SUPPLEMENTARY INFORMATION:

History

On October 26, 1990, the FAA published a notice of proposed rulemaking, which would amend § 71.181 of part 71 of the Federal Aviation Regulations so as to designate a transition area at Washington, Kansas (55 FR 43144).

Interested persons were invited to participate in this rulemaking preceding by submitting written comments on the proposal to the FAA. No objections were received as a result of the notice of proposed rulemaking. Except for editorial changes, this amendment is the same as that proposed in the Notice. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6F, dated January 2, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations designates a 700 foot transition area at Washington, Kansas. To enhance airport usage, a new instrument approach procedure is being developed for the Washington County Memorial Airport, Washington, Kansas, utilizing the Morrison NDB as a navigational aid. This navigational aid will offer new navigational guidance for aircraft utilizing the airport. The establishment of a new instrument approach procedure based on this navigational aid entails designation of a transition area at Washington, Kansas, at and above 700 feet above ground level within which aircraft are provided air traffic control service. Transition areas are designed to contain IFR operations in controlled airspace while aircraft are transiting between the terminal and en route environment. The intended effect of this action is to ensure segregation of aircraft using the approach procedure under instrument flight rule (IFR) and other aircraft operating under visual flight rules (VFR). This action will change the airport status from VFR to IFR.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended as follows:

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

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Washington, Kansas [Revised]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Washington County Memorial Airport (latitude 39°44′10″ North, longitude 97°02′51″ West); within 5.25 miles each side of the Morrison NDB (latitude 39°45′42″ North, longitude 97°02′31″ West) 021° bearing extending from the 6.5-mile radius area to 13.5 miles north of the NDB.

Issued in Kansas City, Missouri, on January 8, 1991.

Clarence E. Newbern,

Manager, Air Traffic Division, Central Region.

[FR Doc. 91-1724 Filed 1-24-91; 8:45 am]

BILLING CODE 4910-13-M

Office of the Secretary

14 CFR Part 241

[Docket No. 46101; Notice No. 91-1; Docket 46710 is consolidated into Docket 46101]

RIN 2137-AB01

Confidentiality of Schedule T-100 Submitted by U.S. Large Certificated Air Carriers

AGENCY: Department of Transportation, Research and Special Programs Administration.

ACTION: Final rule.

SUMMARY: The Department of Transportation (DOT or the Department) eliminates the restrictions on disclosure of U.S. air carriers' domestic Schedule T-100 data, making the data immediately available to the public after DOT processing. Detailed international Schedule T-100 data submitted by U.S. and foreign air carriers will continue to be withheld from public disclosure for a 3-year period. Also, DOT eliminates sections 19-6 (a)(4), (b), and (c) which allowed release of restricted T-100 data before the end of the three years if the Department determines it to be in the public interest.

EFFECTIVE DATE: January 25, 1991. For good cause, the Department is making this rule effective on less than 30-days notice because the rule relieves restrictions on the release of domestic T-100 data.

FOR FURTHER INFORMATION CONTACT: Bernard Stankus or Jack Calloway, Office of Airline Statistics, DAI-10, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590, (202) 366-4387 or 366-4383, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department issued a notice of proposed rulemaking on June 21, 1990 (Notice No. 90-22, 55 FR 25318), proposing to eliminate the restrictions on disclosure of U.S. air carriers' domestic Schedule T-100 data, to maintain the 3-year confidentiality period for detailed international Schedule T-100 data submitted by U.S. and foreign air carriers, and to eliminate sections 19-6 (a)(4), (b), and (c) which allowed release of restricted T-100 data before the end of the three years if the Department determined it to be in the public interest. T-100 data include on-flight market and nonstop segment traffic and capacity statistics.

Comments

Comments were received from Alaska Airlines, Inc.; American Airlines, Inc.; USAir, Inc.; MarkAir, Inc.; Air Line Pilots Association International (ALPA); the Orient Airlines Association (OAA) representing Air Niugini, Air New Zealand, All Nippon Airways, Cathay Pacific, China Airlines, Garuda Indonesia, Korean Air, Japan Air Lines, Malaysia Airlines, Philippine Airlines, Qantas Airways, Royal Brunei Airlines, Singapore Airlines, and Thai Airways International; and the joint comment of Air Canada, Air Jamaica, Lloyd Aereo Boliviano, Balair, and Condor Flugdienst.

Foreign Carrier Comments

The OAA and the joint commenters concur with the elimination of sections 19-6 (a)(4), (b), and (c). Section 19-6(a)(4) permitted the disclosure of confidential T–100 data before the end of 3 years to such persons and in such circumstances as the Department determines to be in the public interest. As part of the public interest determination, section 19–6(b) required the Department to give the providers of the T–100 data an opportunity to object to the release. Where access is approved, section 19–6(c) permitted the Department to release the data to data service companies provided that they abide by the disclosure rules. OAA stated that the exemptions to maintaining the confidential treatment were so broadly worded as to give almost unfettered discretion as to when to release international T–100 data. The OAA and the joint commenters believe the elimination of these sections goes a long way toward resolving some of the concerns and uneasiness with T–100 reporting previously expressed by foreign air carriers and foreign governments.

Immediate Release of U.S. Air Carriers' Domestic T–100 Data

USAir was the only commenter opposed to the immediate release of domestic T–100 data. It feels at a minimum the 3-year period of confidentiality should be retained. It believes that airline competitors should not be required to disclose or to exchange any sensitive proprietary information, as is the case in unregulated industries. USAir states that permanent confidential treatment is the only way to assure that sensitive proprietary traffic data are not disclosed to potential competitors.

Permanent confidentiality for T–100 data was considered in the final rule establishing the T–100 Reporting system (53 FR 46286, 46287, November 16, 1988). In that rulemaking the Department stated that it cannot accept that the T–100 data should be kept confidential forever because of public interest benefits of making the data available. Further, USAir did not claim that the data fall within a release exemption from the Freedom of Information Act (FOIA) 5 U.S.C. 552, nor did it address the Department's justification for the release of domestic data. USAir has raised no arguments that would cause us to retain a three-year period or permanent confidentiality for domestic T–100 data.

International T–100 Disclosures

American, Alaska, and ALPA disagree with the Department on the release of international data. The three parties believe there should be some type of limited release of international data. They do concur with the Department that domestic T–100 data should be released immediately for public inspection.

American and Alaska petitioned the Department to reconsider its denial of the release to U.S. carriers of U.S. carrier international T–100 data. They state the availability of international T–100 data promotes air carrier efficiency and effective use of air carrier resources, which allows the air carriers to better serve the traveling public. Alaska states that no other comparable data are available from other sources and carriers have been greatly burdened by the unavailability of market data.

The Department denies American's and Alaska's petitions seeking reconsideration of the decision not to release international T–100 data. We specifically addressed the issue of confidentiality of international T–100 data in the final rules issued November 16, 1988 (53 FR 46284) and August 2, 1989, (54 FR 31810), and in the NPRM (55 FR 25318) to this rulemaking, and see no reason for change at this time. Neither American nor Alaska have suggested that circumstances have changed.

Section 1104 of the Federal Aviation Act of 1958, as amended (FAAct) (49 U.S.C. 1504) requires that information be withheld from public disclosure if the release of the information would prejudice the formulation and presentation of positions of the United States in international negotiations or adversely affect the competitive position of any air carrier in foreign air transportation. International T–100 data collected from U.S. and foreign air carriers are needed by the United States to formulate international air transportation policies and agreements that are in the best interests of U.S. consumers and air carriers. The Department considered it necessary to promise confidentiality of foreign carriers' data to assure compliance with the reporting regulations. Premature release of this data could impair the government's ability to obtain necessary information from foreign carriers in the future. Since it is necessary to grant a 3-year confidential period to foreign carriers' T–100 data could to encourage their reporting compliance, protection of U.S. carrier T–100 data also is required. Access by foreign air carriers or other foreign users to U.S. carriers' T–100 data subject U.S. flag carriers to competitive disadvantage so long as comparable data are not available to the U.S. carriers with respect to the operations of foreign air carriers. We anticipate that international T–100 data shall be exempt from release under FOIA exemption 3 because section 1104 of the FAAct prohibits its release.

American and Alaska argue that limited release of international T–100 data will not jeopardize its confidentiality under FOIA. Alaska does not request access to foreign air carriers' T–100 submissions, but it believes that U.S. participating carriers should be granted access to other U.S. carriers' international T–100 data. Alaska reiterates that the value of international service segment data cannot be overstated. Alaska states the data are used regularly by airline planners to reach difficult decisions on the allocation of limited airline resources; and the value of international T–100 data becomes greater to computer reservation system (CRS) non-vendor carriers, like Alaska, that do not have access to international CRS booking data which the larger CRS vendor carriers exchange with certain other foreign air carriers. Alaska disagrees with the Department's position that release of confidential data to U.S. carriers could be viewed as a waiver of FOIA exemptions citing *British Airports Authority* v. *C.A.B.*, 531 F. Supp. 408 (D.D.C. 1982) (*British Airports*). The court ruled that, while two private U.S. carriers had participated in the formulation of a CAB negotiating position and that position was reflected in a CAB-created memorandum, the memorandum retained its "non-public" character and could be withheld lawfully from disclosure by the CAB pursuant to section 1104 of the FAAct, and FOIA exemption 3. Alaska believes that the facts of *British Airports* are analogous to the situation here and would allow a limited release of international T–100 data. American proposes a voluntary plan whereby the Department would allow all carriers, foreign and domestic, to decide for themselves whether the international T–100 data they submit will be withheld from disclosure. Those agreeing to allow disclosure would in turn be granted access to the international data of all other consenting carriers, thus providing an incentive to each carrier to consent to disclosure of its international T–100 data. American believes its plan would not result in required release under FOIA, because the release of data would be on a non-preferential basis.

American's plan does not withstand FOIA scrutiny. There are no provisions in FOIA for selective sharing of data. FOIA speaks in terms of disclosure or non-disclosure. There is no middle ground. If the Department approved American's proposal, any party, even those non-volunteer carriers, could receive the "shared data" under a FOIA request to the Department, because the Department would have waived its rights for confidential treatment when the data were released to a third party. The *British Airports* decision would not prevent the waiver of exemptions from release under FOIA here. In *British Airports*, the negotiation position paper retained its non-public character because there was no prior public disclosure of the U.S. negotiating position or the CAB memorandum. What American and Alaska propose here would be the limited release of data to all carriers who agreed to release. The Department is bound by the rules of FOIA. In *Cooper* v. *Internal Revenue Service*, 450 F. Supp. 752 (D.D.C. 1977), the court ruled that documents could not be withheld from disclosure under exemption 3, if the information has been made available to the public. If the Department released U.S. air carriers' international T–100 data to participating carriers, we believe the Department would be required under FOIA to release such data to any person requesting the data under FOIA. If the voluntary approach is unacceptable, American requests that the Department shorten the confidentiality period to 1 year. American alleges that information which is 3 years old is virtually obsolete, and has little value to those who would otherwise make good use of it. The Department also must deny this request. The Department established the 3-year confidentiality period to assure foreign air carrier compliance to T–100 reporting regulations. Shortening the confidentiality period at this time could create an obstacle to foreign air carrier reporting compliance.

As an alternative to limited disclosure of U.S. air carrier international T–100 data, Alaska proposes that U.S. carriers could receive such data through the Air Transport Association (ATA). Alaska states that the only action required from the Department would be a limited grant of antitrust immunity to the ATA to allow for the collection and distribution of such traffic data. Under Alaska's proposal, U.S. carriers participating in the T–100 system could submit voluntarily each month to the ATA a duplicate copy of the international on-flight market and nonstop segment data, which the carrier has submitted to the Department. The ATA could then disseminate copies of each carrier's data to those U.S. carriers who submitted their data to ATA. Alaska asks the Department to indicate whether it would be willing to grant ATA limited antitrust immunity pursuant to section 414 of the FAAct to engage in the collection and distribution of U.S. carriers' T–100 data.

While the Department agrees with Alaska that data collected by ATA are not subject to FOIA requests, since ATA is not a Federal agency, we are not prepared to express an opinion on the grant of antitrust immunity with respect to an agreement which we have not seen. Moreover, such a request is beyond the scope of this rulemaking procedure. Should ATA endorse Alaska's proposition, it is free to file an agreement with the Department.

ALPA believes that section 19–6 should be revised to provide for the release of international T–100 data to organizations such as ALPA who require such data for use in official international aviation negotiations.

We are denying ALPA's request for the revision of section 19–6 to allow release of T–100 international data to organizations like ALPA. Section 19–6(a)(4), which we are eliminating, was too broadly worded. As we have said before, the limited release of T–100 data could waive the FOIA exemption under which the Department could otherwise maintain confidentiality under FOIA exemptions 3 and 4. Should ALPA become a party to an international route case or be involved in international negotiations, it could obtain the appropriate data under the direction of an administrative law judge or Departmental decision maker under section 19–6(a)(2). Other requests for access will be handled under FOIA. If it is determined that the data can be released, then the data will be open for public inspection.

Section 19–6(b)(1) of part 241 provides that the Department may release U.S. carrier nonstop segment and on-flight market detail data by carrier before the end of the 3-year confidentiality period to foreign governments as provided in reciprocal arrangements between the foreign country and the U.S. Government. It is the Department's view that this provision includes our existing data exchanges through ICAO. The Department notes that the vast majority of the world airlines' traffic data are submitted to ICAO on Form B and Form C; consequently, there is no problem with reciprocity. In the future, if the world airline representation in the ICAO data programs declines significantly, the Department will reconsider the issue.

Release of Belly-Cargo Data

MarkAir supports the immediate release of domestic T–100 data, with the exception of the release of belly-cargo data submitted by combination air carriers. In an aircraft, belly cargo is that cargo transported in the space below the passenger deck. Since 1981, belly-cargo data reported in the Service Segment Data reporting system and on Form 41, Scheduled T–9 *Nonstop Market Report* were withheld from public release, as carriers operating domestic all-cargo services pursuant to a section 418 certificate (section 418 carriers) did not report similar market data (see CAB Order 81–12–9). The Service Segment Data reporting system and Schedule T–9 were replaced by the T–100 reporting system, which requires similar data. MarkAir maintains that "cargo and mail traffic provides the economic glue which holds the Alaska air transport system together." MarkAir claims it would suffer substantial competitive harm from the release of its cargo data without reciprocal data from section 418 carriers. MarkAir states that it is inconsistent with Department policy, and the policy of the former Civil Aeronautics Board to maintain one-sided data availability. Specifically, MarkAir objects that Northern Air Cargo is not required to report market data for its intra-Alaska all-cargo service. MarkAir states that Northern Air Cargo informally has disclosed to the Department market data in connection with the intra-Alaska service mail rates, which the Department has not made available to the public. MarkAir's preference is for mutual release of belly-cargo and all-cargo data. MarkAir has no position on the release of international data.

The Department agrees with MarkAir that data submitted in connection with the intra-Alaska mail rates should be made available to the public. Moreover, there is a continuing program need for intra-Alaska all-cargo data for computing the mainline intra-Alaska mail rate. In the past, MarkAir and Northern Air Cargo voluntarily submitted this data on their Schedule T–9 reports; and Alaska Airlines provided the data in its service segment submissions. While the T–100 Reporting system excludes domestic all-cargo operations, the Department will be requiring special reports under 14 CFR 385.27(e) from MarkAir, Northern Air Cargo and Alaska Airlines enabling it to compute the six-month update to the mainline intra-Alaska mail rate. All participants in the intra-Alaska mail rate reviews will be reporting similar data which will be publicly available; thus, MarkAir's argument of one-sided data availability is moot. Letters will be sent by the Director, Office of Airline Statistics initiating the information request.

Department's Regulatory Policies and Procedures

Executive Orders 12291, 12612 and 12630; Department's Regulatory Policies and Procedures; Regulatory Flexibility Act; and Paperwork Reduction Act of 1980.

This rule has been reviewed under Executive Order 12291, and it has been determined that this is not a major rule. It will not result in an annual effect on the economy of $100 million or more. There will be no increase in production costs or prices for consumers, individual industries, Federal, State or local governments, agencies or geographical regions. Furthermore, this rule will not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets. The objective of the rule is to release on-flight market and nonstop segment data of U.S. carriers' domestic operations. This regulation has no impact on reporting burden. Accordingly, a regulatory impact analysis is not required.

This action has been analyzed in accordance with the principles and criteria contained in Executive Orders 12612 and 12630 and it has been determined that the rule: (1) Does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment and (2) does not pose the risk of a taking of constitutionally protected private property.

This regulation is significant under the Department's Regulatory Policies and Procedures, dated February 26, 1979, because it involves important Departmental policies concerning access to commercial data. However, its economic impact is minimal and a full regulatory evaluation is not required.

I certify that this rule will not have a significant economic impact on a substantial number of small entities. For purposes of its aviation economic regulations, Departmental policy categorizes certificated air carriers operating small aircraft (60 seats or less or 18,000 pounds maximum payload or less) in strictly domestic service as small entities for purposes of the Regulatory Flexibility Act. The amendments will affect only large certificated air carriers.

The reporting requirements in this rule are subject to the Paperwork Reduction Act, Public Law 96–511, 44 U.S.C. 35; and were submitted to the Office of Management and Budget (OMB) for review and comment. Persons may submit comments on the release of U.S. air carrier T–100 data to OMB. Comments should be directed to Desk Officer for DOT/RSPA Aviation, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. The Department requests that a copy of any comments sent to OMB also be sent to the DOT rules docket. The Department anticipates that this rule will not change the Department's fiscal year 1990 Information Collection Budget for OMB No. 2138–0040, Report of Traffic and Capacity Statistics, the T–100 System.

Regulatory Identification Number

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 14 CFR Part 241

Air carriers, Uniform system of accounts.

Accordingly, the Department of Transportation amends chapter II, 14 CFR part 241 Uniform System of Accounts and Reports for Large Certificated Air Carriers, as follows:

PART 241—[AMENDED]

1. The authority for part 241 continues to read as follows:

Authority: Secs. 101, 204, 401, 402, 403, 404, 407, 411, 416, 417, 901, 902, 1002, 1601, Pub. L. 85–726, as amended, 72 Stat. 737, 743, 754, 758, 766, 769, 774, 783, 788; 76 Stat. 145; 92 Stat. 1744; 49 U.S.C. 1301, 1324, 1371, 1372, 1373, 1374, 1377, 1381, 1472, 1482, 1551; sec. 43, Pub. L. 95–504, 92 Stat. 1750, 49 U.S.C. 1552.

(2) Section 19–6 *Public disclosure of traffic data* is revised to read:

Section 19–6 Public disclosure of traffic data.

(a) Detailed domestic on-flight market and nonstop segment data in Schedule T–100 shall be made publicly available after processing. Domestic data are defined as data from air transportation operations from a place in any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the Virgin Islands, or a U.S. territory or possession to a place in any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the Virgin Islands, or a U.S. territory or possession.

(b) Detailed international on-flight market and nonstop segment data in Schedule T–100 and Schedule T–100(f) reports shall not be publicly available for a period of 3 years, although industry and carrier summary data may be made public provided there are three or more carriers in the summary data disclosed. Further, at any time, the Department may publish international summary statistics without carrier detail. Further, the Department may release nonstop segment and on-flight market detail data by carrier before the end of the 3 years as follows:

(1) To foreign governments as provided in reciprocal arrangements between the foreign country and U.S. Government for exchange of on-flight market and/or nonstop segment data submitted by air carriers of that foreign country and U.S. carriers serving that foreign country;

(2) To parties to any proceeding before the Department under Title IV of the Federal Aviation Act of 1958, as amended, as required by the Administrative Law Judge or other decisionmaker of the Department. Parties may designate agents or consultants to receive the data in their behalf, provided the agents or consultants agree to abide by the disclosure restrictions. Any data to which access is granted pursuant to this provision may be introduced into evidence, subject to the normal rules of admissibility of evidence.

(3) To agencies and other components of the U.S. Government for their internal use only.

Issued in Washington, DC on January 22, 1991.

Travis P. Dungan,

Administrator, Research and Special Programs Administration, DOT.

[FR Doc. 91–1716 Filed 1–24–91; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8331]

RIN 1545–AE38

Foreign Base Company Oil Related Income

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final Income Tax Regulations relating to current taxation of foreign base company oil related income. Changes to

the applicable tax law were made by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) and by the Tax Reform Act of 1984. These final regulations provide guidance needed to comply with these changes and affect controlled foreign corporations with foreign oil related income and their U.S. shareholders.

EFFECTIVE DATE: These regulations are effective for taxable years of foreign corporations beginning after December 31, 1982, and for taxable years of United States shareholders in which, or with which, those taxable years of foreign corporations end.

FOR FURTHER INFORMATION CONTACT: Richard L. Chewning 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-57-86)) (202-566-6285, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On August 27, 1987, the **Federal Register** published proposed amendments (52 FR 32308) to the Income Tax Regulations (26 CFR part 1) under sections 952, 954, and 964 of the Internal Revenue Code of 1986. These amendments conformed the regulations to section 212 of the Tax Equity and Fiscal Responsibility Act of 1982 (96 Stat. 451) to section 712(f) of the Tax Reform Act of 1984 (98 Stat. 494) and to section 1221(c)(3)(A)(i) of the Tax Reform Act of 1986 (100 Stat. 2553). Written comments responding to this notice were received. A public hearing was not requested and none was held. After consideration of all comments regarding the proposed amendments, those amendments are adopted by this Treasury Decision with revisions in response to those comments. The comments and revisions are discussed below. Section 1.952-3(b)(3) as proposed is not adopted.

Explanation of Provisions

These final regulations include three principal changes from the proposed regulations.

The proposed regulations provided special rules for purposes of determining what portion of a controlled foreign corporation's foreign oil related income is derived from a source within a foreign country (i) In connection with oil or gas which was extracted from an oil or gas well located in that foreign country or (ii) in connection with oil, gas, or a primary product or oil or gas which is sold by the controlled foreign corporation or a related person for use or consumption within that country or is loaded in that country on a vessel or aircraft as fuel for the vessel or aircraft. In effect, the special rules would have required the controlled foreign corporation to trace the fuel product sold within a country back to the point of extraction.

In has been determined that it often would be impossible, or extremely difficult, for a controlled foreign corporation to demonstrate the country of origin of a fuel product derived from a refinery utilizing crude oil or gas extracted in more than one country. Accordingly, these final regulations have adopted a proposal made by a commenter that the amount of refining income attributable to oil or gas extracted within the country of refining should be determined on a pro rata basis. The pro rata method will be based on the proportion that the barrels of the fuel product extracted in the country of processing bears to the total barrels of the fuel product processed in that country.

These final regulations have also adopted a similar pro rata method for determining whether a taxpayer's marketing or transportation income relates to oil or gas which was extracted from an oil or gas well located in the foreign country from which the marketing or transportation income was sourced.

In addition, § 1.954A-1 has been revised to clarify the relationship between foreign base company oil related income as defined in section 954(g) and insurance income as defined in section 953.

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 also 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 Richard L. Chewning of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. Other personnel from offices of the Internal Revenue Service and Treasury Department participated in developing the regulations.

List of Subjects in 26 CFR 1.861-1 Through 1-997-1

Income taxes, Corporate deductions, Aliens, Exports, DISC, Foreign investments in U.S., Foreign tax credit, FSC, Source of income, United States investments abroad.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

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

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

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

§ 1.952-1 [Amended]

Par. 2. Section 1.952-1 is amended by removing "1.954-7" in paragraph (a)(2) and by inserting in lieu thereof "1.954-8".

§ 1.954A-1 [Amended]

Par. 3. Section 1.954A-1 is amended as follows:

1. Paragraph (a) is amended by inserting immediately following the fourth sentence and immediately preceding the fifth sentence the following sentence: "For taxable years beginning after December 31, 1982, the foreign base company income of a controlled foreign corporation also includes foreign base company oil related income, as defined in § 1.954-8."

2. The first sentence of paragraph (b)(3)(i) is amended by removing the first word "Foreign" and by inserting in lieu thereof the clause "Except for income which is foreign base company oil related income as defined in section 954(g) and § 1.954-8, foreign".

3. The first sentence in paragraph (c) is amended by removing the word "and" immediately before "foreign base company shipping income as defined in § 1.954-6" and by inserting ", and foreign base company oil related income as defined in § 1.954-8" between § 1.954-6" and "shall".

4. The introductory text of (e) is amended by removing "1.954-7," and inserting in lieu thereof "1.954-8,".

5. The introductory text of (f) is amended by removing "§§ 1.954-1 to 1.954-7" and inserting in lieu thereof "§§ 1.954-1 to 1.954-8".

6. The first sentence of paragraph (f)(3) is amended by removing "or foreign base company services income." and by inserting in lieu thereof "foreign base company services income, or foreign base company oil related

income."; and the second sentence "See section 954 (b)(6)(A)." is revised to read "See section 954(b)(6)(A) and (b)(8).".

7. A new paragraph (f)(4) is added to read as follows:

§ 1.954A-1 Foreign base company income; taxable years beginning after December 31, 1975.

* * * * *

(f) *Classification of an item of income.* * * *

* * * * *

(4) *Priority of foreign base company oil related income.* Foreign base company oil related income (as determined under § 1.954–8) of a controlled foreign corporation shall not also be considered foreign personal holding company income, foreign base company sales income, or foreign base company services income. See section 954(b)(8). If an item of income qualifies both as foreign base company oil related income and foreign base company shipping income, it is treated as foreign base company shipping income. See section 954(b)(6). If an item of income qualifies both as foreign base company oil related income and insurance income as defined in section 953, it is treated as foreign base company oil related income.

Par. 4. A new § 1.954–8 is added to read as follows:

§ 1.954-8 Foreign base company oil related income.

(a) *Foreign base company oil related income*—(1) *In general.* Under section 954(g), the foreign base company oil related income of a controlled foreign corporation (except as provided under paragraph (b) of this section) consists of the items of foreign oil related income ("FORI") described in section 907(c) (2) and (3), other than such income derived from a source within a foreign country in connection with—

(i) Oil or gas which was extracted from an oil or gas well located in that foreign country ("extraction exception"), or

(ii) Oil, gas, or a primary product of oil or gas which is sold by the controlled foreign corporation or a related person for use or consumption within that country or is loaded in that country on a vessel or aircraft as fuel for the vessel or aircraft ("use or consumption exception").

A taxpayer claiming the use or consumption exception must establish its applicability on the basis of facts and circumstances. For special rules for applying the extraction exception, see paragraph (c) of this section.

(2) *Source of income.* The source of foreign base company oil related income is determined generally under the principles of §§ 1.861–1 to 1.863–5. See § 1.863–6. Thus, income from the performance of a service generally is sourced in the country where the service is performed. See § 1.861–4. Underwriting income from insuring a foreign oil related activity is sourced at the location of the risk. See section 861(a)(7) and § 1.953–2.

(3) *Primary product.* The term "primary product" of oil or gas has the meaning given this term by § 1.907(c)–1(d) (5) and (6).

(4) *Vessel.* For the definition of the term "vessel", see § 1.954–6(b)(3)(ii).

(5) *Foreign country.* For purposes of this section, the term "foreign country" has the same meaning as in section 638 (relating to continental shelf areas). Thus, for example, oil or gas extracted from a sea area will be deemed to be extracted in the country which has exclusive rights of exploitation of natural resources with respect to that area if the other conditions of section 638 are met.

(6) *Country of use or consumption.* For rules for determining the country of use or consumption, see § 1.954–3(a)(3)(ii).

(7) *Insurance income.* For purposes of this section, income derived from or attributable to insurance of section 907(c)(2) activities means taxable income as defined in section 832(a) and as modified by the principles of § 1.953–4 (other than as the section is applied to life insurance).

(8) *Fuel product.* For purposes of this section, the term "fuel product" means oil, gas or a primary product of oil or gas.

(9) *Effective date.* The provisions of section 954(g) and this section are applicable to taxable years of foreign corporations beginning on or after January 1, 1983, and to taxable years of United States shareholders in which or with which those taxable years of foreign corporations end.

(b) *Exemption for small oil producers*—(1) *In general.* Foreign base company oil related income does not include any income of a foreign corporation which is not a large oil producer.

(2) *Large oil producer.* A corporation is a large oil producer (within the meaning of section 954(g)(2)) if the average daily production (extraction) of foreign crude oil and natural gas by the related group which includes the corporation and related persons (within the meaning of section 954(d)(3)) for the taxable year or immediately preceding taxable year is 1,000 or more barrels. The average daily production of foreign crude oil or natural gas for any taxable year (and the conversion of cubic feet of natural gas into barrels) is determined under rules similar to the rules of section 613A, except that only crude oil or natural gas from a well located outside the United States is taken into account.

(c) *Special rules for applying the extraction exception of paragraph (a)(1)(i) of this section*—(1) *Refining income described in section 907(c)(2)(A).* With regard to a controlled foreign corporation's refining income from the processing of minerals extracted (by the taxpayer or by any other person) from oil or gas wells into their primary products, as described in section 907(c)(2)(A), a pro rata method will be applied for purposes of determining the part of the refining income that qualifies for the extraction exception of paragraph (a)(1)(i) of this section. The pro rata method will be based on the proportion that the barrels of the fuel product extracted in the country of processing bears to the total barrels of the fuel product processed in that country and will apply regardless of the country of sale of the primary product.

(2) *Marketing income described in section 907(c)(2)(C).* With regard to a controlled foreign corporation's marketing income from the distribution or sale of minerals extracted from oil or gas wells or of primary products, as described in section 907(c)(2)(C), a pro rata method will be applied for purposes of determining the part of the marketing income that qualifies for the extraction exception of paragraph (a)(1)(i) of this section. When applying the pro rata method to the sale of a fuel product other than a primary product, the pro rata method will be based on the proportion that the barrels of the fuel product extracted in the country of sale bears to the total barrels of the fuel product sold in that country. When applying the pro rata method to the sale of primary products, the method will be based on the proportion that the barrels of the fuel product extracted in the country of sale bears to the total barrels of the fuel product processed. For purposes of applying the pro rata method, data of the controlled foreign corporation's related group (as defined in section 954(g)(2)(C)) will be taken into account. The pro rata method will not apply, however, if the mineral or primary product is purchased by the controlled foreign corporation from a person not within the controlled foreign corporation's related group. In that situation, the marketing income will be presumed to qualify for the extraction exception if the country of the source of the marketing income is a net exporter

of crude oil or gas, whichever is relevant. If the country of the source of the marketing income is not a net exporter of crude oil or gas, whichever is relevant, the marketing income will be presumed not to qualify for the extraction exception. The controlled foreign corporation may, however, rebut this latter presumption by demonstrating on the basis of all the facts and circumstances that its marketing income does qualify for the extraction exception. If a primary product that is acquired from a person within the controlled foreign corporation's related group is commingled with like products acquired from persons not within that related group, the pro rata method based on the proportion that the barrels of the fuel product extracted in the country of sale bears to the total barrels of the fuel product processed will be applied to that portion of the total products sold that was purchased from persons within the related group, to the extent that that person did not sell product purchased from an unrelated person, and either the presumption or facts and circumstances will determine the characterization of the remainder.

(3) *Transportation income described in section 907(c)(2)(B).* With regard to a controlled foreign corporation's income from the transportation of minerals from oil and gas wells or of primary products, as described in section 907(c)(2)(B), the rules set forth in paragraph (c)(2) of this section will apply for purposes of determining the part of the transportation income that qualifies for the extraction exception of paragraph (a)(1)(i) of this section.

(4) *Illustrations.* The following examples illustrate the application of this paragraph.

Example 1. Controlled foreign corporation M has a refinery in foreign country A that refines 250x barrels of oil during its taxable year beginning in 1984. It is determined that 125x barrels of its 250x barrels were extracted in country A. M sold 150x barrels of its 250x barrels in country A for consumption in country A which resulted in $225x of income from refining and $225x of marketing income, as described in section 907(c)(2)(C). M also sold within foreign country B, for consumption in country B, 100x barrels of its 250x barrels which resulted in an additional $150x of income from refining for M and $170x of marketing income for M. The 100x barrels sold by M within country B, a contiguous country, were transported from M's refinery in country A to country B by a pipeline which is owned by M, and M recognized a total of $10x of income from the transportation of the 100x barrels. Of this $10x, $8x was recognized in country A and $2x was recognized in country B. Under the source of income rules of paragraph (a)(2) of this section, income from refining is considered derived from the country in which the refining occurs and not from the country where the sale of the refined product occurs.

(i) *M's refining income.* M has $75x of foreign base company oil related income with respect to its refining of the 250x barrels, determined as follows:

(A) Total amount of income from refining attributable to oil refined in country A by M	$375x
(B) Amount of income from refining with respect to oil sold for consumption ($225x) in country A (use or consumption exception under paragraph (a)(1)(ii) of this section)	(225x)
(C) Pro rate amount of income from refining attributable to sales in country B considered extracted from country A ($150x times 125x barrels/250x barrels) (extraction exception under paragraph (a)(1)(i) of this section	*(75x)*
(D) Foreign base company oil related income	*$75x*

(ii) *M's marketing income.* M does not have foreign base company oil related income with respect to its sale of the 100x barrels in country B and 150x barrels in country A because the $170x and $225x, respectively, of marketing income was derived from the country in which the oil was sold for consumption (an exception under paragraph (a)(1)(ii) of this section).

(iii) *M's transportation income.* M does not have foreign base company oil related income with respect to its $2x of pipeline transportation income recognized in country B because the income was derived from the country in which the 100x barrels were sold for consumption, an exception under paragraph (a)(1)(ii) of this section. With regard to the $8x of pipeline transportation income recognized in country A, however, M has $4x of foreign base company oil related income since of the total barrels refined in country A (250x) only one-half were extracted in that country. Therefore, only one-half of the transportation income qualifies for the extraction exception of paragraph (a)(1)(i) of this section.

(iv) *M's extraction income.* M does not have foreign base company oil related income for its extraction activity because extraction income is excluded in all events. See section 954(g)(1)(A).

Example 2. Assume the same facts as in *Example 1* except that M sold all of the 250x barrels of refined oil in country A. In addition, assume that country A is a net exporter of crude oil. As in *Example 1*, M sold 150x barrels for consumption in country A with the same resulting income. M sold in country A the remaining 100x barrels to unrelated controlled foreign corporation N which resulted in an additional $150x of income from refining for M and $170x of marketing income for M. N immediately resold in country A for export those 100x barrels. N did not commingle the 100x barrels with any other refined oil. N earned $10x of marketing income on that sale.

(i) *M's refining income.* M has $75x foreign base company oil related income with respect to its refining of the 250x barrels determined as follows:

(A) Total amount of income from refining attributable to oil refined in country A by M	$375x
(B) Amount of income from refining with respect to oil sold for consumption ($225x) in country A (use or consumption exception under paragraph (a)(1)(ii) of this section)	(225x)
(C) Pro rata amount of income from refining attributable to sales in country A (for consumption outside of country A) considered extracted from country A ($150x times 125x barrels/250x barrels) (extraction exception under paragraph (a)(1)(i) of this section)	*(75x)*
(D) Foreign base company oil related income	*$75x*

(ii) *M's marketing income.* M does not have foreign base company oil related income with respect to its marketing income from the sale of the 150x barrels in country A because the $225x of marketing income was derived from the country in which the oil was sold for consumption (an exception under paragraph (a)(1)(ii) of this section). M has $85x of foreign base company oil related income with respect to its marketing income from sale to N of the 100x barrels, determined as follows:

(A) Total amount of marketing income from the sale	$170x
(B) Pro rata amount of marketing income attributable to oil product considered extracted in country A ($170x times 125x barrels/250x barrels) (extraction exception under paragraph (a)(1)(i) of this section)	*(85x)*
(C) Foreign base company oil related income	*$85x*

(iii) *N's marketing income.* N is not related to M. Therefore, since N sold the 100x barrels in country A, a net exporter of crude oil, and since N did not commingle the 100x barrels with other refined products, it is presumed that all of the 100x barrels were extracted in country A. Accordingly, all of N's $10x of marketing income is excepted under paragraph (a)(1)(i) of this section.

Example 3. Assume the same facts as in *Example 2* except that N is related to M. Characterization of M's income remains the same as in *Example 2*. N will have, however, $5x of foreign base company oil related income with regard to its marketing income, determined as follows:

(i) Total amount of marketing income from the sale	$10x
(ii) Pro rata amount of marketing income considered extracted from country A ($10x times 125x barrels/250x barrels) (extraction exception under paragraph (a)(1)(i) of this section)	*5x*
(iii) Foreign base company oil related income	*$5x*

Example 4. Assume that controlled foreign corporation M has a refinery in foreign country A that refines 200x barrels of oil during its taxable year beginning in 1984. It is determined that 100x barrels of that oil were extracted in country A and that the other 100x barrels were extracted in country B. Neither country A nor country B is a net exporter of crude oil. In addition, M

purchased from an unrelated country A refiner 100x barrels of already refined oil. M does not know where this oil was extracted. These 100x barrels of purchased refined oil were commingled with the 200x barrels of refined oil from M's refinery. M sold 225x barrels of refined oil in country A for consumption in country A which resulted in $250x of income from refining and $225x of marketing income. M sold within foreign country B for consumption outside of country B 75x barrels of refined oil which resulted in $100x of income from refining and $75x of marketing income. The refined product was transported between country A and country B by an unrelated person.

(i) *M's refining income.* With regard to the sales in country A, M has $50x of foreign base company oil related income with respect to its refining of the 100x barrels, determined as follows:

(A) Total amount of income from refining attributable to oil refined in country A by M	$350x
(B) Amount of income from refining with respect to oil sold for consumption in country A ($250x) (use or consumption exception under paragraph (a)(1)(ii) of this section)	(250x)
(C) Pro rata amount of income from refining attributable to sales in country B considered extracted from country A ($100x times 100x barrels/200x barrels) (extraction exception under paragraph (a)(1)(i) of this section)	*(50x)*
(D) Foreign base company oil related income	*$50x*

(ii) *M's marketing income.* Since the barrels from M's refinery and those that M purchased were commingled, a portion, as follows, of the marketing income is deemed to derive from both purchased and refined products: Since M refined 200x barrels and purchased 100x barrels, its marketing income of $225x from the sale of the 225x barrels in country A for consumption in country A will be deemed to consist of $150x (200x/300x × $225x) from the sale of products refined by M and $75x (100x/300x × $225x) from the sale of purchased products. Likewise, its marketing income of $75x from the sale of the 75x barrels in country B for consumption outside of country B will be deemed to consist of $50x (200x/300x × $75x) from the sale of products refined by M and $25x (100x/300x × $75x) from the sale of purchased products.

(A) *Purchased products.* M is considered as having $75x of marketing income from the sale of purchased products in country A for consumption in country A. None of this marketing income is foreign base company oil related income since the marketing income is earned in country A, the country of consumption. See paragraph (a)(1)(ii) of this section. All of the $25x of M's marketing income from the sale of purchased products in country B will be foreign base company oil related income. The exception at paragraph (a)(1)(ii) of this section does not apply since the refined oil is not sold for use or consumption in country B. Likewise, the extraction exception under paragraph (a)(1)(i) of this section does not apply. The purchased product can not be presumed to be extracted in country B since country B is not a net exporter of crude oil. In addition, M cannot show, on a facts and circumstances basis, that purchased products were refined from crude oil extracted in country B.

(B) *Products refined by M.* With regard to M's marketing income attributable to the sale of products refined by M, M does not have any foreign base company oil related income with regard to its $150x of marketing income in country A since that income was derived from the country in which the oil was sold for consumption (the use or consumption exception under paragraph (a)(1)(ii) of this section). M has $25x of foreign base company oil related income with regard to its $50x of marketing income in country B determined as follows:

(*1*) Total amount of income from marketing attributable to oil refined by M and sold in country B	$50x
(*2*) Pro rata amount of income from marketing attributable to sales in country B considered extracted from country B ($50x times 100x barrels/200x barrels) (extraction exception under paragraph (a)(1)(i) of this section)	*(25x)*
(*3*) Foreign base company oil related income	*$25x*

§ 1964-4 [Amended]

Par. 5. Section 1.964-4 is amended as follows:

1. Paragraphs (d) (4), (5), (6), (7), (8), (9), and (10) are redesignated as (d) (5), (6), (7), (8), (9), (10), and (11), respectively.

2. A new paragraph (d)(4) is added to read as follows:

§ 1.964-4 Verification of certain classes of income.

* * * * *

(d) *Foreign base company income and exclusions therefrom.* * * *

* * * * *

(4) *Foreign base company oil related income.* (i) The foreign base company oil related income described in section 954(g) and § 1.954-8, for which purpose there must be established, with respect to each foreign country, the gross income derived from—

(A) The processing of minerals extracted (by the taxpayer or by any other person) from oil or gas wells into their primary products, as determined under section 907(c)(2)(A),

(B) The transportation of such minerals or primary products, as determined under section 907(c)(2)(B),

(C) The distribution or sale of such minerals or primary products, as determined under section 907(c)(2)(C),

(D) The disposition of assets used by the taxpayer in a trade or business described in subdivision (A), (B) or (C), as determined under section 907(c)(2)(D),

(E) Dividends, interests, partnership distributions, and other amounts, as determined under section 907(c)(3).

Where an item of income falls within more than one of the listings in paragraphs (d)(4)(i) (A) through (E) of this section, it shall be sufficient to establish that it falls within any one of them.

(ii) If any of the items of income listed in paragraph (d)(4)(i) of this section arising from sources within a foreign country relates to oil, gas, or a primary product thereof and is described in section 954(g)(1) (A) or (B) and § 1.954-8(a)(1) (i) or (ii) (and, hence, is not foreign base company oil related income), then there must be established facts sufficient to verify the amount of such item of income which is not foreign base company oil related income. In this regard, the total quantities of oil, gas and primary products thereof which gave rise to such item of income and the portions of such quantities which were extracted or sold within the foreign country must be established.

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Dated: January 1, 1991.

Fred T. Goldberg,

Commissioner of Internal Revenue.

Approved:

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

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DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 619

Program for Qualifying DOD Freight Motor Carriers

AGENCY: Military Traffic Management Command, DOD.

ACTION: Final rule.

SUMMARY: This final rule establishes the Program for DOD Freight Motor Carrier Qualification Program as 32 CFR part 619. Subject to certain exceptions, the DOD Freight Motor Carriers Qualification Program will apply to all freight motor carriers intending to participate in transportation of all freight administered by the Military Traffic Management Command's (MTMC) Directorate of Inland Traffic (except used household goods, hazardous, or secret materials, and sensitive weapons and munitions). This rule establishes the qualification data for carriers without and with rates on file. This rule also establishes the Basic