

no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 314.300.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 452

Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 452 is amended as follows:

PART 452—MACROLIDE ANTIBIOTIC DRUGS

1. The authority citation for 21 CFR part 452 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

2. New § 452.115g is added to Subpart B to read as follows:

§ 452.115g Erythromycin estolate and sulfisoxazole acetyl oral suspension.

(a) *Requirements for certification—(1) Standards of identity, strength, quality, and purity.* Erythromycin estolate and sulfisoxazole acetyl oral suspension is erythromycin estolate and sulfisoxazole acetyl with suitable and harmless buffer substances, preservatives, solvents, stabilizers, emulsifiers, dispersing agents, colorings, and flavorings. Each milliliter contains erythromycin estolate equivalent to 25 milligrams of erythromycin and 120 milligrams of sulfisoxazole. Its erythromycin content is satisfactory if it is not less than 90 percent and not more than 120 percent of the number of milligrams of erythromycin that it is represented to contain. Its sulfisoxazole acetyl content is satisfactory if it is not less than 90 percent and not more than 115 percent

of the number of milligrams of sulfisoxazole that it is represented to contain. Its pH is not less than 3.5 and not more than 6.5. The erythromycin estolate used conforms to the standards prescribed by § 452.15(a)(1). The sulfisoxazole acetyl used conforms to the standards prescribed by the U.S.P. XXII.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(A) The erythromycin estolate used in making the batch for potency, moisture, pH, crystallinity, and identity.

(B) The sulfisoxazole acetyl used in making the batch for all U.S.P. XXII specifications.

(C) The batch for erythromycin content, sulfisoxazole content, and pH.

(ii) Samples, if required by the Center for Drug Evaluation and Research:

(A) The erythromycin estolate used in making the batch: 10 packages, each containing not less than 500 milligrams.

(B) The batch: a minimum of 15 immediate containers.

(b) *Tests and methods of assay—(1) Erythromycin content.* Proceed as directed in § 436.105 of this chapter, preparing the sample for assay as follows: Remove an accurately measured representative volume of the suspension and dilute with sufficient methyl alcohol to give a concentration of 2.5 milligrams per milliliter (estimated). Dilute the entire mixture with sufficient 0.1M potassium phosphate buffer, pH 8.0 (solution 3), to give a concentration of 1.0 milligram of erythromycin base per milliliter (estimated). Hydrolyze in a 60 °C constant temperature water bath for 2 hours or at room temperature for 16 to 18 hours. Further dilute with solution 3 to the reference concentration of 1.0 microgram of erythromycin base per milliliter (estimated).

(2) *Sulfisoxazole content.* Proceed as directed in § 436.328 of this chapter.

(3) *pH.* Proceed as directed in § 436.202 of this chapter, using the drug as it is prepared for dispensing.

Dated: December 20, 1989.

Sammie R. Young,

Acting Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 90-66 Filed 1-3-90; 8:45 am]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 203

[Docket No. R-89-1447; FR-2657-F-01]

RIN 2502-AE74

Revision to FHA Insurance on Hawaiian Home Lands and Assignment Regulations to Remove Dependence on Temporary Mortgage Assistance Payments Program Rule

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

ACTION: Final rule.

SUMMARY: A final rule was published on March 5, 1987 (52 FR 6915) to implement the Temporary Mortgage Assistance Payments (TMAP) program, which contained provisions needed to fully explain the mortgage assignment process and to make it conform to current statutory requirements. When the Hawaiian Home Lands rule was published (March 16, 1987, 52 FR 8064), the Department anticipated that the effective date for the TMAP rule was imminent. The TMAP rule has not yet been made effective. This rule revises the Hawaiian Home Lands rule to remove reliance on the published but ineffective TMAP rule, and revises the Assignment Program regulation to conform it to current statutory requirements pending the effectiveness of the TMAP rule that would have made similar changes.

EFFECTIVE DATE: February 5, 1990 except for § 203.350(e). The approval number for this collection will be published separately in the Federal Register with a notice of effectiveness of this rule.

FOR FURTHER INFORMATION CONTACT: David E. Pinsky, Assistant General Counsel, Home Mortgage Division, Office of the General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755-5303. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Statement

The information collection requirements contained in §§ 203.350(c), 203.665 (a) and (b) have been approved by the Office of Management and Budget and assigned control numbers 2635-0093, 2502-0340, and 2502-0169,

respectively. The information collection contained in § 203.350(e) has been submitted to the Office of Management and Budget for expedited review under the Paperwork Reduction Act of 1980. The approval number for this collection will be published separately in the Federal Register with the notice of effectiveness of this rule. Until that time, no person may be subjected to a penalty for failure to comply with this information collection requirement.

The annual public reporting burden of this requirement, including the time for reviewing instructions, searching any existing data sources needed, gathering and maintaining any data needed, and completing and reviewing the collection of information—to the extent the collection does not coincide with existing requirements of State or local law—is stated in the chart included under the heading of Findings and Certifications. Send comments regarding the burden estimates or any other aspect of this information collection to the Department of HUD, Rules Docket Clerk, 451 Seventh Street, SW., Washington, DC 20410, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for HUD.

II. Background

The Department's general authority to accept assignment of a mortgage on a one- to four-family dwelling from a mortgagee is contained in section 230(b) of the National Housing Act (12 U.S.C. 1715u(b)). That section authorizes the Secretary to accept assignment and provide assistance to a mortgagor if the mortgagor's default was caused by circumstances beyond the mortgagor's control and the mortgagor has reasonable prospects of being able to repay the mortgage obligation. Section 203.350(a) of the Department's regulations has implemented this general authority, and that provision was revised in the TMAP rule to reflect the statutory requirement for the mortgagor to have reasonable prospects for repayment. However, since that rule has not been made effective, § 203.350(a) fails to reflect this statutory requirement. This rule makes effective § 203.350(a) as it was published in the TMAP rule.

Section 247 of the National Housing Act (12 U.S.C. 1715z-12) authorizes HUD to insure mortgages on homestead leaseholds on Hawaiian Home Lands. This insurance is not subject to any limitation in any other section of the National Housing Act that the Secretary determines is contrary to promoting the availability of this insurance. Under this

authority, the Hawaiian Home Lands rule (§ 203.439(b)) provides that a mortgagee may seek to assign its interest when such a mortgage is 180 days or more in default, and the TMAP rule added § 203.350(c) to authorize HUD to accept an assignment of an insured mortgage on Hawaiian Home Lands under certain circumstances. This assignment provision differs from HUD's general authority to accept assignment of a home mortgage under section 230, described above. Since the TMAP rule has not been made effective, there is no current special regulatory authority for accepting assignment of mortgages insured pursuant to section 247 of the National Housing Act. (There is a provision in the currently effective § 203.350(b) for acceptance of assignment of mortgages insured pursuant to 248 of the National Housing Act, a provision for FHA insurance of mortgages on Indian reservation properties that is similar to the Hawaiian Home Lands provision.) This rule makes effective § 203.350(c) as published in the TMAP rule.

Another change contained in the TMAP rule was to include the regulatory requirement for filing an assignment for record as paragraph (e) to § 203.350 (a provision concerning assignment of mortgages on Seneca Nation properties is being inserted as paragraph (d) by another final rule). Instead of as a separate § 203.350a. Of course, this change also has been ineffective, but this rule now makes it effective and corrects a cross-reference to that provision that is found in § 203.404(a)(4).

Section § 203.439(a), the general provision concerning mortgage servicing for mortgages on Hawaiian Home Lands property, contains a reference to regulatory provisions that are inapplicable to the program. At the time the Hawaiian Home Lands rule was published, the program was an obligation of the Mutual Mortgage Insurance Fund and, as such, would have been subject to the provisions of §§ 203.420 through 203.425 concerning distributive shares. Because HUD determined that these provisions should not apply to the program, § 203.439(a) stated that these provisions did not apply. However, now that the Hawaiian Home Lands program has been made an obligation of the General Insurance Fund by statutory amendment, that statement is unnecessary and it is being removed in this rule.

Section 203.665 of the TMAP rule, which prescribes the procedure for a mortgagee to follow to assign a mortgage on Hawaiian Home Lands property to HUD, contained a paragraph

about TMAP relief, and its forbearance relief paragraph relied on the content of the TMAP paragraph. This rule removes the TMAP paragraph and fleshes out the forbearance paragraph to include the relevant criteria previously contained only in the TMAP one, so that it can stand alone—in the absence of a TMAP program.

The regulations have contained no specific reference to a rate of interest charged with respect to assistance provided to a mortgagor under the assignment program. Assistance under this program has been in the form of forbearance, deferring payments due under the mortgage loan, and interest has continued to accrue at the note rate on all overdue amounts. However, section 230(b) of the National Housing Act provides that any interest rate charged by the Secretary on repayment of assistance provided under the assignment program may not exceed the interest rate chargeable under section 230(a) for the TMAP program.

Section 230(a) was amended by section 428 of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988) to require that the interest rate charged on TMAP assistance be the rate that is established for Veteran's Administration-guaranteed mortgages when the Secretary approves assistance. Since the rate charged in the assignment program may not exceed the VA rate, and charging the note rate on arrearages and any advances made during the forbearance period could exceed the VA rate at the time the Secretary accepted assignment of a mortgage and approved forbearance (if mortgage rates had decreased since the issuance of the original mortgage loan), this rule amends § 203.654(b) to add a sentence stating this limitation, to be determined at the time the assignment is accepted by the Secretary to make the regulations conform to the 1987 statutory amendment.

III. Justification for final rule

It is the policy of this Department to publish for comment rules relating to public property, loans, grants, benefits, or contracts, despite the exemption contained in 5 U.S.C. 553 from the requirement to solicit public comment for these rules. However, in accordance with 24 CFR part 10, the Department may omit solicitation of public comment before publishing a final rule in a particular case, if such comment is not required by statute and solicitation and consideration of public comment are "impracticable, unnecessary or contrary to the public interest."

In this case, no statute requires that public comment be solicited. Moreover, most of the changes are ones that have been published previously in a final rule (TMAP) that was developed after consideration of public comment. It is in the interest of mortgages and mortgagors who participate in the Hawaiian Home Lands mortgage insurance program to have a fully operational program, including provisions for action by HUD in the event of default by the mortgagor. The other changes made in this rule are a direct result of statutory changes—removal of an obsolete reference to provisions that would have no effect since the Hawaiian Home Lands mortgage insurance program was moved from the MMIF to the GIF, and insertion of a reference to a new cap on the amount of interest to be charged on assignment assistance. Both of these changes are ones on which comment is unnecessary. The former has no practical effect, and the latter has only a beneficial effect on defaulted mortgagors. Therefore, it would be in the public interest to omit solicitation of public comments through issuance of a proposed rule and to make these changes effective at the earliest possible date by way of this final rule.

IV. Findings and Certifications

A. *Environment.* A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 that implement section

102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying from 7:30 a.m. to 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

B. *Executive Order 12291.* This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 issued by the President on February 17, 1981, and therefore no regulatory impact analysis is necessary. It will not have an annual effect on the economy of \$100 million or more. Furthermore, it will not cause a major increase in cost or prices for consumer, individual industries, Federal, State, or local government agencies, or geographic regions, nor have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

C. *Regulatory Flexibility Act.* Under the Regulatory Flexibility Act (5 U.S.C. 601), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule will permit mortgage lenders to assign defaulted mortgages to HUD and obtain mortgage insurance benefits as intended by Congress and will require that the rate of interest charged in the

assignment program not exceed the statutory limit.

D. *Executive Order 12612, Federalism.* The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this do not have federalism implications and, thus, are not subject to review under the Order. The rule relates to HUD's functions as an insurer of mortgages and to benefits provided defaulted homeowners but will not interfere with State or local government functions.

E. *Executive Order 12606, the Family.* The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule, as distinguished from its statutory basis, does not have potential significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The rule merely implements fairly explicit statutory requirements.

F. *Regulatory Agenda.* This rule was listed as item 1048 on the Department's semiannual agenda of regulations published on October 30, 1989 (54 FR 44702, 44721), under Executive Order 12291 and the Regulatory Flexibility Act.

G. *Information Collection Requirements.* The information collection contained in § 203.250(e) has been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Information on the public reporting burden is that section is provided as follows:

Description of requirement	Section No.	Number of respondents	Freq. of response	Est. Avg. Resp. Time	Est. Annual Burden (Hrs.)
Recordation of assignment.....	203.350(e)	8,258	1.5	.5	6,194
Total Burden.....					6,194

H. *Catalog.* The Catalog of Federal Domestic Assistance program number for this rule is 14.117, Mortgage insurance—homes.

I. List of Subjects in 24 CFR Part 203

Loan programs; housing and community development; Hawaiian natives; Mortgage insurance; Home improvement, Indians; lands; Reporting and recordkeeping requirements; Solar energy.

Accordingly, 24 CFR part 203 is amended as follows:

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

1. The authority citation for Part 203

continues to read as follows:

Authority: Secs. 203, 211, National Housing Act (12 U.S.C. 1709, 1715b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). In addition, subpart C is also issued under sec. 230, National Housing Act (12 U.S.C. 1715u).

2. In § 203.350, paragraph (a) is revised and paragraphs (c) and (e) are added, to read as follows:

§ 203.350 Assignment of defaulted mortgage.

(a) *In general.* The Secretary will accept an assignment of any mortgage

covering a one- to four-family residence if the Secretary finds that the criteria for acceptance of an assignment under § 203.650 have been satisfied.

* * * * *

(c) *Assignment of mortgages insured pursuant to section 247, National Housing Act.* Notwithstanding the provisions of paragraph (a) of this section, the Secretary will, upon application by the mortgagee, agree to accept an assignment of any mortgage insured pursuant to section 247 of the National Housing Act (§ 203.43i of this part) where the mortgagor has been in default for more than 180 days, provided

that the requirements of § 203.665 are satisfied.

(e) *Filing assignment for record.* Within 30 days of the Secretary's written agreement to accept assignment of a defaulted mortgage, or within such additional time as the Secretary authorizes in writing, the mortgagee must file the assignment for record.

(Information collections contained in paragraphs (b) and (c) have been approved by the Office of Management and Budget under control numbers 2502-0340 and 2535-0093, respectively.)

§ 203.350a [Removed]

3. Section 203.350a is removed.

§ 203.404 [Amended]

4. In § 203.404(a)(4), the term "§§ 203.350a" is removed, and the term "§§ 203.350(e)" is substituted in its place.

§ 203.439 [Amended]

5. In § 203.439(a), the words "and § 203.420 through § 203.425" are removed, and the word "and" is added before the word "203.368".

6. In § 203.654, paragraph (b) is revised to read as follows:

§ 203.654 Preliminary review and determination by the Secretary.

(b) If after preliminary review, the Secretary determines that assignment should be accepted, the mortgagee shall assign the mortgage upon notification by the Secretary. The rate of interest to be charged on amounts forborne will be determined by the Secretary at this time, and it shall be the lower of the interest rate of the insured mortgage or the rate established under section 1803(c) of title 38, United States Code (for VA-guaranteed mortgages).

7. Section 203.665 is revised and the undesignated center heading preceding it is republished to read as follows:

Mortgages in Default on Property Located on Hawaiian Home Lands

§ 203.665 Processing defaulted mortgages on property located on Hawaiian home lands.

(a) *Assignment.* Before a mortgagee requests the Secretary to accept assignment (under § 203.350(c)) of the mortgage insured pursuant to section 247 of the National Housing Act (§ 203.43i of this part), the mortgagee must submit documents showing that the requirements of § 203.604 have been met.

(b) *Forbearance.* (1) The Secretary will make forbearance relief available to a mortgagor where the mortgage is assigned in accordance with § 203.350(c), if all of the conditions of § 203.650(a)(3) through (a)(6) are met, and none of the conditions specified in paragraph § 203.650(b)(1) or (b)(2) exist, and the mortgagor and mortgagee furnish the Secretary, within 15 days of the date of the Secretary's request, all the information requested to assist in a preliminary determination of whether or not to forbear.

(2) The amount forborne, period of reduced or suspended payments, review of the mortgagor's circumstances, and payment of the mortgage after the period of reduced or suspended payments, will be in accordance with policies for assignments accepted under § 203.650.

(Information collections contained in paragraphs (a) and (b) of this section have been approved by the Office of Management and Budget under control numbers 2502-0340 and 2502-0169, respectively.)

Dated: October 30, 1989.

C. Austin Fitts,
Assistant Secretary for Housing-Federal
Housing Commissioner.

[FR Doc. 90-102 Filed 1-3-90; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8279]

RIN 1545-AM31

Definition of a Qualified Business Unit

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final Income Tax Regulations relating to the definition of a qualified business unit under section 989 of the Internal Revenue Code of 1986. This section was added to the Code by section 1261 of the Tax Reform Act 1986. These final regulations define the term "Qualified Business Unit" and affect taxpayers who must make income tax determinations for their QBUs for taxable years beginning after December 31, 1986.

EFFECTIVE DATE: These regulations are effective for taxable years beginning after December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Carl Cooper of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal

Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224, (Attention: CC:CORP:T:R(INTL-983-86)) and (202-566-6795, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On June 8, 1988, the Federal Register published proposed amendments (53 FR 20612) to the Income Tax Regulations (26 CFR part 1) under section 989 of the Internal Revenue Code of 1986. These amendments added regulations under section 989 of the Internal Revenue Code of 1986 defining the term "Qualified Business Unit" (QBU). This section was added to the Code by section 1261 of the Tax Reform Act of 1986 (Pub. L. 99-514, 100 Stat. 2085, 2090). No written comments responding to this notice were received. No public hearing was requested or held.

Explanation of Provisions

Section 1.989 (a)-1 (a) provides that the effective date of these regulations is generally for taxable years beginning after December 31, 1986.

Section 1.989 (a)-1 (b) expands the definition of QBU to include partnerships, trusts, and estates. In addition, a branch of a partnership, trust, or an estate may qualify as a QBU. Because a partnership, trust, or estate is treated as a QBU of each of the partners or beneficiaries, section 987 (relating to branch transactions) may apply to remittances from a partnership, trust, or estate to partners or beneficiaries. A QBU also includes activities that produce income or loss effectively connected with a United States trade or business.

Section 1.989 (a)-1 (c) provides that a trade or business for purposes of section 989 (a) is generally any specific unified group of activities that constitute (or could constitute) an independent economic enterprise carried on for profit, the expenses related to which are deductible under section 162 and 212 (rather than only section 162). Thus, all activities engaged in for profit are eligible for QBU status.

Section 1.989 (a)-1 (d) provides that books and records include those used to determine effectively connected income or loss.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C.

chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required.

Drafting Information

The principal author of these regulations is Carl Cooper of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. Other personnel from the Internal Revenue Service and Treasury Department participated in developing the regulations.

List of Subjects in 26 CFR Part 1

Income taxes, aliens, exports, DISC, Foreign investments in U.S., Foreign tax credit, FSC, Sources of income, U.S. investments abroad.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

Income Tax Regulations

PART 1—[AMENDED]

Paragraph 1. The authority for part 1 continues to read in part:

Authority: 26 U.S.C. 7805. * * *

§§ 1.989 (a)—OT and 1.989 (a)—1T [Removed]

Par. 2. Sections 1.989 (a)—OT and 1.989 (a)—1T are removed and new § 1.989 (a)—1 is added to read as follows:

§ 1.989 (a)—1 Definition of a qualified business unit.

(a) *Applicability*—(1) *In general*. This section provides rules relating to the definition of the term "qualified business unit" (QBU) within the meaning of section 989.

(2) *Effective date*. These rules shall apply to taxable years beginning after December 31, 1986. However, any person may apply on a consistent basis § 1.989 (a)—1T (c) of the Temporary Income Tax Regulations in lieu of § 1.989 (a)—1 (c) to all taxable years beginning after December 31, 1986, and on or before February 5, 1990. For the text of the temporary regulation, see 53 FR 20612 (June 8, 1988).

(b) *Definition of a qualified business unit*—(1) *In general*. A QBU is any separate and clearly identified unit of a trade or business of a taxpayer provided that separate books and records are maintained.

(2) *Application of the QBU*

definition—(i) *Persons*. A corporation is QBU. An individual is not a QBU. A partnership, trust, or estate is a QBU of a partner or beneficiary.

(ii) *Activities*. Activities of a corporation, partnership, trust, estate, or individual qualify as a QBU if—

(A) The activities constitute a trade or business; and

(B) A separate set of books and records is maintained with respect to the activities.

(3) *Special rule*. Any activity (wherever conducted and regardless of its frequency) that produces income or loss that is, or is treated as, effectively connected with the conduct of a trade or business within the United States shall be treated as a separate QBU, provided the books and records requirement of paragraph (d)(2) of this section is satisfied.

(c) *Trade or business*—The determination as to whether activities constitute a trade or business is ultimately dependent upon an examination of all the facts and circumstances. Generally, a trade or business for purposes of section 989(a) is a specific unified group of activities that constitutes (or could constitute) an independent economic enterprise carried on for profit, the expenses related to which are deductible under section 162 or 212 (other than that part of section 212 dealing with expenses incurred in connection with taxes). To constitute a trade or business, a group of activities must ordinarily include every operation which forms a part of, or a step in, a process by which an enterprise may earn income or profit. Such group of activities must ordinarily include the collection of income and the payment of expenses. It is not necessary that the activities carried out by a QBU constitute a different trade or business from those carried out by other QBUs of the taxpayer. A vertical, functional, or geographic division of the same trade or business may be a trade or business for this purpose provided that the activities otherwise qualify as trade or business under this paragraph (c). However, activities that are merely ancillary to a trade or business will not constitute a trade or business under this paragraph (c). Activities of an individual as an employee are not considered by themselves to constitute a trade or business under this paragraph (c).

(d) *Separate books and records*—(1) *General rule*. Except as provided in paragraph (d)(2) of this section, a separate set of books and records shall include books of original entry and ledger accounts, both general and subsidiary, or similar records. For example, in the case of a taxpayer using the cash receipts and disbursements method of accounting, the books of original entry include a cash receipts and disbursements journal where each

receipt and each disbursement is recorded. Similarly, in the case of a taxpayer using an accrual method of accounting, the books of original entry include a journal to record sales (accounts receivable) and a journal to record expenses incurred (accounts payable). In general, a journal represents a chronological account of all transactions entered into by an entity for an accounting period. A ledger account, on the other hand, chronicles the impact during an accounting period of the specific transactions recorded in the journal for that period upon the various items shown on the entity's balance sheet (*i.e.*, assets, liabilities, and capital accounts) and income statement (*i.e.*, revenues and expenses).

(2) *Special rule*. For purposes of paragraph (b)(3) of this section, books and records include books and records used to determine income or loss that is, or is treated as, effectively connected with the conduct of a trade or business within the United States.

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

Example (1). Corporation X is a domestic corporation. Corporation X manufactures widgets in the U.S. for export. Corporation X sells widgets in the United Kingdom through a branch office in London. The London office has its own employees and solicits and processes orders. Corporation X maintains in the U.S. a separate set of books and records for all transactions conducted by the London office. Corporation X is a QBU under paragraph (b)(2)(i) of this section because of its corporate status. The London branch office is a QBU under paragraph (b)(2)(ii) of this section because (1) the sale of widgets is a trade or business as defined in paragraph (c) of this section; and (2) a complete and separate set of books and records (as described in paragraph (d) of this section) is maintained with respect to its sales operations.

Example (2). A domestic corporation incorporates a wholly-owned subsidiary in Switzerland. The domestic corporation is a manufacturer that markets its product abroad primarily through the Swiss subsidiary. To facilitate sales of the parent's product in Europe, the Swiss subsidiary has branch offices in France and West Germany that are responsible for all marketing operations in those countries. Each branch has its own employees, solicits and processes orders, and maintains a separate set of books and records. The domestic corporation and the Swiss subsidiary are both QBUs under paragraph (b)(2)(i) of this section because of their corporate status. The French and West German branches are QBUs of the Swiss subsidiary. They satisfy paragraph (b)(2)(ii) because each constitutes a trade or business (as defined in paragraph (c) of this section) and because separate sets of books and records (as described in paragraph (d) of this section) of their respective operations is

maintained. Each branch is considered to have a trade or business although each is a geographical division of the same trade or business.

Example (3). W is a domestic corporation that manufactures product X in the United States for sale worldwide. All of W's sales functions are conducted exclusively in the United States. W employs individual Q to work in France. Q's sole function is to act as a courier to deliver sales documents to customers in France. With respect to Q's activities in France, a separate set of books and records as described in paragraph (d) is maintained. Under paragraph (c) of this section, Q's activities in France do not constitute a QBU since they are merely ancillary to W's manufacturing and selling business. Q is not considered to have a QBU because an individual's activities as an employee are not considered to constitute a trade or business of the individual under paragraph (c).

Example (4). The facts are the same as in example (3) except that the courier function is the sole activity of a wholly-owned French subsidiary of W. Under paragraph (b)(2)(i) of this section, the French subsidiary is considered to be a QBU.

Example (5). A corporation incorporated in the Netherlands is a subsidiary of a domestic corporation and a holding company for the stock of one or more subsidiaries incorporated in other countries. The Dutch corporation's activities are limited to paying its directors and its administrative expenses, receiving capital contributions from its United States parent corporation, contributing capital to its subsidiaries, receiving dividend distributions from its subsidiaries, and distributing dividends to its domestic parent corporation. Under paragraph (b)(2)(i) of this section, the Netherlands corporation is considered to be a QBU.

Example (6). Taxpayer A, an individual resident of the United States, is engaged in a trade or business wholly unrelated to any type of investment activity. A also maintains a portfolio of foreign currency-denominated investments through a foreign broker. The broker is responsible for all activities necessary to the management of A's investments and maintains books and records as described in paragraph (d) of this section, with respect to all investment activities of A. A's investment activities qualify as a QBU under paragraph (b)(2)(ii) of this section to the extent the activities engaged in by A generate expenses that are deductible under section 212 (other than that part of section 212 dealing with expenses incurred in connection with taxes).

Example (7). Taxpayer A, an individual resident of the United States, is the sole shareholder of foreign corporation (FC) whose activities are limited to trading in stocks and securities. FC is a QBU under paragraph (b)(2)(i) of this section.

Example (8). Taxpayer A, an individual resident of the United States, markets and sells in Spain and in the United States various products produced by other United States manufacturers. A has an office and employs a salesman to manage A's activities in Spain, maintains a separate set of books

and records with respect to his activities in Spain, and is engaged in a trade or business as defined in paragraph (c) of this section. Therefore, under paragraph (b)(2)(ii) of this section, the activities of A in Spain are considered to be a QBU.

Example (9). Foreign corporation FX is incorporated in Mexico and is wholly owned by a domestic corporation. The domestic corporation elects to treat FX as a domestic corporation under section 1504(d). FX operates entirely in Mexico and maintains a separate set of books and records with respect to its activities in Mexico. FX is a QBU under paragraph (b)(2)(i) of this section. The activities of FX in Mexico also constitute a QBU under paragraph (b)(2)(ii) of this section.

Example (10). F, a foreign corporation, computes a gain of \$100 from the disposition of a United States real property interest (as defined in section 897(c)). The gain is taken into account as if F were engaged in a trade or business in the United States and as if such gain were effectively connected with such trade or business. F is a QBU under paragraph (b)(2)(i) of this section because of its corporate status. F's disposition activity constitutes a separate QBU under paragraph (b)(3) of this section.

Dated: November 9, 1989.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

Approved:

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 90-186 Filed 1-3-90; 8:45 am]

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Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. ATF-291; RE: Notice No. 687]

RIN 1512-AA07

Arroyo Grande Valley Viticultural Area (87F-147P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule establishes a viticultural area known as Arroyo Grande Valley which is located in San Luis Obispo County, California. The petition was submitted by the proprietors of two wineries in the area. The establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising will help consumers better identify wines they purchase. The use of this viticultural area as an appellation of origin will help winemakers distinguish their products from wines made in other areas.

EFFECTIVE DATE: February 5, 1990.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in title 27, Code of Federal Regulations, part 4. These regulations allow the establishment of definitive American viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin in the labeling and advertising of wine. On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added to title 27 a new part 9 providing for the listing of approved American viticultural areas.

Section 4.25a(e)(1), title 27, CFR, defines an American viticultural area as a delimited grape growing region distinguishable by geographical features, the boundaries of which have been delineated in subpart C of part 9. Section 4.25a(e)(2) outlines the procedures for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area.

Petition

By letter dated July 8, 1987, Don Talley of Talley Vineyards and William S. Greenough of Saucelito Canyon Vineyard filed a petition for the establishment of an "Arroyo Grande Valley" viticultural area in San Luis Obispo County, California.

The Arroyo Grande Valley is approximately 12 miles southeast of the town of San Luis Obispo. The western leg of the boundary of the viticultural area is about three miles directly east of the Pacific Ocean at Grover City. The area covers approximately 67 square miles. The principal stream in the area is the Arroyo Grande Creek which meanders approximately 12 miles in a southwesterly direction from the spillway of Lopez Lake to the Pacific Ocean. The viticultural area includes substantially all the drainage of the Arroyo Grande Creek including the (upper) Arroyo Grande Creek. Feeding waters into the Arroyo Grande Creek are Tar Spring Creek, Los Berros Creek and Lopez Lake into which flow the (upper) Arroyo Grande Creek, Wittenberg Creek and the creek in Lopez Canyon. Tributaries to the (upper)