46(a)(2)(B)(ii)—

- (i) For purposes of applying this section, and
- (ii) When the context requires, for purposes of applying § 1.46-8 to this extra credit.

(3) *Matching employee contribution.* A "matching employee contribution" is a contribution that meets the requirements of paragraph (f) of this section.

(4) *Basic amount.* A "basic amount" is a matching employee contribution which is equal to the maximum credit multiplied by a fraction. The numerator of this fraction is a participant's compensation for the plan year. (See § 1.46-9(f)(3)(ii), concerning disregarded compensation.) The denominator is the aggregate of all participants' compensation for the plan year. The "maximum credit" is the estimated value of all employer contributions under paragraph (c)(4)(i) of this section for the applicable year, determined as if the maximum possible matching employee contributions were made.

(5) *Supplemental contribution.* A "supplemental contribution" is a matching employee contribution made in addition to a basic amount.

(c) *Special procedures for extra additional credit*—(1) *Statement of election.* A corporation's statement of election described in § 1.46-8(c)(3) must contain the name and taxpayer identification number of the corporation. Also, it must declare in the following words, or in words having substantially the same meaning, that:

(i) The corporation elects to have section 46(a)(2)(B) (i) and (ii) of the Internal Revenue Code of 1954 apply; and

(ii) The corporation agrees to implement (or continue to implement, as appropriate) a TRASOP and to claim the additional credit as required by § 1.46-8 and § 1.46-9 of the Income Tax Regulations.

(2) *Separate election.* A separate election must be made for each year's qualified investment to obtain the extra additional credit for the qualified investment. If a corporation does not make a timely election to obtain an extra additional credit for a taxable year, it may not subsequently make the election on an amended return or otherwise.

(3) *No partial election.* To reduce administrative costs, a plan may establish a ceiling on matching employee contributions. Thus, for example, it may provide for the contribution of only a basic amount without supplemental contributions under paragraph (f)(2)(iv) of this section. Such a ceiling that in effect limits the additional credit to less than one-half percent of the qualified investment is not a partial election prohibited by § 1.46-8(c)(5).

(4) *Funding a TRASOP*—(i) *Employer contributions.* The carryover option under § 1.46-8(c)(1)(ii) is available for both the one-percent and one-half percent additional credits or for the one-half percent additional credit alone. In

applying § 1.46-8(c)(8)(iii), the value of TRASOP securities, other than those acquired with matching employee contributions, for an applicable year must equal one-half percent of the corporation's qualified investment for that year or, if less, the amount of matching employee contributions received (including pledges, where permitted by the plan) by the time the election for that year is made. However, if a corporation exercises the carryover option in § 1.46-8(c)(1)(ii), the value of these TRASOP securities for an applicable year must equal the amount of additional credit claimed for that year determined after being reduced, if necessary, to equal contributions received (including pledges, if permitted) by the time the credit is claimed for that year. The value of these TRASOP securities, but not the amount of credit claimed, is further reduced to the extent that the employer withholds TRASOP securities to take into account start-up and administrative expenses under paragraph (e)(1) of this section or an investment tax credit reduction under paragraph (e)(2) of this section.

(ii) *Employee contributions.* Paragraph (f)(4) of this section, but not § 1.46-8(c)(8) (i)-(iii), applies to TRASOP securities acquired with matching employee contributions.

(5) *Claiming additional credit.* In applying § 1.46-8(c)(9)(ii), if less than all of a corporation's credit earned for a taxable year is allowed, the extra additional credit under this section for that year is allowed last.

(d) *Additional formal plan requirements—(1) Contributions by employees—(i) In general.* The plan must contain statements relating to matching employee contributions as required under paragraph (f) of this section.

(ii) *Aggregate floor.* A plan may provide for the return of all matching employee contributions for a year if the aggregate amount of such contributions is not at least equal to an amount stated in the plan. See also § 1.46-9(f)(3)(iv).

(2) *Separate accounting.* The plan must state that employer contributions and matching employee contributions respectively described in paragraph (c)(4)(i) and (ii) of this section are accounted for separately from each other as well as from other contributions, including those described in § 1.46-8(c)(8).

(3) *Allocation of TRASOP securities contributed by employer.* The plan must provide for the allocation under section 301(e)(5) of the 1975 TRA and this subparagraph (3) of TRASOP securities contributed by the employer. These allocations reflect a ratable reduction

for TRASOP securities withheld by the employer under paragraph (c)(4)(i) of this section. TRASOP securities so allocated are deemed to be allocated under section 301(d) of the 1975 TRA. In applying § 1.46-8(d)(6) to this section, only subdivisions (ii), (iv), (ix), (x), (xi) and (xii) thereof apply to allocations under this section.

(4) *Effect of section 415.* In applying the limitations of section 415 to limitation years beginning after January 19, 1979, allocations of TRASOP securities are considered in the following order: first, allocations under § 1.46-8; second, allocations under this section. See § 1.46-8(d)(6)(v) concerning the allocation of amounts under any other defined contribution plan. No suspense or escrow account may be maintained to hold contributions under this section that are unallocated because of section 415. Thus, section 415 in effect limits the availability of an extra additional credit in a particular year. However, if the plan so provides, a potential extra additional credit is treated as an investment credit carryover under the carryover option described in § 1.46-8(c)(1)(ii) to the extent that it is not used in a particular year because of section 415.

(5) *Nonforfeitable.* Employer contributions are also not considered to be forfeitable under § 1.46-8(d)(7) merely because the plan provides for their return to the corporation in an amount equal to the excess of employer contributions under this section over matching employee contributions or in the case of discriminatory operation under paragraph (f)(3) of this section. See paragraph (f)(3)(iv).

(6) *Distributions.* Notwithstanding § 1.46-8(d)(9)(i), a plan may not distribute from a participant's employer contribution account cash or employer securities attributable to unpaid pledges of the participant.

(e) *Additional operational plan requirements—(1) Start-up and administrative expenses—(i) In general.* The expense of establishing plan features relating to the extra additional credit is a start-up expense. The expense of collecting matching employee contributions is an administrative expense.

(ii) *Payment.* Under § 1.46-8(e) (6) and (7), an employee may withhold or a plan may use, to the extent not withheld, TRASOP securities for start-up and administrative expense payments. However, withdrawals must be either limited to employer contributions under § 1.46-8(c)(8) or reasonably apportioned between these employer contributions and contributions under paragraph (c)(4)(i) of this section. An example of

reasonable apportionment is earmarking expenses attributable to each of the additional credits and allocating any remaining non-earmarked expenses on either a 2:1 or 1:1 ratio between the additional credits. Another example is simply apportioning expenses between the additional credits on a 2:1 or 1:1 ratio basis without earmarking. However, if one-percent and one-half percent start-up expenses are attributable to different qualified investments, withdrawals for one-half percent expenses are limited to employer contributions under paragraph (c)(4)(i) of this section.

(iii) *Ceiling.* In determining the ceiling on start-up expenses under § 1.46-8(e)(6)(iii), only employer contributions under § 1.46-8(c)(8) and paragraph (c)(4)(i) of this section are considered. In determining the ceiling on administrative expenses under § 1.46-8(e)(7)(ii), dividends on all TRASOP securities, including those acquired with matching employee contributions, are considered.

(2) *Redeterminations and recaptures.* A reduction in investment credit because of a redetermination or recapture is allocated ratably under the principles of § 1.46-8(e)(9)(ii) among the 10-percent credit, the one-percent credit, and the one-half percent credit for a particular year. However, as illustrated in § 1.46-8(e)(9)(ii), this subparagraph (3) does not apply to a redetermination solely of one or both of the additional credits.

(3) *Withdrawal asset segregation.* The segregated accounting provisions of § 1.46-8(f) apply independently to withdrawal assets attributable to TRASOP securities under § 1.46-8 and to TRASOP securities under this section.

(f) *Matching employee contributions—(1) Designation by employee.* The plan must state that each employee on whose behalf an allocation is made under § 1.46-8(d)(6) for an applicable year is eligible to designate and contribute an amount to the TRASOP for that year as a matching employee contribution.

(2) *Form and timing of contribution—(i) Cash.* A participant may contribute in a manner provide under the plan a designated amount in cash directly to the plan or indirectly by the employer's withholding from amounts otherwise due the participant. The full amount, or pledge in lieu of an amount, for an applicable year must be contributed by the applicable last day described in § 1.46-8(c)(8)(i).

(ii) *Optional pledges in lieu of cash.* The plan need not permit a pledge. However, when permitted by the plan,

an irrevocable written pledge made in good faith by a participant is treated as a matching employee contribution of cash, whether or not the pledge is in fact contractually binding. The pledge must be to contribute, by no later than a time specified in the TRASOP, a designated amount in cash directly to the plan or indirectly by authorizing the employer to withhold from compensation otherwise due a participant. The specified time may not be later than 24 months after the close of the applicable year for which the amount is treated as a matching employee contribution.

(iii) *Transitional rule.* A plan may provide for the receipt of employee pledges at any time before the later of the applicable last day or January 15, 1980. If the last day for receipt of pledges for an applicable year is January 15, 1980, the one-half percent TRASOP credit for the applicable year may be elected on an amended return filed not later than that date, and employer contributions for the applicable year must be made by that date. A plan may provide that pledges which otherwise would have been payable on or before December 31, 1979 may be paid on or before January 15, 1980.

(iv) *Basic and supplemental contributions.* A plan formula may limit a matching employee contribution to a basic amount. It may also permit matching employee contributions of supplemental amounts to the extent that total basic amount contributions do not equal the amount of the additional credit claimed under this section. Employees may make supplemental contributions covering unpaid pledges only after the employer has disclosed the value of securities and income attributable to the unpaid pledge.

(3) *Prohibited discrimination—(i) General rule.* Matching employee contributions must be based on a formula stated in the plan that does not result in prohibited discrimination under section 401(a)(4) either in form or in operation. Thus, for example, a flat dollar amount required as a matching employee contribution to qualify for employer-provided benefits under this section may not be too high for lower paid employees to contribute under the plan. Further, lower paid employees must participate to such an extent that allocations under this section do not result in prohibited discrimination.

(ii) *Compensation disregarded.* Compensation disregarded in allocations under § 1.46-8(d)(6)(iv) is disregarded under this paragraph and for purposes of determining basic amounts as defined in paragraph (b)(4) of this section.

(iii) *Former employees.* A TRASOP must give all participants a reasonable opportunity to make matching employee contributions. However, neither a former employee who is a participant at the end of the plan year by reason of § 1.46-8(d)(6)(iii), nor the estate of a deceased employee, need have the same options as are available to other participants. Thus, for example, a former employee may be limited to cash contributions even though other participants are permitted to make pledges. Also, if former employees of estates of deceased employees fail to make matching employee contributions, they are not considered in determining whether or not a TRASOP is discriminatory.

(iv) *Return of contributions.* A plan may provide for the return of employee and employer contributions for a year to the extent that plan operation would otherwise result in prohibited discrimination.

(4) *Investment in employer securities—(i) General rule.* Matching employee contributions must be invested in TRASOP securities no later than 30 days after the time for funding a TRASOP under § 1.46-8(c)(8)(ii) or, if later, the time specified under the special rule for pledges.

(ii) *Special rule for pledges.* Cash contributed to pay a pledge permitted by paragraph (f)(2)(ii) of this section must be invested in employer securities so that the cash is not held more than 3 months. The 3-month period includes the period, if any, that the cash is held by the employer.

(5) *Reduction of matching employee contribution—(i) In general.* Matching employee contributions must be reduced in three cases. First, they are reduced to the extent that there are no corresponding employer contributions described in paragraph (c)(4)(i) of this section. This occurs, for example, when the aggregate of the basic amounts of matching employee contributions exceeds the allowable credit. Second, they are reduced to the extent that corresponding employer contributions matching them under paragraph (c)(4)(i) of this section are withdrawn under section 301(f) of the 1975 TRA. Third, they are reduced by the amount of any pledge unpaid at the time specified in paragraph (f)(2)(ii) of this section.

(ii) *Apportioning reductions.* Generally, the account of each contributor under this section for an applicable year is reduced by a percentage of the account. This percentage equals the total reduction of all matching employee contributions for that year divided by the total, before the reduction, of all matching employee

contributions. However, if a reduction is directly attributable to a particular contributor, only that contributor's account is reduced. A reduction is directly attributable to a particular contributor when, for example, the limits of section 415 prohibit a full allocation of employer contributions equal to the contributor's matching employee contribution for an applicable year or when a contributor fails to pay a pledge. A reduction may not yield a negative balance in a participant's account.

(iii) *Disposing of reductions.* If a participant's matching employee contribution is reduced, the amount of the reduction must either be treated as a voluntary contribution or returned to the participant by the later of two dates. The first date is 30 days after the time for investing in TRASOP securities under paragraph (f)(4) of this section. The second date is the 30th day after the date on which the withdrawal of employer contributions occurs that causes the reduction. It may be treated as a voluntary contribution only if, as stated in the plan, the participant so indicates in writing when making the matching employee contribution.

(iv) *Supplemental contributions covering unpaid pledges.*

Notwithstanding the timing requirements of paragraph (f)(2) of this section, supplemental contributions covering unpaid pledges must be made no later than 60 days after accounting for the corresponding reduction under paragraph (f)(5)(ii) of this section.

(v) *Effect of reduction on credit.* For the purpose of applying section 415 to an additional allocation to the account of a participant attributable to a supplemental contribution covering an unpaid pledge, the contribution is treated as an annual addition to the supplemental contributor's account in the applicable year for which the reduction occurred. An amount in excess of the contribution may be allocated in equal amounts for each year from the applicable year to the year of the reduction. The employer's credit is reduced only to the extent that a proportionate transfer of assets is not made from the account of the participant to whom the reduction is attributable to the accounts of supplemental contributors.

(vi) *Example.* The rules contained in paragraph (f)(2) and (5) of this section are illustrated by the following example:

*Example.* Assume that A is an employee of corporation M, a calendar year taxpayer that maintains a TRASOP. A has pledged \$100 as a matching employee contribution for 1977, the first applicable year of M's TRASOP. M has transferred employer securities valued

at \$100 that have been allocated to A's account under the Plan. The TRASOP provides that pledges must be paid no later than 24 months after the end of the applicable year. Thus, A's \$100 pledge must be paid by December 31, 1979. As of December 31, 1979, the employer securities attributable to A's pledge have a value of \$90 and have produced undistributed dividend income of \$13. Thus, the value of the portion of A's account attributable to the unpaid pledge is \$103. After December 31, 1979, the value of this portion of A's account is disclosed to participants, and employee B chooses to pay off A's unpaid pledge, as provided in the plan, by making a \$100 supplemental contribution. The full amount of the securities and dividend income attributable to the unpaid pledge are transferred from A's account to that of B as of December 31, 1979. M's credit for 1977 is not reduced. The \$100 supplemental contribution is an annual addition to B's account for purposes of applying section 415 in 1979. Income attributable to the pledge in excess of the supplemental contribution, \$3 (\$103-\$100), may be allocated and treated as an annual addition by spreading this excess amount over the years from the applicable year to the year of the reduction (1977, 1978, 1979).

(g) *Failure to comply—(1) General rule.* If a corporation elects under § 1.46-8(c) (2)-(5) and paragraph (c)(1) of this section to obtain an additional credit, § 1.46-8(h) (1), (2), (3), (5), (6), and (7) as modified by this paragraph (g) apply.

(2) *Failure to comply (penalty classifications)—(i) In general.* A corporation fails to comply with an extra additional credit election if a defect described in paragraph (g)(2) (ii)-(iv) of this section occurs in a taxable year.

(ii) *Funding defect.* A funding defect occurs under this section if a corporation or its TRASOP fails to satisfy the requirements of § 1.46-8(c) (8) or (9) or paragraph (c)(4) of this section, as they apply directly to the extra additional credit.

(iii) *Special operational defect.* A special operational defect occurs if a TRASOP fails in operation to satisfy the requirements described in § 1.46-8(d)(5)-(9) (except (6) (i), (iii), and (v)-(viii)) or (e)(3), or paragraph (d) (5), (6), and (e)-(3) of this section, as they apply directly to the extra additional credit.

(iv) *De minimis defect.* A de minimis defect occurs if a corporation or its TRASOP fails to satisfy the requirements, other than those enumerated in paragraphs (c) (1) and (2) and (g)(2) (ii) and (iii), of this section or of § 1.46-8 other than those excluded under § 1.46-8(h)(4)(iv).

(3) *Amount involved.* The amount involved in a failure to comply under this section is based upon the extra additional credit within the meaning of section 46(a)(2)(B)(ii).

(4) *Coordination of civil penalties.* The civil penalties under § 1.46-8 and this section are determined separately. In no case may the amount involved with respect to a particular failure to comply in one year exceed under both sections the full additional credit within the meaning of section 46(a)(2)(B) (i) and (ii).

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).

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: October 25, 1982.

David G. Glickman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 82-32671 Filed 11-29-82; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[Docket No. AH 306PA; A-FRL 2249-6]

### Approval of Revision of Pennsylvania State Implementation Plan

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Commonwealth of Pennsylvania submitted a proposed revision to its State Implementation Plan to change the automobile emission inspection and maintenance (I/M) program coverage area in the Pittsburgh, Philadelphia and Allentown/Bethlehem/Easton regions. It is not anticipated that this revision will have a significant effect on air quality.

EPA assessed the approvability of the SIP revision by reviewing the plan revision in connection with the requirements for an approvable nonattainment SIP, which are described in the Federal Register notice of April 4, 1979 (44 FR 20372) and the requirements of Section 110 and Part D of the Clean Air Act. On June 15, 1982, EPA published a Notice of Proposed Rulemaking (47 FR 25745). EPA evaluated the comments received during the public comment period in its assessment of the final approval status of the revision to the Pennsylvania SIP. It is EPA's conclusion that the portion of the SIP revision which pertains to the Pittsburgh and Allentown/Bethlehem/Easton regions is approvable.

**EFFECTIVE DATE:** December 6, 1982.

**ADDRESSES:** Copies of the SIP support documents are available for inspection

during normal business hours at the following locations:

U.S. Environmental Protection Agency, Air Programs & Energy Branch, Curtis Building, 6th & Walnut Streets, Philadelphia, PA 19106. Attn: Patricia Gaughan (3AW12).

Pennsylvania Department of Environmental Resources, Bureau of Air Quality Control, 200 North 3rd Street, Harrisburg, PA 17120. Attn: James K. Hambricht. Public Information Reference Unit, Room 2922, EPA Library, U.S. Environmental Protection Agency, 401 M Street SW. (Waterside Mall), Washington, D.C. 20460.

### FOR FURTHER INFORMATION CONTACT:

Mr. Glenn Hanson, Chief, Pennsylvania Section (3AW11), Air and Waste Management Division, U.S. Environmental Protection Agency, Region III, 6th & Walnut Streets, Curtis Building, Philadelphia, PA 19106. Telephone Number 215/597-8173.

### SUPPLEMENTARY INFORMATION:

#### Description of Submittal

On July 27, 1981, August 12, 1981 and September 15, 1981 the Pennsylvania Department of Environmental Resources (DER) submitted proposed revisions to the Pennsylvania State Implementation Plan, along with supporting documentation, to revise the automobile emission inspection and maintenance (I/M) program coverage areas. Public hearings were conducted by the State on February 24, 1982, and February 25, 1982, and a summary of the comments was submitted to EPA on March 29, 1982.

DER proposed to limit the I/M program coverage areas to urbanized areas in the Pittsburgh, Philadelphia and Allentown/Bethlehem/Easton (A/B/E) regions, as defined by the U.S. Census Bureau in its preliminary 1980 report. The previous I/M program coverage areas included the entire counties of Butler, Allegheny, Beaver, Washington, and Westmoreland in the Pittsburgh region; the counties of Bucks, Chester, Delaware, Montgomery and Philadelphia in the Philadelphia region and the counties of Lehigh and Northampton in the A/B/E region.

In order to align the I/M program coverage areas with the urbanized areas, DER used U.S. Postal Service ZIP code maps. All ZIP code areas which are in the urbanized areas would be included in the I/M program coverage areas. The ZIP code areas in the rural portions of the existing I/M coverage area would no longer be included in the I/M coverage areas. As a result, the rural portions of Lehigh, Northampton, Bucks, Chester, Delaware, Montgomery,

Allegheny, Beaver, Washington and Westmoreland Counties and all of Butler County would be deleted from the I/M program areas. All of Philadelphia County would remain in the program.

#### Public Comments on Proposal

Comments were received from five respondents, three of whom requested an additional public hearing, five recommended disapproval, and one requested the deletion of additional ZIP code areas from the I/M coverage area. Those recommending disapproval disputed the State's claim that deletion of the unurbanized areas would have an insignificant impact on the attainment of the ozone standard, and noted that additional compensating measures would be required since analysis by the Delaware Valley Regional Planning Commission (DVRPC) indicates a shortfall of 6 percent of the 1980 emissions in the Philadelphia region. The fifth commenter urged deletion of those additional ZIP code areas which contain significant unurbanized portions.

#### Response

With respect to the relative effect of the proposed boundary change on regional air pollution in 1987, consideration of the emission inventory along with the EKMA model indicates clearly that the impact would be insignificant and would not jeopardize attainment of the ozone standard by 1987 in the Pittsburgh and Allentown/Bethlehem/Easton regions. However, in the Philadelphia region, data submitted by the Pennsylvania Department of Environmental Resources indicates that attainment of the ozone standard by 1987 will not be possible even if I/M is implemented throughout the five-county region. Hence the proposed boundary change would result in an increase in the predicted shortfall.

With respect to the possible need for additional measures and the six percent shortfall in the Philadelphia region, EPA will address these issues in its proposed and final rulemaking on the 1982 SIP for Southeastern Pennsylvania. Therefore, no action is being taken at this time on the I/M boundary change in the Philadelphia region.

With respect to the possible deletion of some ZIP code areas which include substantial unurbanized portions, EPA Policy plus the administrative problem of designating subareas make a change in area designations unfeasible. EPA I/M Policy was established by the Hawkins memo of July 17, 1978, from Assistant Administrator David G. Hawkins to Regional Administrators, "Inspection/Maintenance Policy." This

Policy memo specifies that the I/M geographic coverage "should include the entire urbanized area and fringe areas of development." Since it is impractical for the state to consider smaller areas than those designated by ZIP code, it is apparent that all ZIP code areas which contain an urbanized portion (plus an adjacent fringe area) should be included. Although the Hawkins memo does provide for adjustment in the I/M boundaries, the resultant requirement for increased stringency (i.e., higher failure rate) in the remaining area would impose a severe penalty on the affected drivers.

#### EPA Review Criteria

As per EPA's I/M policy memos of July 17, 1978 (from David Hawkins, Assistant Administrator for Air and Waste Management to Regional Administrators) and January 19, 1981 (from Michael P. Walsh, Deputy Assistant Administrator for Mobile Source Air Pollution Control to Air and Hazardous Materials Division Directors, "Questions on Inspection/Maintenance"), EPA reviewed DER's proposed SIP revision to: (1) Verify that the I/M program can be administered and enforced effectively with the changed boundaries; (2) verify that attainment of the National Ambient Air Quality Standards for ozone and carbon monoxide can be achieved no later than December 31, 1987; (3) verify that the minimum reasonably available control technology (RACT) emission reduction of 35 percent from light duty gasoline powered vehicles in the urbanized area will be obtained from the program.

#### EPA Findings

The primary tool for administering the I/M program is the Motor Vehicle Registration Card, which is mailed to each motorist in the State. When a motorist goes for one of the annual safety inspections the motorist must show the inspector the vehicle's registration card. Registration cards mailed to motorists in the I/M areas have a mark identifying the vehicles which must undergo an I/M inspection. Since the proposed I/M program boundaries are delineated by ZIP code, mailing registration cards with I/M identification marks to motorists in the I/M areas will allow effective administration and enforcement of the I/M program.

In regard to air quality, the proposed program boundaries still encompass the urbanized areas and, therefore, the 35 percent RACT emission reduction will be obtained. DER demonstrated that attainment of the carbon monoxide and ozone air quality standards by 1987 will

not be jeopardized in the Pittsburgh and A/B/E regions since total 1987 VOC emissions with the reduced geographical coverage will be less than the allowable emissions in each region. However, in the Philadelphia region, where a significant shortfall is predicted for 1987, the proposed boundary change will add to the shortfall and hence exacerbate the predicted violation of the ozone standard.

Based on the review to date, EPA believes DER's proposed SIP revision meets all applicable regulations and policies in the Pittsburgh and A/B/E regions and EPA is, therefore, approving the revision for the Pittsburgh and A/B/E regions. EPA is deferring action on the boundary change in the Philadelphia region pending final review of the Pennsylvania SIP for Southeastern Pennsylvania.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under 5 U.S.C. 605(b) the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. See 46 FR 8709 (January 27, 1981).

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by 60 days from today. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2)).

#### List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

(42 U.S.C. 7401-7642)

Note.—Incorporation by reference of the State Implementation Plan for the State of Pennsylvania was approved by the Director of the Federal Register on July 1, 1982.

Dated: November 29, 1982.

Anne M. Gorsuch,  
Administrator.

#### PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

##### Subpart NN—Pennsylvania

Title 40, Part 52, Subpart NN, of the Code of Federal Regulations is amended by adding new paragraphs (c)(46) and (c)(47) to § 52.2020.

##### § 52.2020 Identification of plan.

(c) \* \* \*

(46) A revision submitted by the Acting Secretary of the Pennsylvania Department of Environmental Resources on December 9, 1981, which would add an expanded ridesharing program in the Delaware Valley.

(47) Revisions submitted on July 27, 1981, August 12, 1981, and September 15, 1981, by the Pennsylvania Department of Environmental Resources (DER), which will limit the automobile emission Inspection and Maintenance Program to the urbanized areas of the Pittsburgh and Allentown-Bethlehem-Easton regions.

[FR Doc. 82-33174 Filed 12-3-82; 8:45 am]

BILLING CODE 6560-50-M

## GENERAL SERVICES ADMINISTRATION

### 41 CFR Part 101-36

[FPMR Amendment F-56]

### Hardware and Joint Federal Information Processing and Federal Telecommunication Standards

**AGENCY:** General Services  
Administration.

**ACTION:** Final rule.

**SUMMARY:** This regulation provides standard terminology for use in requirements documents, including solicitations, regarding the application of Federal Information Processing Standards Publication (FIPS PUBS) 32-1 and 93, and Joint Federal Information Processing Standards Publication 71/Federal Standard 1003A (FIPS PUB/FED-STD). It also updates the reference to FIPS PUB 61 to 61-1. This regulation is necessary to implement the Federal standards into Federal Government ADP management procedures. The objective of the revised FIPS PUB 32 is to improve the automatic reading of printed data for entry into OCR ADP systems. The intent of FIPS PUB 93 is to ensure the efficient interchange of information recorded on a 4 track, 6.30 millimeter, 63 bits per millimeter, phase-encoded magnetic tape cartridge between different devices or systems. The intended effect of FIPS PUB 71/FED-STD 1003A is to reduce the costs of data transmission networks and ensure their interoperability.

**EFFECTIVE DATE:** October 1, 1982.

**FOR FURTHER INFORMATION CONTACT:** P. Patton, Policy Branch, Office of Information Resources Management Policy (202-566-0194).

**SUPPLEMENTARY INFORMATION:** (a) FIPS PUBS are developed by the National Bureau of Standards (NBS) and are

issued by the Secretary of Commerce. FIPS PUB 32-1, effective June 25, 1982, adopts in whole or in part, American National Standards X3.17-1981, X3.49-1975, and X3.2-1970. FIPS PUB 93, effective June 29, 1982, adopts American National Standard X3.72-1981. FIPS PUB 71/FED-STD 1003A, effective June 13, 1980, adopts American National Standard X3.66-1979.

(b) This Regulation supersedes FPMR Temporary Regulation F-497 (46 FR 3021, January 13, 1981), dated January 6, 1981, which expired on September 30, 1982. The temporary regulation was promulgated to address the same technical area covered by separate FIPS PUB 71 and FED-STD 1003, now a joint FIPS PUB 71/FED-STD 1003.

(c) The General Services Administration has determined that this rule is not a major rule for the purpose of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of \$100 million or more; a major increase in cost to consumers or others; or significant adverse effects. The General Services Administration's decisions are based on adequate information concerning the need for and consequences of this rule. This is a Government-wide management regulation that will have little or no effect on society.

### List of Subjects in 41 CFR Part 101-36

ADP, Computer technology,  
Government procurement and property  
management, Security measures.

### PART 101-36—ADP MANAGEMENT

1. The table of contents of Part 101-36 is amended by changing two entries and adding two others as follows:

Sec.

101-36.1304-11 FIPS PUB 32-1, Federal  
Standard for Optical Character  
Recognition Character Sets

101-36.1304-21 FIPS PUB 61-1, Channel  
Level Power Control Interface

101-36.1304-33 FIPS PUB 93, Parallel  
Recorded Magnetic Tape Cartridge for  
Information Interchange, 4 Track 6.30  
mm (0.250 inch), 63 bpm (1600 bpi),  
Phase Encoded

101-36.1309-6 FIPS PUB 71/FED-STD  
1003A, Advanced Data Communication  
Control Procedures (ADCCP)

### Subpart 101-36.13—Implementation of Federal Information Processing and Federal Telecommunication Standards Into Solicitation Documents

2. Section 101-36.1302-1 is revised to  
read as follows:

### § 101-36.1302-1 Federal Information Processing Standards Publications (FIPS PUBS).

Federal Information Processing Standards Publications (FIPS PUBS) are official Federal Government publications relating to standards adopted and issued under the provisions of section 111 of the Federal Property and Administrative Services Act of 1949, 63 Stat. 383, as amended, 40 U.S.C. 759 and Executive Order 11717 (3 CFR). These publications are issued by the National Bureau of Standards (NBS) and collectively constitute the Federal Information Processing Standards Register. As an aid in implementing this subpart 101-36.13, all agencies should establish and maintain a register in accordance with FIPS PUB O, General Description of the Federal Information Processing Standards Register, November 1, 1968. Requests for FIPS PUBS should be sent to:

National Technical Information Service,  
U.S. Department of Commerce, Springfield,  
VA 22161, Telephone (703) 487-4650, FTS  
487-4650.

Requests for discount prices on quantity orders should also be referred to the above address and telephone number. Requests for FIPS PUBS subscriptions should be sent to:

Subscriptions, National Technical  
Information Service, U.S. Department of  
Commerce, Springfield, VA 22161, Telephone  
(703) 487-4630, FTS 487-4630.

3. Section 101-36.1302-2 is revised to  
read as follows:

### § 101-36.1302-2 Federal Telecommunication Standards (FED-STD).

Federal Telecommunication Standards (FED-STD) are official Federal Government publications relating to standards adopted and issued under the provisions of section 206 of the Federal Property and Administrative Services Act of 1949, 63 Stat. 390, as amended, 40 U.S.C. 487. These Federal publications are issued by the General Services Administration and collectively constitute the Federal Supply Class (FSC) of "Telecommunications" in the Federal Standards Index. Federal agencies may obtain one copy of each FED-STD free of charge. Copies are available to the public on a cost-reimbursable basis. Requests for these publications should be sent to:

General Services Administration (WFR),  
Washington, DC 20407, Telephone (202) 472-  
2205, FTS 472-2205.

**Note.**—Requests for standards must include the FED-STD number. Most FED-STDs implement specifications contained in

American National Standards Institute standards or Electronic Industry Association standards.

4. Section 101-36.1304-11 is revised to read as follows:

**§ 101-36.1304-11 FIPS PUB 32-1, Federal Standard for Optical Character Recognition Character Sets.**

(a) FIPS PUB 32-1 provides the description, scope, and identification for different character sets (OCR-A and OCR-B) to be used in the application of Optical Character Recognition (OCR) systems. This standard adopts, in whole or in part, American National Standard X3.17-1981, Character Set for Optical Character Recognition (OCR-A); American National Standard X3.49-1975, Character Set for Optical Character Recognition (OCR-B); and American National Standard X3.2-1970, Print Specifications for Magnetic Ink Character Recognition (MICR).

(b) FIPS PUB 32-1 includes only character shapes for OCR-A and OCR-B and certain print specifications for MICR. Print quality (print contrast ratio) and other considerations which may be required to ensure compatibility within or among systems must be specified elsewhere in the requirements document. (Also, see §§ 101-36.1304-29 (FIPS PUB 85) and 101-36.1304-31 (FIPS PUB 89)).

(c) The standard terminology for use in requirements documents, including solicitations, is:

Applicability of FIPS PUB 32-1 (Equipment and Services)

All applicable Optical Character Recognition (OCR) equipment or services resulting from this requirement must comply with the provisions of FIPS PUB 32-1. Applicable OCR equipment includes data input devices such as typewriters, line printers, and CRT displays. Applicable services include data preparation and processing of information represented in OCR form.

(End of Requirements Provision)

5. Section 101-36.1304-21 is revised to read as follows:

**§ 101-36.1304-21 FIPS PUB 61-1, Channel Level Power Control Interface.**

(a) FIPS PUB 61-1 defines the functional, electrical, and mechanical interface specifications for a power control interface for use in connecting computer peripheral equipment as a part of ADP systems. This standard, with a companion standard for I/O Channel Interface (FIPS PUB 60-1), defines the hardware characteristics for the I/O channel level interface. This standard provides that FIPS PUB 61-1 is applicable whenever use of FIPS PUB 60-1 is required. If waivers are

applicable to a solicitation, the solicitation document shall so state.

(b) The correct operation of all interfaces required to conform to FIPS PUB 61-1 must be verified by NBS before the acceptance of all applicable ADP equipment. A list of equipment having verified interfaces will be established, maintained, and periodically distributed by NBS and will be available from NBS upon request. This list will identify each interface verified and the conditions of verification. The solicitation document shall require offerors to state the status of verification for those interfaces for which conformance is required.

(c) The standard terminology for use in solicitation documents is:

Unless otherwise excluded as specified in FIPS PUB 61-1 by reference to FIPS PUB 60-1 or unless a waiver is granted following the waiver procedures specified in FIPS PUB 61-1, ADP systems and peripheral subsystems that may result from this solicitation, and for which operational specifications FIPS PUBS (such as FIPS PUBS 62 and 63) have been issued and are in effect, must conform to FIPS PUB 61-1. The correct operation of these systems' conforming interfaces must be verified before the acceptance of all applicable ADP equipment in accordance with FPMR 101-36.1304-21(b). Arrangements for verification may be made according to procedures issued by NBS. These procedures may be obtained by writing the Director, Institute for Computer Sciences and Technology, National Bureau of Standards, Washington, DC 20234, Attention: Verification of I/O Channel Level Interface Standards. The Government may, at its option, apply instrumentation and test equipment at an interface required to conform to FIPS PUB 61-1 before the acceptance of these ADP systems to ensure conformance with FIPS PUB 61-1. Waivers applicable to the requirements of this solicitation are identified elsewhere in this solicitation document.

6. Section 101-36.1304-33 is added to read as follows:

**§ 101-36.1304-33 FIPS PUB 93, Parallel Recorded Magnetic Tape Cartridge for Information Interchange, 4 Track 6.30 mm (0.250 inch), 633 bps (1600 bpi), Phase Encoded.**

(a) FIPS PUB 93 specifies the recorded characteristics for a 6.30 mm (0.250 inch) wide magnetic tape cartridge with data recorded across four parallel tracks in order to provide for data interchange between information processing systems at a recording density of 63 bits per millimeter (1600 bits per inch) using phase encoding techniques. This standard is one of a series of Federal Information Processing Standards implementing the code for Information Interchange (FIPS 1-1) on flexible magnetic media, and adopts technical

specifications contained in American National Standard X3.72-1981, Parallel Recorded Magnetic Tape Cartridge for Information Interchange, 4 Track, 0.250 inch (6.30mm), 1600 bpi (63 bps), Phase Encoded.

(b) The standard terminology for use in requirements documents, including solicitations, is:

Applicability of FIPS PUB 93 (Magnetic Tape Cartridge Equipment and Associated Software)

All magnetic tape cartridge recording and reproducing equipment which results from this requirement and employs 6.30 mm (0.250 inch) wide magnetic tape with data recorded across four parallel tracks at recording densities of 63 bits per millimeter (1600 bits per inch) using phase encoding techniques, including associated software, shall provide the capability to accept and generate recorded magnetic tape cartridges in the code and format as specified in FIPS PUB 1-1 and FIPS PUB 93.

(End of Requirements Provision)

7. Section 101-36.1309-6 is added to read as follows:

**§ 101-36.1309-6 FIPS PUB 71/FED-STD 1003A, Advanced Data Communication Control Procedures (ADCCP).**

(a) FIPS PUB 71/FED-STD 1003A establishes data link control procedures for systems, equipment, and services using synchronous, bit-oriented data communications.

(b) The standard terminology for use in requirements documents, including solicitations, is:

Applicability of FIPS PUB 71/FED-STD 1003A (Systems, Equipment, and Services)

All systems, equipment, and services using synchronous, bit-oriented data communications offered as a result of this requirement shall implement the class(es) of procedures specified in FIPS PUB 71/FED-STD 1003A.

(End of Requirements Provision)

(Sec: 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

Dated: November 15, 1982.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 82-33139 Filed 12-3-82; 8:45 am]

BILLING CODE 6820-25-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration 42 CFR Part 405

#### Medicare Program; Interest Charges on Overpayments and Underpayments to Providers and Suppliers of Services

AGENCY: Health Care Financing Administration (HCFA), HHS.