List of Subjects

15 CFR Parts 771 and 775

Exports, Reporting and recordkeeping requirements.

15 CFR Part 785

Communist countries, Exports.

Accordingly, parts 771, 775, and 785 of the Export Administration Regulations are amended as follows:

1. The authority citation for 15 CFR part 771 continues to read as follows:

Authority: Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; sec. 101, Pub. L. 93–153, 87 Stat. 576 (30 U.S.C. 185), as amended; sec. 103, Pub. L. 94–163, 89 Stat. 877 (42 U.S.C. 6212), as amended; secs. 201 and 201(11)(e), Pub. L. 94–258, 90 Stat. 309 (10 U.S.C. 7420 and 7430(e)), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); sec. 208, Pub. L. 95–372, 92 Stat. 668 (43 U.S.C. 1354); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended (extended by Pub. L. 103–10, 107 Stat. 40); sec. 125, Pub. L. 99–64, 99 Stat. 156 (46 U.S.C. 466c); E.O. 11912 of April 13, 1976 (41 FR 15825, April 15, 1976); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 25, 1992 (57 FR 44649, September 28, 1992); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 11, 1992 (57 FR 53979, November 13, 1992).

2. The authority citations for 15 CFR parts 775 and 785 continue to read as follows:

Authority: Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended (extended by Pub. L. 103–10, 107 Stat. 40); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 25, 1992 (57 FR 44649, September 28, 1992); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 11, 1992 (57 FR 53979, November 13, 1992).

PART 771—[AMENDED]

3. Section 771.3 is revised to read as follows:

§ 771.3 General license G–DEST; shipments of commodities to destinations not requiring a validated license.

A general license designated G-DEST is established, subject to the provisions of this section 771.3, authorizing the export of any commodity listed on the Commerce Control List to any destination for which a validated license is not required by the information set forth in the paragraph titled *"Validated License Required"*. A validated export license is required and General License G–DEST is not available for a proposed export if the *"Validated License Required"* paragraph lists any of the following: the country of destination; an entity in a country of destination; the letter symbol for the country group that includes the destination; or a supplementary list of countries that includes the destination. Shipments under General License G–DEST are subject to the prohibitions contained in § 771.2(c).

PART 775—[AMENDED]

4. Section 775.6 is amended by removing paragraph (c)(2) and redesignating paragraphs (c)(3) and (c)(4) as paragraphs (c)(2) and (c)(3) respectively and revising them, and by adding a new paragraph (d) to read as follows:

§ 775.6 People's Republic of China End-User Certificate.

* * * * *

(c) * * *

(2) The commodity to be exported (i.e., replacement parts or sub-assemblies, not tools of trade or test instruments) is for servicing previously exported equipment and is valued at $75,000 or less; or

(3) The Chinese do not issue an End-Use Certificate because the end-user is not a Chinese entity.

(d) *Exemptions for temporary export.* License applications for temporary export, e.g., exhibition, demonstration, etc., in the People's Republic of China must be filed in accordance with the procedures outlined in section 772.8(c) of this subchapter; no supporting documentation is required.

PART 785—[AMENDED]

5. Section 785.6 is amended by revising paragraph (b) to read as follows:

§ 785.6 Canada.

* * * * *

(b) The Commerce Control List indicates that a validated license is required for export to Canada. Shipments of certain non-naval reserve petroleum commodities may be exported to Canada under General License G–NNR provided the criteria set forth under § 771.16 (a) and (b) of this subchapter are met.

Dated: August 30, 1993.

Iain S. Baird,

Acting Assistant Secretary for Export Administration.

[FR Doc. 93–21634 Filed 9–3–93; 8:45 am]

BILLING CODE 3510–DT–P

---

15 CFR Part 770, 771, 774, 775, 776, 779, and 785

[Docket No. 930780–3180]

Revisions to the Export Administration Regulations: New General License for Vietnam; Name Change to Reflect the Creation of the Czech Republic and the Slovak Republic

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration is amending the Export Administration Regulations (EAR) by revising the references to "Czechoslovakia" to read "Czech Republic" and "Slovak Republic" to reflect Czechoslovakia's separation into two countries, which was effective January 1, 1993. This rule also amends the EAR by establishing a new General License GVN to permit certain exports and reexports to support activities in Vietnam licensed by the Department of the Treasury's Office of Foreign Assets Control, related to obtaining and preparing to perform executory contracts with Vietnam or Vietnamese nationals.

EFFECTIVE DATE: This rule is effective September 7, 1993.

FOR FURTHER INFORMATION CONTACT: Rod Joseph, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 482–4171.

SUPPLEMENTARY INFORMATION:

Background

On January 1, 1993, Czechoslovakia separated into two countries—the Czech Republic and the Slovak Republic. The Bureau of Export Administration (BXA) is revising all references to "Czechoslovakia" in the Export Administration Regulations (EAR) to correctly reflect the names of the new countries.

On December 30, 1992, the Department of the Treasury's Office of Foreign Assets Control (OFAC) published a final rule authorizing persons subject to U.S. jurisdiction to enter into contracts with Vietnam or Vietnamese nationals (57 FR 62230). The performance of such contracts may not begin until the embargo on Vietnam

is lifted or modified. However, OFAC may issue specific licenses authorizing commercial and financial transactions necessary to obtain, or to prepare to perform, contracts. These activities include the opening of offices in Vietnam, hiring staff, writing and designing plans, carrying out feasibility studies and engineering and technical surveys, and trade and service transactions related to the foregoing.

This rule creates a new general license, designated GVN, which allows export and reexport to Vietnam of eligible items required by parties who have been licensed by the Treasury Department to engage in activities necessary to obtain, or to prepare to perform, contracts. The items exported must remain under the effective control of the parties who hold licenses under § 500.574 of the Foreign Assets Control Regulations (31 CFR 500.574), and may not be transferred to any other party in Vietnam or to any Vietnamese entity or national. Only items listed as eligible for General License GVN may be exported, and must be of the type and minimum quantity required to perform activities authorized by OFAC. Any other items needed to perform activities authorized by an OFAC license will continue to require a validated export license from the Department of Commerce.

This rule also amends the Special Country Policies section of the EAR to authorize the issuance of individual validated licenses to permit the export or reexport of items not eligible for General License GVN needed to support activities licensed by OFAC. Those wishing to export or reexport items that are not eligible for General License GVN must first comply with the licensing requirements set forth in 31 CFR 500.574. License applications submitted to the Bureau of Export Administration's Office of Export Licensing should include a copy of the OFAC license or a copy of the license application submitted to OFAC.

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694–0005, 0694–0008, 0694–0010, and 1505–0096.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 603(b)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects

15 CFR Part 770

Administrative practice and procedure, Exports.

15 CFR Parts 771, 774, 775, and 776

Exports, Reporting and recordkeeping requirements.

15 CFR Part 779

Computer technology, Export, Reporting and recordkeeping requirements, Science and technology.

15 CFR Part 785

Exports.

Accordingly, parts 770, 771, 774, 775, 776, 779, and 785 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

1. The authority citations for 15 CFR parts 770, 771, and 774 continue to read as follows:

Authority: Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; sec. 101, Pub. L. 93–153, 87 Stat. 576 (30 U.S.C. 185), as amended; sec. 103, Pub. L. 94–163, 89 Stat. 877 (42 U.S.C. 6212), as amended; secs. 201 and 201(11)(e), Pub. L. 94–258, 90 Stat. 309 (10 U.S.C. 7420 and 7430(e)), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); sec. 208, Pub. L. 95–372, 92 Stat. 668 (43 U.S.C. 1354); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended (extended by Pub. L. 103–10, 107 Stat. 40); sec. 125, Pub. L. 99–64, 99 Stat. 156 (46 U.S.C. 466c); E.O. 11912 of April 13, 1976 (41 FR 15825, April 15, 1976); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 25, 1992 (57 FR 44649, September 28, 1992); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 11, 1992 (57 FR 53979, November 13, 1992).

2. The authority citations for 15 CFR parts 775, 779 and 785 continue to read as follows:

Authority: Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended (extended by Pub. L. 103–10, 107 Stat. 40); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 25, 1992 (57 FR 44649, September 28, 1992); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 11, 1992 (57 FR 53979, November 13, 1992).

3. The authority citation for 15 CFR part 776 continues to read as follows:

Authority: Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*); Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended (extended by Pub. L. 103–10, 107 Stat. 40); sec. 125, Pub. L. 99–64, 99 Stat. 156 (46 U.S.C. 466c); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 25, 1992 (57 FR 44649, September 28, 1992); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 11, 1992 (57 FR 53979, November 13, 1992).

PART 770—[AMENDED]

4. Supplement No. 1 to part 770 is amended by revising the text under the heading "Country Group W" to read as follows:

Supplement No. 1—Country Groups

* * * * *

Country Group W

Czech Republic
Poland
Slovak Republic
* * * * *

PART 771—[AMENDED]

5. A new § 771.28 is added to read as follows:

§ 771.28 General License GVN: Shipments to Vietnam in support of executory contracts.

(a) *Scope.* A general license GVN is established, subject to the provisions of this § 771.28, authorizing parties who hold a license from the Department of the Treasury's Office of Foreign Assets Control (OFAC) under 31 CFR 500.574, to export eligible items of the type and minimum quantity required to engage in activities covered by the Treasury license. OFAC issues specific licenses on a case-by-case basis authorizing activities necessary to obtain, or to prepare to perform, contracts in Vietnam.

(b) *Eligible items.* The items eligible for export under this general license are limited to those described under ECCNs on the CCL that have a final character of F, G, H, or I, except ECCNs 2B85F, 2B91F, 2B92F, 2B93F, 2B94F, 3B91F, 3D91F, 3E91F, 5E91F, 5E92F, 5E93F, 5E94F, 5E95F,6A90F, 7A94F, 7B94F, 7D94F, 7E94F, 8E92F, 8E93F, 9A91F, 9A94F, 9D91F, 9E90F, and 9E91F.

(c) *Special conditions.* (1) To use this general license, an exporter must have a license issued by the Office of Foreign Assets Control, Department of the Treasury, under 31 CFR 500.574;

(2) Items shipped must be the minimum quantities and types reasonably required to engage in OFAC-authorized activities, e.g., to furnish and equip offices, write and design plans, or carry out feasibility studies and engineering or technical surveys; and

(3) All items must be retained under the effective control of the exporting party, and may not be sold or otherwise retransferred within Vietnam or to any Vietnamese entity or national.

(d) *Reporting and Recordkeeping.* Records of shipments made under this general license must be kept in accordance with § 787.13 of this subchapter.

PART 774—[AMENDED]

§ 774.2 [Amended]

6. Section 774.2 is amended by revising the phrase "GUS or BAGGAGE" is paragraph (a)(1) to read "GUS, GVN, or BAGGAGE".

PART 775—[AMENDED]

§ 775.1 [Amended]

7. In § 775.1, in the table in paragraph (b), revise the words "Czechoslovakia Hungary, or Poland" in the second column for entry 6 to read "Czech Republic, Hungary, Poland, or Slovak Republic" and revise the words "Czechoslovakia, Hungary, or Poland" in footnote 1 to the table to read "Czech Republic, Hungary, Poland, or Slovak Republic".

§ 775.2 [Amended]

8. Section 775.2 is amended by revising the phrase "Polish, Hungarian, or Czechoslovak" in paragraph (b)(1) to read "Czech Republic, Hungarian, Polish, or Slovak Republic".

9. Section 775.8 is amended by revising the heading, paragraph (a), paragraph (b)(2), and the first sentence of paragraph (d) to read as follows:

§ 775.8 Czech, Hungarian, Polish, or Slovak Import Certificate.

(a) *Requirements.* License applications to export or reexport items identified by the code letter "A" on the Commerce Control List to the Czech Republic, Hungary, Poland, or the Slovak Republic must be accompanied by the original Import Certificate issued by the appropriate ministry listed in Supplement No. 1 of this part 775. These ministries certify that all items described in the Import Certificate are for use only as authorized and will not be reexported to a third country without prior authorization.

(b) * * *

(2) *Temporary export.* An Import Certificate need not be submitted to support a license application to export commodities or software for temporary exhibition, demonstration, or testing purposes in the Czech Republic, Hungary, Poland, or the Slovak Republic.

* * * * *

(d) *Delivery Verification.* The Office of Export Licensing will, on a selective basis, require Delivery Verification documents for shipments to the Czech Republic, Hungary, Poland, and the Slovak Republic that are subject to the Import Certificate procedure. * * *

§ 775.10 [Amended]

10. Section 775.10 is amended:

a. By revising the phrase "Polish, Hungarian, or Czechoslovak Import Certificates" in the introductory text and in paragraph (a) to read "Czech, Hungarian, Polish, or Slovak Import Certificates";

b. By revising the phrase "Polish, Hungarian, or Czechoslovak Import Certificate" in paragraph (b)(2) heading and introductory text, paragraph (c), paragraph (e), paragraph (f)(1) introductory text, paragraph (f)(2)(i) introductory text, and paragraph (g)(1) introductory text, to read "Czech, Hungarian, Polish, or Slovak Import Certificate"; and

c. By revising the phrase "or Indian Import Certificate number" in the second certification in paragraph (f)(2)(ii)(A) to read "Indian Import Certificate, or Czech, Hungarian, Polish, or Slovak Import Certificate number".

11. Supplement No. 1 to part 775 is amended:

a. By revising the term "Czechoslovakia" to read "Czech Republic"; and

b. By adding a new entry for "Slovak Republic" immediately after the entry for "Singapore", to read as follows:

SUPPLEMENT NO. 1.—AUTHORITIES ADMINISTERING IMPORT CERTIFICATE/DELIVERY VERIFICATION SYSTEM IN FOREIGN COUNTRIES [1]

Country	IC/DV authorities	System administered [2]
*	*	*
Slovak Republic	Ministry of Foreign Affairs, Licensing-Registration Department, Spitalska 8, 813 15 Bratislava, Slovak Republic.	IC
	Central Customs Administration, Bratislava, Slovak Republic	DV

SUPPLEMENT NO. 1.—AUTHORITIES ADMINISTERING IMPORT CERTIFICATE/DELIVERY VERIFICATION SYSTEM IN FOREIGN COUNTRIES [1]—Continued

Country	IC/DV authorities	System administered [2]
*	* * * * * *	*

[1] Facsimiles of Import Certificates and Delivery Verifications issued by each of these countries may be inspected at the Bureau of Export Administration Western Regional Office, 3300 Irvine Avenue, suite 345, Newport Beach, California 92660–3198 or at any U.S. Department of Commerce District Office (see listing in Commerce Office Addresses section of these regulations) or at the Office of Export Licensing, room 1099D, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.
[2] IC—Import Certificate and/or DV—Delivery Verification.

PART 776—[AMENDED]

12. Section 776.11 is amended by revising paragraph (f)(6)(i)(D) and paragraph (f)(6)(ii)(A) to read as follows:

§ 776.11 Supercomputers.

* * * * *

(f) * * *

(6) * * *

(i) * * *

(D) Czech Republic, Hungarian, Polish, or Slovak Republic Import Certificates—see § 775.8(a) of this subchapter.

(ii) * * *

(A) *Czech Republic, Hungary, Poland, and Slovak Republic.* Reproduced copies of the Czech, Hungarian, Polish, and Slovak Import Certificates;

* * * * *

PART 779—[AMENDED]

13. Section 779.4 is amended by revising paragraph (f)(1)(i) to read as follows:

§ 779.4 General license GTDR: Technical data under restriction.

* * * * *

(f) * * *

(1) * * *

(i) Reexport, directly or indirectly, to Country Group Q, S, W,[10] Y, or Z, or the People's Republic of China any technical data relating to commodities controlled to Country Group W as described in the paragraph titled "Validated License Required" of any entry of the Commerce Control List;

* * * * *

[10] Effective April 26, 1971, Country Group W no longer included Romania. Assurances executed prior to April 26, 1971, that refer to Country Group W continue to apply to Romania as well as Poland. Effective April 25, 1991, Czechoslovakia was added to Country Group W. Assurances executed on or after April 25, 1991, that refer to Country Group W apply to Czechoslovakia as well as Poland. On May 8, 1992, Hungary was removed from Country Group W. Assurances are no longer applicable to Hungary. On January 1, 1993, Czechoslovakia became two separate countries called the Czech Republic and the Slovak Republic. Assurances executed prior to January 1, 1993, that refer to Czechoslovakia continue to apply to the Czech Republic and the Slovak Republic.

§ 779.5 [Amended]

14. Section 779.5 is amended by revising the phrase "Poland, Hungary, and Czechoslovakia," in paragraph (a)(3) to read "the Czech Republic, Hungary, Poland, and the Slovak Republic,".

PART 785—[AMENDED]

15. Section 785.1 is amended by revising paragraph (a) to read as follows:

§ 785.1 Country group Z:[1] North Korea, Vietnam, and Cuba.

(a) As authorized by section 6 of the Export Administration Act of 1979 and by the Trading with the Enemy Act of 1917 as amended by Public Law 95–223, a validated license is required for foreign policy purposes for the export and reexport of virtually all U.S.-origin commodities and technical data to destinations in Country Group Z.

(1) The general policy is to deny all applications or requests to export or reexport U.S.-origin commodities and technical data to destinations in Country Group Z. Exceptions are contained in parts 771 and 779 of the EAR, and in ECCN 0A98 on the Commerce Control list. Other exceptions to the general policy of denial are as follows:

(i) Exports to Vietnam of donations to meet basic human needs by non-governmental, non-profit organizations may be authorized under General License G–NGO, as described in § 771.27 of this subchapter.

(ii) Exports to Vietnam of donations to meet basic human needs that do not qualify for general license G–NGO may be authorized under a Humanitarian License, as described in § 773.5 of this subchapter. Such exports may also be authorized for single transactions under an individual validated license.

(iii) Exports of commercially-supplied goods to meet basic human needs may be authorized under an individual validated license on a case-by-case basis for destinations in North Korea and Vietnam. The types of commodities that may be supplied commercially to meet basic human needs are the same as those types of commodities described in Supplement No. 7 to Part 773, but are not restricted solely to small scale projects at the local level.

(2) The Department of the Treasury's Office of Foreign Assets Control (OFAC), under 31 CFR 500.574, authorizes persons subject to U.S. jurisdiction to engage in activities related to obtaining and preparing to perform executory contracts with Vietnam or Vietnamese nationals. Such activities include opening offices in Vietnam, hiring staff, writing and designing plans, carrying out preliminary feasibility studies and engineering and technical surveys, and import, export, and service transactions incident to these activities.

(i) Exports and reexports to Vietnam of certain items required for activities licensed under 31 CFR 500.574 may be made under General License GVN, as described in § 771.28 of this subchapter.

(ii) Parties wishing to export or reexport items not eligible for General License GVN that are needed to support OFAC-authorized activities must obtain an individual validated license from the Office of Export Licensing (OEL). License applications submitted to OEL must include a copy of the OFAC license or a copy of the license application submitted to OFAC. Applications for licenses should describe the items to be exported or reexported and explain how they will be used in the authorized activity. Applications to export or reexport items in support of OFAC-authorized activities will be considered on a case-by-case basis to determine whether such shipments are consistent with the objectives of a specific export control program as set forth in the Export Administration Regulations.

* * * * *

[1] See Supplement No. 1 to part 770 for listing of Country Groups.

§ 785.2 [Amended]

16. Section 785.2 is amended:

a. By revising the phrase "Czechoslovakia, Estonia, Latvia, Lithuania, Mongolian People's Republic, Poland, and Romania" in paragraph (a)(1) to read "the Czech

Republic, Estonia, Latvia, Lithuania, Mongolia, Poland, Romania, and the Slovak Republic";

b. By revising the first reference to the phrase "Czechoslovakia and Poland" in paragraph (c) to read "the Czech Republic, Poland, and the Slovak Republic"; and

c. By revising the phrase the second reference to the phrase "Czechoslovakia and Poland" in paragraph (c) to read "destinations in Country Group W".

Dated: August 30, 1993.

Iain S. Baird,

Acting Assistant Secretary for Export Administration.

[FR Doc. 93–21635 Filed 9–3–93; 8:45 am]

BILLING CODE 3510-DT-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 558

Animal Drugs, Feeds, and Related Products; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for nine new animal drug applications (NADA's) from A. H. Robins Co., to Agri-Bio Corp.

EFFECTIVE DATE: September 7, 1993.

FOR FURTHER INFORMATION CONTACT: Benjamin Puyot, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1646.

SUPPLEMENTARY INFORMATION: A. H. Robins Co., 1407 Cummings Dr., P.O. Box 26609, Richmond, VA 23261–6609, has informed FDA that it has transferred ownership of, and all rights and interests in, the following approved NADA's to Agri-Bio Corp., P.O. Box 897, Gainesville, GA 30503:

NADA Number	Ingredient	Trade Name
128–686	Salinomycin	Bio-Cox
132–447	Salinomycin + Roxarsone	Bio-Cox + 3-Nitro
134–284	Salinomycin + Bamber mycins	Bio-Cox + Flavomycin
134–185	Salinomycin + Roxarsone/and Bamber mycins	Bio-Cox + 3-Nitro + Flavomycin
135–746	Salinomycin + Bacitracin-MD	Bio-Cox + BMD
135–321	Salinomycin + Roxarsone + Bacitracin-MD	Bio-Cox + 3-Nitro + BMD
137–537	Salinomycin + Lincomycin	Bio-Cox + Lincomix
137–536	Salinomycin + Roxarsone + ZN Bacitracin	Bio-Cox + 3-Nitro + Albac
140–581	Salinomycin + Roxarsone + Lincomycin	Bio + 3-Nitro + Lincomix

Accordingly, FDA is amending the regulations in 21 CFR 510.600(c)(1) and (c)(2), 558.95(b)(1)(xi)(*b*) and (b)(1)(xii)(*b*) and 558.550(a) to reflect the change of sponsor.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379(e)).

2. Section 510.600 is amended in the table in paragraph (c)(1) by alphabetically adding a new entry for "Agri-Bio Corp." and in the table in paragraph (c)(2) by numerically adding a new entry for "042835" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
Agri-Bio Corp., P.O. Box 897, Gainesville, GA 30503	042835
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
042835	Agri-Bio Corp., P.O. Box 897, Gainesville, GA 30503
* * * * *	

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

3. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

§ 558.95 [Amended]

4. Section 558.95 *Bambermycins* is amended in paragraphs (b)(1)(xi)(*b*) and (b)(1)(xii)(*b*) by removing the number "000031" and adding in its place "042835".

§ 558.550 [Amended]

5. Section 558.550 *Salinomycin* is amended in paragraph (a) by removing the number "000031" and adding in its place "042835".

Dated: August 30, 1993.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 93–21668 Filed 9–3–93; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 86

[Docket No. R–93–1683; FR–3386–F–01]

RIN 2501–AB54

Requirements Governing the Lobbying of HUD Personnel; Housing and Community Development Act of 1992 Amendment

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This rule complies with the Housing and Community Development

Act of 1992 by amending the regulations on lobbying of HUD personnel to exclude from coverage a State or local government, or the officer or employee of a State or local government or housing finance agency thereof who is engaged in the official business of the State or local government.

EFFECTIVE DATE: October 7, 1993.

FOR FURTHER INFORMATION CONTACT: Garry Phillips, Acting Director, Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20419. Telephone: (202) 708–3815; TDD/Voice: (202) 708–1112. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

Section 112 of the Department of Housing and Urban Development Reform Act of 1989, Public Law 101–235, approved December 15, 1989, (the "Reform Act"), added a new section 13 to the Department of Housing and Urban Development Act, 42 U.S.C. 3531, *et seq.* (the "HUD Act"). Section 13 contains two principal features. The first establishes the standards under which:

—Persons that make expenditures to influence a HUD officer or employee in the award of financial assistance or the taking of a management action by the Department must keep records, and report to HUD, on the expenditures; and

—Persons that are engaged to influence a HUD officer or employee in the award of financial assistance or the taking of a management action by the Department must register with HUD, and report to HUD on their lobbying activities.

The second feature imposes limitations on the fees that may be paid to consultants who are engaged to influence the award or allocation of the Department's financial assistance.

A notice of proposed rulemaking to implement section 13 of the HUD Act was published on June 1, 1990, at 55 FR 22722. The notice gave the public 60 days in which to submit comments, and 39 comments were received. A final rule was published on May 17, 1991, at 56 FR 22912, establishing the section 13 requirements as a new part 86 of title 24 of the Code of Federal Regulations.

Based on the statutory definition of "person" as set forth in the Reform Act, coverage of 24 CFR part 86 was established through the definition of "person" at 24 CFR 86.15. Under 24 CFR 86.15, "person" means

an individual (including a consultant, lobbyist, or lawyer); corporation; company; association; authority (including an Indian Housing Authority); firm; partnership; society; State, unit of general local government, or other governmental entity (including a public housing agency); and any other organization or group of people. The term does not include an Indian tribe.

Because of significant public comments received on the proposed part 86 rule from municipal and State organizations, the Department acknowledged the burdens associated with subjecting mayors and other State and local government officials to the requirements of 24 CFR part 86, and therefore, the May 17, 1991 final rule contains an exception from all part 86 requirements for the following categories of State and local government officials:

—All elected officials of State and local government.

—The political appointees who serve on the personal staffs of State and local elected officials, such as Executive Assistants and Special Assistants.

—All full-time, appointed officials—political appointees or otherwise—of State and local government who serve in policy-level positions.[1]

This Rule

Section 926 of the Housing and Community Development Act of 1992, Public Law 102–550, approved October 28, 1992, (the "1992 Act"), amended the definition of "person" in section 13 of the HUD Act to exclude from coverage

a State or local government, or the officer or employee of a State or local government or housing finance agency thereof who is engaged in the official business of the State or local government.

The effect of this amendment is to broaden the exclusion for State and local government officials that was contained in the May 17, 1991 final rule. Accordingly, this rule amends the definition of "person" in § 86.15 to set out the expanded exception and removes §§ 86.20(f) and 86.25(f) which contained the more limited exception that existed before the 1992 Act. An amendment is made to one of the examples in paragraph IV.1 of the appendix A (which sets out the standards to be used to determine the intent to influence) to remove the characterization of actions taken by a State official. Amendments are also made to paragraph VI.4. of the appendix A (which sets out the standards to be used to determine the types of activities that constitute "influence" subject to part 86). The chart included in the final rule as appendix B is also amended to reflect the broadened exclusion for State and local government officials.

In connection with the broadened exclusion for State and local government officials, section 926 also removed the terms "authority," "State," and "local government" from the statutory definition of "person." Therefore, the definition of "person" in the May 17, 1991 final rule, as codified at 24 CFR 86.15, is revised to delete those references, as well as references to "Indian Housing Authority" and "public housing agency."

Other Matters

1. Environmental Review

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street SW., Washington, DC 20410.

2. Regulatory Impact Analysis

This rule does not constitute a "major rule" as that is defined in section 1(d) of the Executive Order on Federal Regulations issued on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment investment, productivity, innovation, or the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

3. Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule

[1] These individuals include State and local cabinet officials, Community Development and Housing Directors, and Public Housing Authority Directors. To qualify for the exception, the individual must occupy a position that is responsible for setting policy for the organization, or for participating in the development of that policy with the organization head. The exception does not include positions in which the incumbents execute policy set by others.

pertains only to certain State and local government officials and, in fact, reduces the registration, record keeping, and reporting burdens for this very limited group.

4. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this rule does not preempt a State law or involve proposed legislation that would have that impact, or have substantial direct effects on the States (including their political subdivisions), or on the distribution of power and responsibilities among the various levels of government. Inasmuch as this rule relaxes a requirement regarding lobbying of HUD personnel by State or local government officials in certain capacities, the implications are positive and not sufficiently significant to warrant preparation of a Federalism Assessment.

5. Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, the Family, has determined that this rule does not have potential significant impact on family formation, maintenance, and general well-being. It only imposes record keeping, disclosure, and registration requirements on those seeking to influence the Department's decision making process.

6. Semi-Annual Agenda of Regulations

This rule was listed as item number 1389 in the Department's Semiannual Agenda of Regulations published on April 26, 1993 (58 FR 24382, 24397) in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

7. Catalog of Federal Domestic Assistance

There are no Catalog of Federal Domestic Assistance Program numbers assigned to this rule.

List of Subjects in 24 CFR Part 86

Lobbying (Government agencies), Administrative practice and procedure, Reporting and recordkeeping requirements.

Accordingly, the Department amends 24 CFR part 86 as follows:

PART 86—REQUIREMENTS GOVERNING THE LOBBYING OF HUD PERSONNEL—SECTION 112 OF THE REFORM ACT

1. The authority for part 86 is revised to read as follows:

Authority: 42 U.S.C. 3535(d) and 3537(g).

2. The definition of "person" in section 86.15 is revised to read as follows:

§ 86.15 Definitions.

* * * * *

Person means an individual (including a consultant, lobbyist, or lawyer); corporation; company; association; firm; partnership; society; and any other organization or group of people. The term does not include an Indian tribe, nor does it include a State or local government, or the officer or employee of a State or local government or housing finance agency thereof who is engaged in the official business of the State or local government.

* * * * *

§ 86.20 [Amended]

3. Section 86.20 is amended by removing paragraph (f), redesignating paragraph (g) as paragraph (f), and redesignating paragraph (1) as paragraph (g).

§ 86.25 [Amended]

4. Section 86.25 is amended by removing paragraph (f) and redesignating paragraphs (g) and (h) as (f) and (g), respectively.

5. Paragraph IV. 1. of appendix A is revised to read as follows:

Appendix A to Part 86—Standards With Regulatory Effect

* * * * *

IV. Influencing the Decision of the Department Through Direct Communication With an Officer or Employee of the Department

* * * * *

1. Intent to Influence

General rule

"Influence" is to be given the broadest possible reading. It includes (but is not limited to) any effort to affect any aspect, including (but not limited to) the outcome, of the award of any financial assistance or the taking of any management action by the Department.

An "intent to influence" may be shown in two ways: If the agreement or expenditure was *actually* intended to have the requisite influence (*actual* intent), or should *reasonably have been expected* to have the effect of having the requisite influence (*constructive intent*). In determining an intent to influence, the Department will take into account all the circumstances involved, including (but not limited to) oral and documentary evidence, and the actions of the parties involved.

The expenditure or communication must be designed (actually or constructively) to influence the officer or employee. Communications of another nature need not be reported, even if they are made during an otherwise covered lobbying venture.

Note: For the rule test, see the definition of "influence" in § 86.15 and §§ 86.20 and 86.25, generally.

* * * * *

Examples

—A writes a check to B pursuant to a written contract specifying that B is to lobby HUD. B endorses the check. The cancelled check and the contract are documentary evidence of an intent to lobby the Department.

—A makes an oral promise to pay B to lobby the Department. The intent to lobby may be established by all the circumstances involved, including the actions of A and B and the record of any payment actually made.

—A pays B to "look into" a HUD management action involving A. B makes a communication to influence the Department on A's behalf. A may not claim that it is not subject to Part 86, since it did not give B specific directions to lobby the Department. A reasonable person would conclude that A in fact intended B to attempt to influence the Department.

—B was a senior HUD official over 10 years ago. He is representing A, whose funding application is pending before the Department. B personally delivers A's application to C, the HUD official designated to receive applications for the assistance involved. When C asks B for his name, B also mentions his title while at HUD.

B's reference to his former position is not covered. Simple reference to B's former title does not in and of itself invoke part 86.

Assume further, however, that after delivering the application, B stops by the office of D. D is a HUD employee in the decision making process for the assistance involved, and was a Special Assistant to B while he was at HUD.

B knows that D has an official role in considering A's application. Although he hasn't seen D since he left HUD, B considers it advantageous to A's cause to "press the flesh" with D. In the course of the conversation, B tells D that he is representing an application in the funding competition.

B's conduct would invoke part 86. Unlike his remarks to C, B's approach was intended to "cash in" on an old relationship—and could reasonably have been expected to have that result.

—A contacts HUD to ask when final selections will be made on A's application for a grant that is pending before the Department. A's communication with HUD does not trigger the requirements of the rule for two reasons: Purely informational inquiries are permitted; and coverage does not apply to a person that attempts to influence the Department on its own behalf, without being retained by another person.

—B, a law firm representing a mortgages with an FHA-insured mortgage, writes to HUD to point out that HUD mistakenly endorsed an insurance document with the wrong section of the National Housing Act. This request involves a purely ministerial change occasioned by a HUD mistake, and is not covered by the rule.

—If, however, the law firm alleges that the "mistake" involved an erroneous interpretation of the law, the communication would be covered. Legal interpretations involve an analysis of the facts and the law of a specific case, and do not constitute purely ministerial acts. Efforts to change the interpretation involve an intent to influence.

* * * * *

6. Paragraph VI.4. of Appendix A is revised to read as follows:

Appendix A to Part 86—Standards With Regulatory Effect

* * * * *

VI. Additional Examples of Actions Subject to Part 86 [13]

* * * * *

4. Officials of State and local government

—A is the mayor of a small city. He asks his special assistant and his director of community development to call HUD officials in support of a grant application that the city has pending with HUD. The mayor calls the Department as well.

The mayor, the special assistant, and the CD director are not covered by part 86. Officers or employees of a State and local government who are engaged in the official business of the State or local government are not subject to the rule.

—A is the mayor of a small city. B is the elected head of a water and sewer district within the city. They both contact HUD for a specific award of assistance.

Neither A nor B is subject to the rule. The officer or employee of a State or local government who is engaged in the official business of the State or local government is excluded from coverage.

—B is county executive. A is the county executive of a neighboring county. A pays B a small stipend to lobby HUD on behalf of A's application for a grant for the county. B make the appropriate contacts.

Only B is subject to part 86. The exclusion for State and local officials is limited to actions taken in the official business of the local government that the officials serve.

—A is a private supplier of equipment who stands to gain if the city wins a HUD contract. A pays B, a city official not connected to the contract, to contact HUD in support of the contract.

B may not claim the exception for State and local officials. B is not contacting the Department in his official capacity with the city.

—A is the director of a community development agency. A asks B, an employee with line responsibility for administering a demonstration program, to contact HUD to influence a grant award for the program.

A and B are not covered by part 86. Officers or employees of a State and local government who are engaged in the official business of the State or local government are not subject to the rule, irrespective of their rank or title or the nature of their duties.

* * * * *

6. Appendix B is revised to read as follows:

Appendix B to Part 86—Chart

Persons covered	Requirements	Exception
Persons making expenditures to influence		
—A person that makes, or that enters into an agreement to make, a covered expenditure to a person. —A person that makes, or that enters into an agreement to make, a covered expenditure to a person on behalf of another person. —A person on whose behalf a covered expenditure is made to a person, or an agreement to make an covered expenditure to a person is entered into. (§ 86.20(a)(1)).	1. *Record keeping:* Keep records on all agreements and expenditures for a two-year period. (§ 86.20(b)). 2. *Reporting:* Between January 1 and 10 of each year, report on all agreements and expenditures made during the preceding calendar year. (§ 86.20(c)).	1. *Record keeping:* —Compliance with HUD requirements. (§ 86.20(e)). —Litigation. (§ 86.20(e)). —State or local government, or the officer or employee of a State or local government or housing finance agency thereof who is engaged in the official business of the State or local government. (§ 86.15—definition of "person"). —Expenditures made by an entity, that has been retained to provide lobbying services, to certain of its partners, associates, and other officers and employees. (§ 86.15—definition of "expenditure"). 2. *Reporting:* —Payment of reasonable compensation to a regularly employed officer or employee of the person that requests or receives financial assistance. (§ 86.20(c)(3)). —Sum of the amounts of all reportable expenditures and agreements during the reporting year is less than $10,000. (§ 86.20(c)(4)). —Compliance with HUD requirements. (§ 86.20(d)). —Litigation. (§ 86.20(e)). —State or local government, or the officer or employee of a State or local government or housing finance agency thereof who is engaged in the official business of the State or local government. (§ 86.15—definition of "person"). —Expenditures made by an entity, that has been retained to provide lobbying services, to certain of its partners, associates, and other officers and employees. (§ 86.15—definition of "expenditure").

[13] Unless otherwise indicated, the examples assume that the applicable dollar thresholds have been reached.

Persons covered	Requirements	Exception
Persons engaged to Influence		
—A person engaged pursuant to an agreement to make an expenditure. (§86.25(a)).	1. *Registration:* Register with the Department within 14 days of being engaged. (§86.25(b)). 2. *Reporting:* Between January 1 and 10 of each year, report on all monies and other things of value expended or received during the preceding calendar year. (§86.25(c)).	1. *Registration:* —Employees of entities retained. (§86.15—definition of "retained"). —Compliance with HUD requirements. (§86.25(d)). —Litigation. (§86.25(e). —State or local government, or the officer or employee of a State or local government or housing finance agency thereof who is engaged in the official business of the State or local government. (§86.15—definition of "person"). 2. *Reporting:* —Certain partners, associates, and other officers and employees assigned to perform lobbying services by an entity that has been retained for that purpose. (§86.15—definition of "retained"). —Receipt of reasonable compensation by a regularly employed officer or employee of that person that requests or receives financial assistance. (§86.25(c)(3)). —Sum of the amounts of all reportable receipts during the reporting year is less than $10,000. (§86.25(c)(2)). —Compliance with HUD requirements. (§86.25(d)). —Litigation. (§86.25(e)). —State or local government, or the officer or employee of a State or local government or housing finance agency thereof who is engaged in the official business of the State or local government. (§86.15—definition of "person").

Dated: August 25, 1993.

Henry G. Cisneros,

Secretary.

[FR Doc. 93–21211 Filed 9–3–93; 8:45 am]

BILLING CODE 4210–32–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8484]

RIN 1545–AR75

Computation of Equity Base

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations that provide guidance to life insurance companies in determining the equity base for purposes of computing the differential earnings amount and recomputed differential earnings amount. Section 809 of the Internal Revenue Code, enacted as part of the Tax Reform Act of 1984, provides that these amounts are used in determining the deduction for policyholder dividends of a mutual life insurance company.

In response to certain changes in state regulatory requirements, the temporary regulations provide that the equity base includes the amount of any asset valuation reserve and the amount of any interest maintenance reserve reported on the annual statement prescribed by the National Association of Insurance Commissioners (NAIC) for filing with the insurance regulatory authorities of a state. The text of the temporary regulations set forth in this document also serves as the text of proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the **Federal Register**.

DATES: These temporary regulations are effective on September 7, 1993.

For dates of applicability of these temporary regulations, see §1.809–10T(b) of these regulations.

FOR FURTHER INFORMATION CONTACT: Katherine Ann Hossofsky, (202) 622–3477 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) to provide guidance relating to the determination of the equity base under section 809 of the Internal Revenue Code (Code). Section 809 was added to the Code by section 211(a) of the Tax Reform Act of 1984 (Pub. L. 98–369, 98 Stat. 733).

Need for Temporary Regulations

Immediate guidance is necessary for life insurance companies that file 1992 Form 1120L, U.S. Life Insurance Company Income Tax Return, and 1992 Form 8390, Information Return for Determination of Life Insurance Company Earnings Rate Under Section 809. Therefore, good cause is found to dispense with the public notice requirement of 5 U.S.C. 553(b) and the delayed effective date requirement of 5 U.S.C. 553(d).

Explanation of Provision

Section 809(a) of the Code provides that, in the case of any mutual life insurance company, the amount of the deduction allowable under section 808

for policyholder dividends is reduced (but not below zero) by the differential earnings amount. For purposes of the computations under section 809, a life insurance company must determine its equity base. The equity base of a life insurance company includes the capital and surplus of the company as well as the reserves specified in section 809(b)(5).

The first reserve listed in section 809(b)(5) is the mandatory securities valuation reserve. From the time section 809 was enacted through 1991, the mandatory securities valuation reserve was required to be reported on the NAIC annual statement filed by all life insurance companies. During these years, the NAIC annual statement required insurers to allocate surplus from capital gains on securities (stocks and bonds) to fund the mandatory securities valuation reserve. Thus, the mandatory securities valuation reserve was not a true actuarial reserve; rather, it represented a fund of allocated surplus, earmarked as a contingency reserve against particular types of unexpected catastrophic losses, or expected capital losses on securities owned by an insurer.

For NAIC annual statements covering 1992 and later years, the NAIC replaced the mandatory securities valuation reserve with the asset valuation reserve and interest maintenance reserve. This change reflected the recognition by the NAIC that it was necessary to protect against fluctuations in value in mortgages, real estate, and other investments as well as fluctuations in value in stocks and bonds and that interest-related changes in asset values might appropriately be differentiated from other changes. Accordingly, these new reserves cover an expanded class of assets and differentiate between (1) equity and credit-related capital gains and losses, and (2) interest-related capital gains and losses.

The asset valuation reserve reflects changes in the value of equity investments and also changes in the value of debt investments where the changes are credit-related. Both realized and unrealized capital gains and losses are reflected in the asset valuation reserve.

The interest maintenance reserve reflects realized capital gains and losses from bonds, mortgages, and other fixed-income obligations to the extent that they are interest-related. Because the value of U.S. Government securities, together with the value of securities of agencies backed by the full faith and credit of the U.S. Government, are safe from credit-related risks and are only subject to interest-related risks, the capital gains and losses on those securities are allocated solely to the interest maintenance reserve.

To carry out Congressional intent in enacting section 809, it is essential to preserve the integrity of the equity base computation under that provision. Because the NAIC annual statement no longer includes the mandatory securities valuation reserve, it is necessary to compute the equity base with reference to the reserves set forth in the current NAIC annual statement. Thus, the temporary regulations provide that, for section 809 purposes, the equity base includes both the amount of any asset valuation reserve and the amount of any interest maintenance reserve.

In connection with the publication of the temporary regulations, the Service is publishing Announcement 93–117, 1993–29 I.R.B., to provide guidance regarding filing of 1992 Form 1120L, U.S. Life Insurance Company Income Tax Return.

Special Analyses

It has been determined that these regulations are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It also 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 Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these proposed regulations is Katherine Ann Hossofsky of the Office of the Assistant Chief Counsel (Financial Institutions and Products), IRS. However, other personnel from the Internal Revenue Service and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.809–10T is added to read as follows:

§ 1.809–10T Computation of equity base (temporary).

(a) *In general.* For purposes of section 809, the equity base of a life insurance company includes the amount of any asset valuation reserve and the amount of any interest maintenance reserve.

(b) *Effective date.* This section is effective for taxable years ending after December 31, 1991.

Phil Brand

Acting Commissioner of Internal Revenue.

Approved: August 6, 1993.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 93–21526 Filed 9–3–93; 8:45 am]

BILLING CODE 4830–01–U

---

26 CFR Part 1

[T.D. 8488]

RIN 1545–AR55

Definition of Compensation for Qualified Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains amendments to the final regulations under section 414(s) of the Internal Revenue Code of 1986, which concerns the definition of compensation for qualified plans. The regulations reflect changes made by the Tax Reform Act of 1986 and the Technical and Miscellaneous Revenue Act of 1988. The regulations provide guidance necessary to comply with the law and affect sponsors of, and participants in, tax-qualified retirement plans.

DATES: These regulations are effective January 1, 1994, and apply to plan years beginning on or after January 1, 1994, except as provided in the transition rules of § 1.414(s)–1(j).

FOR FURTHER INFORMATION CONTACT: Marjorie Hoffman at (202) 622–4606 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On September 19, 1991, final regulations under section 414(s) were published in the **Federal Register** (56 FR 47659). In the **Federal Register** of August 10, 1992, (57 FR 35536), the Internal Revenue Service published proposed regulations to extend the effective date of the final regulations under section 414(s) and related

regulations generally to plan years beginning on or after January 1, 1994.

On April 21, 1993, proposed regulations amending the final regulations were published in the **Federal Register** (58 FR 21412). Written comments were received from the public on the proposed regulations, and a public hearing was held on June 7, 1993. After consideration of all of the written comments received and the statements made at the public hearing, the proposed regulations are adopted as modified by this Treasury Decision.

Explanation of Provisions

1. Overview of Regulations

Section 414(s) provides rules for defining compensation for purposes of applying any provision that specifically refers to section 414(s). For example, section 414(s) is explicitly referred to in many of the nondiscrimination provisions applicable to pension, profit-sharing, and stock bonus plans qualified under section 401(a). The amount of plan benefits or contributions, expressed as a percentage of compensation within the meaning of section 414(s), is generally one of the key factors in determining whether these nondiscrimination provisions are satisfied.

In general, these regulations retain the structure of the September 1991 regulations. The September 1991 regulations implemented section 414(s) by providing design-based safe harbor definitions of compensation and by providing that any other definition of compensation will satisfy section 414(s) if the definition is reasonable (as determined under the regulations), does not by design favor highly compensated employees, and satisfies a nondiscrimination test.

The proposed regulations issued in April 1993, make a number of significant changes to the September 1991 regulations that increase the flexibility of the regulatory requirements. Major changes in the proposed regulations include the following:

- Allowing defined benefit plans to credit compensation with another employer (both for the periods before and after employment with the employer maintaining the plan) or during a leave of absence in a wide range of circumstances.
- Allowing a safe harbor definition of compensation to be modified to exclude any portion of the compensation of some or all of the employer's highly compensated employees.
- Making rate of pay definitions of compensation more flexible to accommodate certain common practices.

In general, comments received on changes contained in the proposed regulations were favorable. Accordingly, these final regulations incorporate those changes and make additional minor revisions.

2. Pre-participation and Imputed Compensation

These regulations permit a defined benefit plan to credit compensation with another employer (both for the periods before and after employment with the employer maintaining the plan) or during a leave of absence, provided certain facts-and-circumstances standards are met. If imputed compensation is credited to an employee under an alternative definition of compensation subject to the nondiscrimination test in the regulations, the regulations generally require that the imputed compensation be taken into account under that test. However, in order to avoid distorting the results of the nondiscrimination test, the regulations limit the employee's plan compensation taken into account in applying that test to 100 percent of the employee's actual compensation for the period. In response to comments, the description of this special rule has been rewritten in order to clarify how it is applied in the nondiscrimination test.

3. Exclusions From Compensation Only Applicable to Highly Compensated Employees

The regulations allow safe harbor definitions of compensation to be modified to exclude any portion of the compensation of some or all of the employer's highly compensated employees. An alternative definition of compensation also may exclude any portion of the compensation of some or all of the employer's highly compensated employees without violating the consistency requirement in the regulations. These regulations expand the rules permitting exclusions from some or all highly compensated employees to apply also in determining the section 414(s) compensation of self-employed individuals.

For purposes of calculating the average compensation percentages used in the nondiscrimination test for an alternative definition of compensation, the regulations require that amounts excluded from compensation under a provision in an alternative definition of compensation that does not apply consistently to all highly compensated employees also be excluded from each employee's total compensation. Although this rule was criticized by certain commentators as being inconsistent with the general principle that discrimination among highly compensated employees is disregarded, the Service and the Treasury believe that this rule is appropriate because of the averaging nature of the section 414(s) nondiscrimination test.

4. Use of Rate-of-Pay Definition for Purposes of Section 414(s)

These regulations retain the requirements for rate-of-pay definitions of compensation contained in the proposed regulations, including the restriction that compensation based on an employee's rate of pay generally may not be credited for more than 31 days after an employee terminates employment. Some commentators requested that the regulations allow compensation based on an employee's rate of pay to be credited to the end of the year in which an employee's employment terminates, or otherwise allow, even for plans not using a rate of pay definition, annualization of the employee's compensation for that year, subject to an anti-abuse rule. They assert that annualization would prevent employees from being penalized for retiring or terminating employment mid-year, and that a facts and circumstances anti-abuse rule could be included in the regulations to prevent annualization from causing significant discrimination. The Service and the Treasury believe that Congress intended section 414(s) compensation to be actual compensation and that any departures from actual compensation should be limited. Appropriate departures from actual compensation already have been provided for in these regulations to address significant practical difficulties arising both under the imputed compensation provisions and in the provisions of the section 401(a)(4) regulations that accommodate the prohibition against double proration of service and compensation. Any other annualization of partial year compensation is not allowed under the regulations because it would give undue weight to the partial year compensation while the suggested facts and circumstances anti-abuse rule needed to prevent annualization of unrepresentative compensation would require a type of subjective analysis that presents significant administrative difficulties.

Effective Dates

The regulations generally are effective for years beginning on or after January 1, 1994, or, in the case of plans maintained by tax-exempt organizations, for plan years beginning

on or after January 1, 1996. However, section 414(s) is effective for years beginning on or after January 1, 1987. For plan years beginning before the effective date of these regulations and on or after the statutory effective date, a plan must be operated in accordance with a reasonable, good faith interpretation of section 414(s). Whether a plan is operated in accordance with a reasonable, good faith interpretation of section 414(s) generally will be determined based on all relevant facts and circumstances, including the extent to which an employer has resolved unclear issues in its favor. A plan will be deemed to be operated in accordance with a reasonable, good faith interpretation of section 414(s) (1) and (2) if it is operated in accordance with these regulations, the September 1991 regulations, the May 1990 temporary regulations, or the February 1988 temporary regulations. In addition, for these transition years, a definition of compensation is deemed to satisfy section 414(s) as an alternative method of determining compensation under section 414(s)(3) if, based on all the relevant facts and circumstances in effect for the year, use of the definition does not cause discrimination in favor of highly compensated employees.

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 also 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 Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Marjorie Hoffman of the Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), Internal Revenue Service. However, personnel from other offices of the Service and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *
§ 1.414(s)–1 also issued under 26 U.S.C. 414(s). * * *

Par. 2. Section 1.414(s)–1 is amended by:

1. Revising the fourth sentence of paragraph (a)(3).
2. Removing the reference "(f)" in the fifth sentence of paragraph (a)(3) and adding "(g)" in its place.
3. Removing the reference "(g)" in the sixth sentence of paragraph (a)(3) and adding "(h)" in its place.
4. Designating the text of paragraph (b)(2) as paragraph (b)(2)(i) and adding a paragraph heading for paragraph (b)(2)(i).
5. Adding paragraph (b)(2)(ii).
6. Revising the first sentence of paragraph (b)(3), removing reference "paragraph (c)(3), (d), or (e)" in the third and fourth sentences of paragraph (b)(3) and adding "paragraph (c)(3), (d), (e), or (f)" in their places, and removing the reference "(f)" in the fourth sentence of paragraph (b)(3) and adding "(g)" in its place.
7. Removing the reference "402(a)(8)" in paragraph (c)(4)(i) and adding "402(e)(3)" in its place.
8. Revising paragraphs (c)(5), (d)(2)(i), (d)(2)(ii), (d)(3)(ii), (d)(3)(iii)(A), and adding (d)(3)(iii)(C).
9. Removing "the applicable" from the first sentence of paragraph (d)(3)(v) and adding "all the relevant" in its place.
10. Adding paragraph (d)(3)(vi).
11. Revising paragraph (e).
12. Redesignating paragraphs (f) through (i) as (g) through (j) respectively.
13. Adding new paragraph (f).
14. Removing reference "paragraph (c)(3), (d), or (e)" in the first sentence of newly designated paragraph (g)(1)(i) and adding "paragraph (c)(3), (d), (e), or (f)" in its place.
15. Removing the reference "(e)(4)(ii)" in the second sentence of newly designated paragraph (g)(1)(i) and adding "(d)(3)(vi)" in its place.
16. Adding new paragraph (g)(1)(iii).
17. Revising newly designated paragraph (h).
18. Revising newly designated paragraph (j).
19. The revisions and additions read as follow:

§ 1.414(s)–1 Definition of compensation.

(a) * * *

(3) *Overview.* * * * Paragraphs (e) and (f) of this section provide special rules permitting the use of rate of compensation, or prior-employer compensation or imputed compensation, rather than actual compensation, under a definition of compensation that satisfies section 414(s). * * *

(b) * * *

(2) *Consistency rule*—(i) *General rule.* * * *

(ii) *Scope of consistency rule.* Compensation will not fail to be defined consistently for a group of employees merely because some employees do not receive one or more of the types of compensation included in the definition. For example, a definition of compensation that includes salary, regular or scheduled pay, overtime, and specified types of bonuses will not fail to define compensation consistently merely because only salaried employees receive salary and these specified types of bonuses and only hourly employees receive regular or scheduled pay and overtime.

(3) *Self-employed individuals.* Notwithstanding paragraph (b)(1) of this section, self-employed individuals' compensation can only be determined under paragraph (c)(2) of this section (with or without the modification permitted by paragraph (c)(4) of this section or a modification permitted by paragraph (c)(5) of this section) or by using an equivalent alternative compensation amount determined in accordance with paragraph (g)(1) of this section. * * *

(c) * * *

(5) *Exclusions applicable solely to highly compensated employees.* Any definition of compensation that satisfies paragraph (c)(2) or (c)(3) of this section, with or without the modification permitted by paragraph (c)(4) of this section, may be modified to exclude any portion of the compensation of some or all of the employer's highly compensated employees (including, for example, any one or more of the types of elective contributions or deferred compensation described in paragraph (c)(4) of this section).

(d) * * *

(2) *Reasonable definition of compensation*—(i) *General rule.* An alternative definition of compensation under this paragraph (d) is reasonable under section 414(s) if it is a definition of compensation provided in paragraph (c) of this section, modified to exclude all or any portion of one or more of the types of compensation described in paragraph (d)(2)(ii) of this section. See

paragraph (e) of this section, however, for special rules that permit definitions of compensation based on employees' rates of compensation and paragraph (f) of this section for special rules that permit definitions of compensation that include prior-employer compensation or imputed compensation.

(ii) *Items that may be excluded.* A reasonable definition of compensation is permitted to exclude, on a consistent basis, all or any portion of irregular or additional compensation, including (but not limited to) one or more of the following: Any type of additional compensation for employees working outside their regularly scheduled tour of duty (such as overtime pay, premiums for shift differential, and call-in premiums), bonuses, or any one or more of the types of compensation excluded under the safe harbor alternative definition in paragraph (c)(3) of this section. Whether a type of compensation is irregular or additional is determined based on all the relevant facts and circumstances. A reasonable definition is also permitted to include, on a consistent basis, all or any portion of the types of elective contributions or deferred compensation described in paragraph (c)(4) of this section and, thus, need not include all those types of elective contributions or deferred compensation as otherwise required under paragraph (c)(4) of this section.

* * * * *

(3) * * *

(ii) *Total compensation*—(A) *General rule.* For purposes of this paragraph (d)(3), total compensation must be determined using a definition of compensation provided in paragraph (c)(2) of this section, either with or without the modification permitted by paragraph (c)(4) of this section. Thus, total compensation does not include prior-employer compensation or imputed compensation described in paragraph (f)(1) of this section (including imputed compensation for a period during which an employee performs services for another employer). Total compensation taken into account for each employee (including, if added, the elective contributions and deferred compensation described in paragraph (c)(4) of this section) may not exceed the annual compensation limit of section 401(a)(17).

(B) *Alternative definitions with exclusions applicable solely to highly compensated employees.* If an alternative definition of compensation contains a provision that excludes amounts from compensation and, as described in paragraph (c)(5) of this section, the provision only applies in defining the compensation of some highly compensated employees, then, for purposes of this paragraph (d)(3), the total compensation of any highly compensated employee subject to the provision must be reduced by any amount excluded from the employee's compensation as a result of the provision. However, if the provision applies consistently in defining the compensation of all highly compensated employees, this adjustment to total compensation is not required.

(iii) *Employees taken into account*—(A) *General rule.* In applying the requirement of this paragraph (d)(3), the employees taken into account are the same employees taken into account in satisfying the requirements of the applicable provision for the determination period. For example, in determining whether a plan satisfies section 401(a)(4), an alternative definition must satisfy this paragraph (d)(3) taking into account all employees who benefit under the plan for the plan year (within the meaning of § 1.410(b)–3(a)). If an employer is using the same alternative definition of compensation to determine whether more than one separate plan satisfies section 401(a)(4), the employer is permitted to take into account all the employees who benefit under all of those plans for the plan year in determining whether the alternative definition of compensation being used satisfies this paragraph (d)(3).

* * * * *

(C) *Certain employees disregarded.* If an employee's total compensation for the determination period, determined under paragraph (d)(3)(ii) and (d)(3)(vi)(B) of this section, is zero, the employee is disregarded in determining whether the nondiscrimination requirement of paragraph (d)(3) of this section is satisfied for that determination period. For example, an employee who does not receive any actual compensation during a determination period because the employee is on unpaid leave of absence for the entire period, but who is credited with imputed compensation described in paragraph (f)(1) of this section, is disregarded in determining whether the nondiscrimination requirement of this paragraph (d)(3) is satisfied for that determination period.

* * * * *

(vi) *Special rules for definitions of compensation based on rate of compensation or that include prior-employer or imputed compensation*—(A) *Special rule for determining compensation included under an alternative definition.* If an alternative definition uses rate of compensation or includes prior-employer compensation or imputed compensation, the amount of each employee's compensation for a determination period that is treated as included under the alternative definition for purposes of determining the average percentages for the nondiscrimination requirement (i.e. the amount used in the numerator) must not be more than 100 percent of the employee's total compensation for that period, determined under paragraph (d)(3)(ii) and (d)(3)(vi)(B) of this section. This limit on the amount of compensation treated as included under the alternative definition applies even if the amount of compensation actually credited to the employee for the determination period under the definition and, thus, used as compensation within the meaning of section 414(s), exceeds the employee's total compensation for the period.

(B) *Special rule for determining total compensation.* If an alternative definition uses rate of compensation or includes prior-employer compensation or imputed compensation, each employee's total compensation for purposes of determining the average percentages for the nondiscrimination requirement (i.e. the amount used in the denominator) must include all the types of elective contributions and deferred compensation described in paragraph (c)(4) of this section.

(e) *Rate of compensation*—(1) *General rule.* A definition of compensation satisfies section 414(s) as a reasonable definition of compensation even though it defines the amount of each employee's basic or regular compensation using the employee's basic or regular rate of compensation rather than using the employee's actual basic or regular compensation from the employer if the definition satisfies the requirements specified in paragraph (e)(3) of this section and otherwise satisfies the requirements of paragraph (d) of this section, including the nondiscrimination test in paragraph (d)(3) of this section. For this purpose, the employee's rate of compensation must be determined using an hourly pay scale, weekly salary, or similar unit of basic or regular compensation applicable to the employee. A definition will not fail to satisfy the requirements of this paragraph (e) merely because it defines compensation as including each employee's basic or regular compensation, the amount of which is determined using each employee's basic or regular rate of compensation, plus actual amounts of irregular or additional compensation, such as overtime or bonuses. In addition, a definition of compensation will not fail to satisfy

section 414(s) merely because it defines compensation for each employee as the greater of the employee's actual compensation, the amount of which is determined using a definition that would otherwise satisfy paragraph (c) or (d)(2) of this section, or the employee's basic or regular compensation, the amount of which is determined using the employee's basic or regular rate of compensation.

(2) *Not applicable to certain contributions.* This paragraph (e) does not apply to a definition of compensation used in determining whether elective deferrals (as defined in section 402(g)(3)), matching contributions (as defined in section 401(m)(4)), or employee contributions subject to section 401(m) satisfy any applicable provision. Thus, for example, a definition of compensation that defines compensation based on each employee's basic or regular rate of compensation may not be used to measure compensation for purposes of determining if a qualified cash or deferred arrangement satisfies the actual deferral percentage test in section 401(k)(3).

(3) *Requirements for definitions of compensation based on rate of compensation*—(i) *Benefit determination.* The definition of compensation must actually be used to calculate the benefits, contributions, or other amounts, that are subject to the applicable provision. For example, a definition of compensation that defines compensation based on each employee's basic or regular rate of compensation may not be used to determine whether a plan satisfies section 401(a)(4) unless the benefits, contributions, or other amounts for each employee in the plan are determined using that definition of compensation.

(ii) *Period for determining compensation.* The amount of each employee's basic or regular compensation for the determination period must be determined using the employee's basic or regular rate of compensation as of a designated date in the determination period. For example, if the determination period is a calendar year, this requirement would be satisfied if the amount of each employee's basic or regular compensation for the calendar year is determined using the employee's basic or regular rate of compensation as of January 1 of the calendar year. Alternatively, the amount of each employee's basic or regular compensation for a determination period can be the sum of the amounts separately determined for shorter specified periods (e.g., weeks or months) within the determination period provided the amount of each employee's basic or regular compensation for each specified period is determined using the employee's basic or regular rate of compensation as of a designated date within the specified period.

(iii) *Dates for determining rate of compensation.* One or more dates may be used to determine employees' rates of compensation for a determination period or specified period provided that, if the same date is not used for all employees, the dates selected are designed to determine the rates of compensation for that period on a consistent basis for all employees taken into account for the determination period. For example, if annual compensation increases are provided to different groups of employees on different dates during the year, it would be consistent to choose a different date for each group in order to include the annual increase in the employees' rates of compensation for the determination period. In addition, the date or dates selected, by themselves, must not cause the portion of total compensation included to vary significantly among employees.

(iv) *Periods without compensation or with reduced compensation.* An employee's compensation may generally only be determined using the employee's rate of compensation for employment periods during which the employer actually compensates the employee. However, if an employee terminates employment or otherwise stops performing services (such as for a leave of absence, layoff or similar event) either without compensation or with reduced compensation during a determination period, the employer may continue to credit the employee with compensation based on the employee's rate of compensation for a period of up to 31 days after the event, but not beyond the end of the determination period. Paragraph (f) of this section contains special rules for crediting imputed compensation for periods extending beyond 31 days during which an employee is not compensated or an employee's compensation is reduced. See also the definition of *Section 414(s) compensation* in § 1.401(a)(4)–12 that, for purposes of satisfying section 401(a)(4), permits adjustments to compensation to reflect the equivalent of full-time compensation to the extent necessary to satisfy the requirements of 29 CFR 2530.204–2(d) (regarding double proration of service and compensation).

(f) *Prior-employer compensation and imputed compensation*—(1) *General rule.* Solely for purposes of determining whether a defined benefit plan, as defined in § 1.410(b)–9, satisfies section 401(a)(4) or 410(b), an alternative definition that includes prior-employer compensation or imputed compensation satisfies section 414(s) as a reasonable alternative definition if the definition satisfies the requirements specified in paragraphs (f) (2) and (3) of this section. For this purpose, prior-employer compensation is compensation from an employer other than the employer (determined at the time that the compensation is paid) maintaining the plan that is credited for periods prior to the employee's employment with the employer maintaining the plan and during which the employee performed services for the other employer. For this purpose, imputed compensation is compensation credited for periods after an employee has commenced or recommenced participation in a plan while the employee is not compensated by the employer maintaining the plan or is compensated at a reduced rate by that employer because the employee is not performing services as an employee for the employer (including a period in which the employee performs services for another employer, e.g., a joint venture) or because the employee has a reduced work schedule.

(2) *Requirements for definitions of compensation crediting prior-employer compensation or imputed compensation*—(i) *General requirement.* The definition must otherwise be described in paragraph (c) of this section or must otherwise satisfy the requirements of paragraph (d) or (e) of this section for alternative definitions of compensation, including the nondiscrimination requirement in paragraph (d)(3) of this section.

(ii) *Benefit determination.* A definition of compensation that credits prior-employer compensation or imputed compensation must actually be used to calculate the benefits under the plan. For example, the definition may not be used to determine whether a defined benefit plan satisfies section 401(a)(4) unless the benefits for each employee in the plan are determined using that definition of compensation.

(iii) *Provision applied to all similarly-situated employees.* A provision in a plan's definition of compensation crediting prior-employer compensation or imputed compensation must apply on the same terms to all similarly-situated employees in the plan. The criteria for determining whether employees are similarly situated for this purpose are the same as the criteria for determining whether a plan provision crediting pre-participation or imputed

service satisfies the requirements of § 1.401(a)(4)–11(d)(3)(iii)(A).

(iv) *Legitimate business purpose.* There must be a legitimate business purpose, based on all of the relevant facts and circumstances, for crediting prior-employer compensation or imputed compensation to an employee for the period being credited. The standard for determining whether crediting prior-employer compensation or imputed compensation satisfies this requirement is the same as the standard for determining whether crediting pre-participation or imputed service under a plan satisfies the requirements of § 1.401(a)(4)–11(d)(3)(iii)(B) and whether crediting imputed service satisfies the additional requirements of § 1.401(a)(4)–11(d)(3)(iv)(A). However, if the legitimate business reason for crediting imputed compensation relates to the services the employee is performing for another employer and the reason satisfies the standard in § 1.401(a)(4)–11(d)(3)(iii)(B), the additional requirements of § 1.401(a)(4)–11(d)(3)(iv)(A) are deemed to be satisfied. For example, if an employee becomes employed by another employer as a result of a merger, acquisition or similar transaction with the other employer and imputed compensation is credited to the employee while the employee is performing services for the other employer, the crediting of imputed compensation to the employee satisfies the standard in § 1.401(a)(4)–11(d)(3)(iii)(B). Thus, under that example, crediting the imputed compensation to the employee is deemed to satisfy the additional requirements of § 1.401(a)(4)–11(d)(3)(iv)(A), even if the employee is not performing those services under an arrangement that provides an ongoing business benefit to the employer maintaining the plan.

(v) *No significant discrimination.* Based on all of the relevant facts and circumstances, crediting prior-employer compensation or imputed compensation must not by design or in operation discriminate significantly in favor of highly compensated employees. The standard for determining whether crediting prior-employer compensation or imputed compensation satisfies this requirement is the same as the standard for determining whether crediting pre-participation or imputed service satisfies the requirement in § 1.401(a)(4)–11(d)(3)(iii)(C) and whether crediting imputed service satisfies the additional requirement of § 1.401(a)(4)–11(d)(3)(iv)(B).

(3) *Reasonable method*—(i) *General rule.* Any reasonable method may be used to determine the amount of prior-employer compensation or imputed compensation provided that the requirements of paragraph (f)(3) (ii) or (iii) of this section are satisfied, whichever is applicable.

(ii) *Requirements for prior-employer compensation.* Prior-employer compensation credited to an employee for a period that an employee is performing services for another employer must be compensation for the employee from the other employer (or be based on the employee's basic or regular rate of compensation from the other employer) for that period. In addition, prior employer compensation credited to an employee must not exceed the amount of compensation from the other employer that would have been included under the definition of compensation in effect for that period for compensation from the employer maintaining the plan. Reasonable assumptions may be made in determining the amount of compensation received from another employer for a period that would have been included under the definition of compensation in effect for that period for compensation from the employer maintaining the plan.

(iii) *Requirements for imputed compensation*—(A) *General rule.* The amount of imputed compensation credited to an employee during any period, when combined with the amount of any actual compensation being included, must not exceed an amount that, based on all of the relevant facts and circumstances, is reasonably representative of the amount of compensation that the employee would have received and that would have been included under the definition of compensation in effect for the period if the employee had continued to perform services for the employer during that period at the same level as the employee was performing before the employee stopped performing services or changed to a reduced work schedule. The relevant facts and circumstances include the compensation that the employee was receiving immediately before the employee stopped performing services or changed to a reduced work schedule, and, if applicable, the rate of compensation in effect while the employee is not performing services or has a reduced work schedule that is applicable to the employee's specific job grade immediately before the change occurred.

(B) *Imputed compensation from another employer.* Imputed compensation credited for a period that an employee is performing services for another employer is deemed to satisfy paragraph (f)(3)(iii)(A) of this section if the amount of compensation credited satisfies the requirements of paragraph (f)(3)(ii) of this section for prior-employer compensation. Thus, for example, the amount of imputed compensation credited to an employee for a period that the employee is performing services for another employer is deemed to satisfy paragraph (f)(3)(iii)(A) of this section if the amount credited is compensation for the employee from the other employer (or is based on the employee's basic or regular rate of compensation from the other employer) for that period, and the amount credited does not exceed the compensation from the other employer that would be included for the employee under the definition of compensation in effect for that period for compensation from the employer maintaining the plan.

(4) *Special nondiscrimination rule for safe harbor definitions.* If a definition of compensation crediting prior-employer or imputed compensation is otherwise described in paragraph (c) of this section, and the prior-employer compensation or imputed compensation credited satisfies the requirements of paragraphs (f) (1), (2), and (3) of this section, then the definition is deemed to satisfy paragraph (d) of this section (i.e., it is deemed to be nondiscriminatory).

(g) * * * (1) * * *

(iii) *Reductions in equivalent alternative compensation amount applicable only to highly compensated employees.* An alternative definition of compensation may provide that compensation under the alternative definition for some or all self-employed individuals who are highly compensated employees is a specified portion of, rather than equal to, the equivalent compensation amount determined under paragraph (g)(1)(i).

* * * * *

(h) *Definitions.* The following definitions apply for purposes of this section:

(1) *Applicable provision.* Applicable provision means a provision that specifically refers to section 414(s) or this section.

(2) *Determination period.* Determination period means a period during which the amount of compensation is measured for use in determining whether the requirements of an applicable provision are satisfied. If no period is provided under the applicable provision for measuring compensation, the determination period is the period for which the applicable provision must be satisfied. The applicable provision may provide additional rules concerning the

determination period to be used for satisfying the nondiscrimination requirement in paragraph (d) of this section.

(3) *Employee.* Employee means employee within the meaning of § 1.410(b)–9.

(4) *Highly compensated employee.* Highly compensated employee means highly compensated employee within the meaning of § 1.410(b)–9.

(5) *Nonhighly compensated employee.* Nonhighly compensated employee means nonhighly compensated employee within the meaning of § 1.410(b)–9.

(6) *Self-employed individual.* Self-employed individual means self-employed individual within the meaning of section 401(c)(1).

* * * * *

(j) *Effective date and transition rules*—(1) *Statutory effective date.* Section 414(s) applies to years beginning on or after January 1, 1987.

(2) *Regulatory effective date*—(i) *In general.* Except as otherwise provided in paragraph (j)(2)(ii) of this section, § 1.414(s)–1 (a) through (i) apply to years beginning on or after January 1, 1994.

(ii) *Plans of tax-exempt organizations.* In the case of a plan maintained by an organization that is exempt from income taxation pursuant to section 501(a), including plans subject to section 403(b)(12)(A)(i) (nonelective plans), § 1.414(s)–1 (a) through (i) apply to plan years beginning on or after January 1, 1996.

(3) *Compliance during transition period.* For plan years beginning before the effective date of these regulations, as set forth in paragraph (j)(2) of this section, and on or after the statutory effective date as set forth in paragraph (j)(1) of this section, a plan must be operated in accordance with a reasonable, good faith interpretation of section 414(s). Whether a plan is operated in accordance with a reasonable, good faith interpretation of section 414(s) will generally be determined based on all relevant facts and circumstances, including the extent to which an employer has resolved unclear issues in its favor. A plan will be deemed to be operated in accordance with a reasonable, good faith interpretation of section 414(s)(1) and (2) if it is operated in accordance with the terms of § 1.414(s)–1 (a) through (i). For years beginning on or after the statutory effective date and before the effective date of these regulations, a definition of compensation is also deemed to satisfy section 414(s) as an alternative method of determining compensation under section 414(s)(3) if the definition satisfies the requirements of § 1.414(s)–1 (a) through (i) or if the definition satisfies the prior regulation provisions of § 1.414(s)–1 T. (See § 1.414(s)–1 T as contained in the CFR edition revised as of April 1, 1991.) In addition, for those transition years, a definition of compensation is deemed to satisfy section 414(s) as an alternative method of determining compensation under section 414(s)(3) if, based on all the relevant facts and circumstances in effect for the year, use of the definition does not cause discrimination in favor of highly compensated employees.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: August 23, 1993.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 93–21380 Filed 9–1–93; 4:15 pm]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–93–122]

Drawbridge Operation Regulations; Apponagansett River, MA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Coast Guard is providing notice that the Town of Dartmouth, Massachusetts, has been granted permission to temporarily deviate for thirty two (32) days from the regulations governing the Padanaram Bridge over the Apponagansett River at mile 1.0 in Dartmouth, Massachusetts. The deviation permits scheduled openings on the hour and the half hour from 5 a.m. to 9 a.m. and from 8 p.m. to 9 p.m. and permits openings only on the hour from 9 a.m. to 8 p.m. daily from August 30, 1993, through September 30, 1993. This temporary deviation is being implemented to evaluate the effects of alternative changes to the regulations governing the Padanaram Bridge between Dartmouth and South Dartmouth, Massachusetts.

DATES:

(1) The deviation is effective for 32 days from August 30, 1993 through September 30, 1993.

(2) Comments on the deviation must be received on or before November 15, 1993.

ADDRESSES: Comments may be mailed to Commander (obr), First Coast Guard District, room 628 at the John Foster Williams Building, 408 Atlantic Avenue, Boston, Massachusetts. The comments and other materials referenced in this notice will be available for inspection and copying by appointment at the above address. Normal office hours are between 6:30 a.m. and 3 p.m., Monday through Friday, except federal holidays. Comments may also be hand-delivered to the above address.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, First Coast Guard District, (212) 668–7170.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in evaluation of possible changes to the regulations governing the Padanaram Bridge over the Apponagansett River by submitting written data, or arguments for or against the deviation. Persons submitting comments should include their name, address, identify this notice (CGD01–93–122) and give the reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped self-addressed post card or envelope.

The Coast Guard will consider all comments received during the comment period. If it appears appropriate to propose a permanent change to the regulations, the Coast Guard plans to publish a notice of proposed rulemaking which will request comments during an additional comment period announced by a later notice in the **Federal Register**. Persons may submit comments by writing to the Commander (obr), First Coast Guard District listed under **ADDRESSES.**

Background and Purpose

The Padanaram Bridge over the Apponagansett River between Dartmouth and South Dartmouth has a vertical clearance of 9′ above mean high water (MHW) and 12′ above mean low water (MLW).

The Town of Dartmouth requested a change from the present operating regulations in 33 CFR 117.587 which permitted the Padanaram Bridge to open on the hour and half hour. The town selectmen felt that the traffic congestion during peak summer months was a result of the bridge opening every 30 minutes and was causing village commerce to suffer. The selectmen also considered the 30 minute opening schedule a serious risk to public safety because emergency vehicles could not travel to and from South Dartmouth