(g) * * *
(2) * * *
(iii) * * *
(B) [The text of the proposed amendment to § 1.1017–1(g)(2)(iii)(B) is the same as the text of § 1.1017–1T(g)(2)(iii)(B) published elsewhere in this issue of the **Federal Register**].
* * * * *

Par. 7. Section 1.1368–1 is amended by revising paragraphs (f)(5)(iii) and (g)(2)(iii) to read as follows:

§ 1.1368–1 Distributions by S corporations.

* * * * *
(f) * * *
(5) * * *
(iii) [The text of the proposed amendment to § 1.1368–1(f)(5)(iii) is the same as the text of § 1.1368–1T(f)(5)(iii) published elsewhere in this issue of the **Federal Register**].
* * * * *
(g) * * *
(2) * * *
(iii) [The text of the proposed amendment to § 1.1368–1(g)(2)(iii) is the same as the text of § 1.1368–1T(g)(2)(iii) published elsewhere in this issue of the **Federal Register**].
* * * * *

Par. 8. Section 1.1377–1 is amended by revising paragraph (b)(5)(i)(C) to read as follows:

§ 1.1377–1 Pro rata share.

* * * * *
(b) * * *
(5) * * *
(i) * * *
(C) [The text of the proposed amendment to § 1.1377–1(b)(5)(i)(C) is the same as the text of § 1.1377–1T(b)(5)(i)(C) published elsewhere in this issue of the **Federal Register**].
* * * * *

Par. 9. Section 1.1502–21 is amended by revising paragraphs (b)(2)(iii), (b)(3)(i) and (b)(3)(ii)(B) to read as follows:

§ 1.1502–21 Net operating losses.

* * * * *
(b)(2)(iii) [The text of the proposed amendment to § 1.1502–21(b)(2)(iii) is the same as the text of § 1.1502–21T(b)(2)(iii) published elsewhere in this issue of the **Federal Register**].
* * * * *
(3) * * * (i) [The text of the proposed amendment to § 1.1502–21(b)(3)(i) is the same as the text of § 1.1502–21T(b)(3)(i) published elsewhere in this issue of the **Federal Register**].
(ii) * * *
(B) [The text of the proposed amendment to § 1.1502–21(b)(3)(ii)(B) is the same as the text of § 1.1502–21T(b)(3)(ii)(B) published elsewhere in this issue of the **Federal Register**.
* * * * *

Par. 10. Section 1.1502–75 is amended by revising paragraph (h)(2) to read as follows:

§ 1.1502–75 Filing of consolidated returns.

* * * * *
(h) * * *
(2) [The text of the proposed amendment to § 1.1502–75(h)(2) is the same as the text of § 1.1502–75T(h)(2) published elsewhere in the issue of the **Federal Register**].
* * * * *

Par. 11. Section 1.1503–2 is amended by revising paragraphs (g)(2)(i), (g)(2)(iv)(B)(*3*)(*iii*) and (g)(2)(vi)(B) to read as follows:

§ 1.1503–2 Dual consolidated loss.

* * * * *
(g) * * *
(2) * * * (i) [The text of the proposed amendment to § 1.1503–2(g)(2)(i) is the same as the text of § 1.1503–2T(g)(2)(i) published elsewhere in this issue of the **Federal Register**].
* * * * *
(iv) * * *
(B) * * *
(*3*) * * *
(*iii*) [The text of the proposed amendment to § 1.1503–2(g)(2)(iv)(B)(*3*)(*iii*) is the same as the text of § 1.1503–2T(g)(2)(iv)(B)(*3*)(*iii*) published elsewhere in this issue of the **Federal Register**].
* * * * *
(vi) * * *
(B) [The text of the proposed amendment to § 1.1503–2(g)(2)(vi)(B) is the same as the text of § 1.1503–2T(g)(2)(vi)(B) published elsewhere in this issue of the **Federal Register**].
* * * * *

Par. 12. Section 1.6038B–1 is amended by revising paragraphs (b)(1)(i) and (b)(1)(ii) to read as follows:

§ 1.6038B–1 Reporting of certain transfers to foreign corporations.

* * * * *
(b) * * * (1) * * * (i) [The text of the proposed amendments to § 1.6038B–1(b)(1)(i) is the same as the text of § 1.6038B–1T(b)(1)(i) published elsewhere in this issue of the **Federal Register**].
(ii) [The text of the proposed amendment to § 1.6038B–1(b)(1)(ii) is the same as the text of § 1.6038B–1T(b)(1)(ii) published elsewhere in this issue of the **Federal Register**].
* * * * *

PART 301—PROCEDURE AND ADMINISTRATION

Par. 13. The authority citation for part 301 continues to read as follows:

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

Par. 14. Section 301.7701–3 is amended by revising paragraph (c)(1)(ii) to read as follows:

§ 301.7701–3 Classification of certain business entities.

* * * * *
(c) * * * (1) * * *
(ii) [The text of the proposed amendment to § 301.7701–3 (c)(1)(ii) is the same as the text of § 301.7701–3T(c)(1)(ii) published elsewhere in this issue of the **Federal Register**].
* * * * *

Robert E. Wenzel,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 03–31239 Filed 12–18–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 931

[SATS No. NM–043–FOR]

New Mexico Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We are announcing receipt of a proposed amendment to the New Mexico regulatory program (hereinafter, the "New Mexico program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). New Mexico proposes revisions to and additions of rules about definitions of permit modification, permit revision, and temporary cessation of operations; permit fees; administrative review of decisions; review of permits; requirements for permit modifications; public hearings for permit modifications; and additional requirements for temporary cessation of operations. New Mexico intends to revise its program to clarify ambiguities, provide additional safeguards, and improve operational efficiency.

This document gives the times and locations that the New Mexico program and proposed amendment to that program are available for your inspection, the comment period during

procedures set forth in 12 U.S.C. 1831r–1(a) and (b) (branch closings).

■ 18. Add new § 28.25 to read as follows:

§ 28.25 Change in control.

(a) *After-the-fact notice.* In cases in which no other filing is required under subpart B of this part, a foreign bank that operates a Federal branch or agency shall inform the OCC in writing of the direct or indirect acquisition of control of the foreign bank by any person or entity, or group of persons or entities acting in concert, within 14 calendar days after the foreign bank becomes aware of a change in control.

(b) *Additional information.* The foreign bank shall furnish the OCC with any additional information the OCC may require in connection with the acquisition of control.

■ 19. Add a new § 28.26 to read as follows:

§ 28.26 Loan production offices.

A Federal branch may establish lending offices, make credit decisions, and engage in other representational activities at a site other than a Federal branch office, subject to the same rights, privileges, requirements and limitations that apply to national banks under 12 CFR 7.1003, 7.1004, and 7.1005.

Dated: December 15, 2003.

John D. Hawke, Jr.,

Comptroller of the Currency.

[FR Doc. 03–31342 Filed 12–18–03; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Flunixin Meglumine Solution

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Norbrook Laboratories, Ltd. The ANADA provides for the veterinary prescription use of flunixin meglumine injectable solution for the control of inflammation in horses, beef cattle, and nonlactating dairy cattle.

DATES: This rule is effective December 19, 2003.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV 104), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–8549, e-mail: *lluther@cvm.fda.gov.*

SUPPLEMENTARY INFORMATION: Norbrook Laboratories, Ltd., Station Works, Newry BT35 6JP, Northern Ireland, filed ANADA 200–308 for the use of Flunixin Injection by veterinary prescription for the control of inflammation in horses, beef cattle, and nonlactating dairy cattle. Norbrook Laboratories' Flunixin Injection is approved as a generic copy of Schering-Plough Animal Health's BANAMINE (flunixin) Solution, approved under NADA 101–479. The ANADA is approved as of November 17, 2003, and the regulations in § 522.970 (21 CFR 522.970) are amended to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subject in 21 CFR Part 522

Animal drugs.

■ 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 part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 522.970 [Amended]

■ 2. Section 522.970 *Flunixin meglumine solution* is amended in paragraph (b)(1) by removing "000061 and 059130" and by adding in its place "000061, 055529, and 059130".

Dated: December 9, 2003.

Linda Tollefson,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 03–31294 Filed 12–18–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 301 and 602

[TD 9100]

RIN 1545–BC62

Guidance Necessary To Facilitate Business Electronic Filing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains regulations designed to eliminate regulatory impediments to the electronic filing of certain income tax returns and other forms. These regulations affect business taxpayers who file income tax returns electronically. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective December 19, 2003.

Applicability Date: These regulations apply with respect to taxable years beginning after December 31, 2002. The applicability of §§ 1.170A–11T, 1.556–2T, 1.565–1T, 1.936–7T, 1.1017–1T, 1.1368–1T, 1.1377–1T, 1.1502–21T, 1.1502–75T, 1.1503–2T, 1.6038B–1T, and 301.7701–3T will expire on or before December 18, 2006.

FOR FURTHER INFORMATION CONTACT: Nathan Rosen, (202) 622–4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and pending receipt and evaluation of

public comments, approved by the Office of Management and Budget under control number 1545–1868. Responses to this collection of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Books and records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) and the Procedure and Administration Regulations (26 CFR part 301) designed to eliminate regulatory impediments to the electronic submission of tax returns and other forms filed by corporations, partnerships and other businesses.

In 1998, Congress enacted the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 1998), Public Law 105–206 (112 Stat. 685) (1998). In relevant part, RRA 1998 states that the policy of Congress is to promote the paperless filing of Federal tax returns. Section 2001(a) of RRA 1998 sets a long-range goal for the IRS to have at least 80 percent of all Federal tax returns filed electronically by 2007. Section 2001(b) of RRA 1998 requires the IRS to establish a 10-year strategic plan to eliminate barriers to electronic filing. On January 30, 2003, the IRS published final regulations (TD 9040) eliminating a number of regulatory impediments to the electronic filing of Form 1040, "U.S. Individual Income Tax Return."

The IRS has identified a number of regulatory provisions that impede the ability of business entities to file returns electronically. Some of these regulations, for example, impede electronic filing by requiring taxpayers to include third-party signatures on their tax returns or by requiring taxpayers to attach documents or statements generated by a third party. Others require a taxpayer to sign an IRS form and file it as an attachment to the taxpayer's income tax return. These regulations eliminate the impediments for taxable years beginning after December 31, 2002. The regulations generally affect taxpayers who must file any of the following forms: Form 926, "Return by a U.S. Transferor of Property to a Foreign Corporation"; Form 972, "Consent of Shareholder To Include Specific Amount in Gross Income"; Form 973, "Corporation Claim for Deduction for Consent Dividends"; Form 982, "Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment)"; Form 1120, "U.S. Corporation Income Tax Return"; Form 1120S, "U.S. Income Tax Return for an S Corporation"; Form 1122, "Authorization and Consent of Subsidiary Corporation To Be Included in a Consolidated Income Tax Return"; Form 5471, "Information Return of U.S. Persons With Respect To Certain Foreign Corporations"; Form 5712–A, "Election and Verification of the Cost Sharing or Profit Split Method Under Section 936(h)(5)"; and Form 8832, "Entity Classification Election."

Explanation of Provisions

1. Form 926: Return by a U.S. Transferor of Property to a Foreign Corporation

Section 6038B provides that transferors of property to foreign corporations must, in certain circumstances, file information returns with the Secretary regarding such transactions. Section 1.6038B–1(b)(1)(i) requires the transferor to file the return on Form 926 as an attachment to its income tax return. Under § 1.6038B–1(b)(1)(i) and (ii), filers of Form 926 must sign the form and attachments to the form are subject to the declaration under penalties of perjury that the information submitted is true, correct, and complete. The signature requirement impedes electronic filing of the transferor's income tax return because Form 926 cannot yet be signed electronically. These regulations eliminate the obligation to sign Form 926 and provide, instead, that Form 926 and any attachments to the form are verified by signing the income tax return with which the form and attachments are filed.

2. Form 972: Consent of Shareholder To Include Specific Amount in Gross Income

Section 565 allows a corporation and its shareholders to treat certain hypothetical corporate distributions as actual dividends. Section 1.565–1(b)(1) requires shareholders to use Form 972 to elect such treatment and requires each consenting shareholder (or an authorized agent) to sign the form. Section 1.565–1(b)(3) requires the corporation to attach the signed Form 972 to its income tax return for the taxable year in which it claims the dividends paid deduction for the hypothetical dividends. Requiring corporations to attach a signed Form 972 impedes electronic filing of their income tax returns because third-party signatures cannot be incorporated into an electronic return. These regulations provide that an unsigned copy of Form 972 may be submitted with the corporation's income tax return if the corporation retains the signed original in its records.

3. Form 973: Corporation Claim for Deduction for Consent Dividends

A corporation uses Form 973 to claim the dividend treatment permitted by section 565. Section 1.565–1(b)(3) requires the corporation to sign Form 973 under penalties of perjury and submit the form with its tax return. This signature requirement impedes electronic filing of a corporation's income tax return because Form 973 cannot yet be signed electronically. These regulations eliminate the obligation to sign Form 973 and provide, instead, that Form 973 is verified by signing the income tax return with which the form is filed.

4. Form 982: Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment)

Section 1017 provides for basis reductions when income from discharge of indebtedness is excluded from gross income. If a partnership has income from discharge of indebtedness, § 1.1017(g) permits its partners to request that the partnership reduce the basis of partnership depreciable property with respect to the partners. Section 1.1017–1(g)(2)(iii)(A) requires a partnership that consents to this basis reduction to prepare a statement describing, among other things, the amount of the reduction. Section 1.1017–1(g)(2)(iii)(B) requires the affected partners to attach a copy of that statement to their income tax returns.

Requiring partners to attach the partnership consent statement impedes the electronic filing of their income tax returns because the partnership statement cannot yet be incorporated into all electronic returns. To remedy this impediment, these regulations eliminate the obligation to attach the partnership consent statement and provide, instead, that taxpayers must

retain the consent statement in their records.

5. Form 1120: U.S. Corporation Income Tax Return

Section 1503 prescribes certain rules for computing tax for corporations filing consolidated returns. Section 1.1503–2(g) permits dual consolidated losses of dual resident corporations to offset the income of domestic affiliates under specified circumstances, including entry into an agreement described in § 1.1503–2(g)(2)(i). The corporation entering into the agreement must attach the agreement to its timely filed U.S. income tax return for the taxable year in which the loss is incurred. The agreement must be signed under penalties of perjury by the person who signs the income tax return. Section 1.1503–2(g)(2)(iv)(B)(3)(iii) also requires a successor corporation to file an agreement described in § 1.1503–2(g)(2)(i) to prevent recapture of the dual consolidated loss in certain circumstances. The new agreement must be signed under penalties of perjury by the person who signs the income tax return. Section 1.1503–2(g)(2)(vi)(B) requires corporations to file annual certifications with respect to dual consolidated losses. The annual certification must be signed under penalties of perjury by the person who signs the corporation's income tax return. The signature requirements in § 1.1503–2(g)(2)(i), (g)(2)(iv)(B)(3)(iii), and (g)(2)(vi)(B) impede electronic filing of the corporation's income tax return because neither the agreement nor the annual certification can be signed electronically. These regulations eliminate the obligations under § 1.1503–2(g)(2)(i) and (iv)(B)(3)(iii) to attach a signed agreement and provide, instead, that an unsigned copy of the agreement may be submitted with the corporation's income tax return if the corporation retains the signed original in its records. These regulations also eliminate the obligation under § 1.1503–2(g)(2) (vi)(B) to sign the annual certification and provide, instead, that the annual certification is verified by signing the income tax return with which the certification is filed.

Section 170 addresses the tax deductibility of charitable contributions and gifts. Section 1.170A–11(b)(1) provides that, under certain conditions, corporations may treat a charitable contribution as paid during a taxable year even if the contribution occurs in the following taxable year. A corporation claiming a charitable deduction for a taxable year under this provision must attach a copy of the resolution of the board of directors authorizing the contribution to its return for the year. In addition, the corporation must attach a declaration, signed under penalties of perjury, that the resolution was adopted during the taxable year. *See* § 1.170A–11(b)(2). Requiring taxpayers to attach a signed declaration impedes electronic filing of Form 1120 because the declaration cannot be signed electronically. The regulations eliminate the requirement of a signed declaration and provide, instead, that the declaration is verified by signing the return. The regulations also slightly expand the content of the declaration by requiring that it state the date on which the board of directors authorized the contribution. Requiring taxpayers to attach a copy of the resolution authorizing the contribution may also impede electronic filing of Form 1120 because including the resolution increases the size of the electronic return file in a potentially burdensome manner. The regulations eliminate this requirement and provide, instead, that the resolution must be retained in the taxpayer's records.

Section 1.1502–21(b)(3)(i) provides that a consolidated group of corporations may elect to relinquish carryback treatment with respect to a consolidated net operating loss for any consolidated return year. The consolidated group elects this treatment by attaching a statement to the group's income tax return for the relevant year. The regulations require the statement to be signed by the common parent. This signature requirement impedes electronic filing of Form 1120 because the statement cannot be signed electronically. These regulations eliminate the signature requirement and permit the election to be made in an unsigned statement.

Section 1.1502–21(b)(3)(ii)(B) provides that a group of corporations acquiring a new member may elect to relinquish part of the carryback period with respect to certain net operating losses of the new member. The election is made in a statement attached to the group's income tax return. The statement must be signed by the common parent, the new member, and any other corporation joining the group with the new member. This signature requirement impedes electronic filing of Form 1120 because third-party signatures cannot be incorporated into an electronic return. These regulations eliminate the signature requirement and permit the election to be made in an unsigned statement.

6. Form 1120S: U.S. Income Tax Return for an S Corporation

Section 1377 provides that under certain circumstances an S Corporation may elect to treat a taxable year as if it consisted of two separate taxable years. Section 1.1377–1(b)(5) provides that an S Corporation elects this treatment by attaching a signed statement to its income tax return. This signature requirement impedes electronic filing of Form 1120S because the statement described in § 1.1377–1(b)(5) cannot be signed electronically. These regulations eliminate the signature requirement and permit the election to be made in an unsigned statement that is verified by signing the return.

Section 1.1368–1(g)(2)(i) provides a similar election for purposes of determining the treatment of distributions by an S Corporation in the event of certain ownership changes. Section 1.1368–1(g)(2)(iii) provides that an S Corporation makes this election by attaching a statement, signed by an officer of the corporation, to its income tax return for the relevant taxable year. This signature requirement impedes electronic filing of Form 1120S because the statement described in § 1.1368–1(g)(2)(iii) cannot be signed electronically. These regulations eliminate the signature requirement and permit the election to be made in an unsigned statement that is verified by signing the return.

Section 1.1368–1(f) allows an S corporation to make certain elections relating to the source of its distributions. Section 1.1368–1(f)(5)(iii) provides that an S corporation makes these elections by attaching a statement containing specified information to its income tax return. An officer of the corporation must sign the statement under penalties of perjury. This signature requirement impedes electronic filing of Form 1120S because the statement described in § 1.1368–1(f)(5)(iii) cannot be signed electronically. These regulations eliminate the signature requirement and permit the election to be made in an unsigned statement that is verified by signing the return.

7. Form 1122: Authorization and Consent of Subsidiary Corporation To Be Included in a Consolidated Income Tax Return

Section 1.1502–75(h)(2) provides that, when an affiliated group of corporations files a consolidated return for the first time, each subsidiary must consent to the filing by signing Form 1122 and the signed consent forms must be attached to the consolidated return. Requiring the group to file signed consent forms

impedes electronic filing of consolidated returns because Form 1122 cannot yet be signed electronically. These regulations retain the requirement that each subsidiary consent to filing a consolidated return but eliminate the impediment to electronic filing by permitting the group to submit unsigned copies of the consents with its return if it retains the signed originals in its records.

8. Form 5471, Information Return of U.S. Persons With Respect to Certain Foreign Corporations

Section 1.556–2(e)(2) provides that certain U.S. shareholders of a foreign personal holding company must attach a number of items to their income tax returns relating to property the company owns or operates. In particular, § 1.556–2(e)(2)(vii) requires certain shareholders to attach a copy of the contract, lease or rental agreement covering the property. A shareholder attaches these items to Form 5471, and in turn attaches that form to its return. Requiring shareholders to attach a copy of these documents to an income tax return impedes electronic filing because the documents cannot yet be incorporated into all electronic returns. These regulations eliminate this requirement and provide, instead, that a copy of the contract, lease or rental agreement must be retained in the shareholder's records.

9. Form 5712–A: Election and Verification of the Cost Sharing or Profit Split Method Under Section 936(h)(5)

Section 1.936–7(a), Q&A 1 provides that a possessions corporation makes the election under section 936(h)(5) to use the cost sharing or profit split method by filing a signed Form 5712–A that includes a declaration that all affiliated group members have consented to the election. The electing corporation attaches the Form 5712–A to Form 5735, "Possessions Corporation Tax Credit," which in turn must be attached to the corporation's income tax return. Requiring taxpayers to sign Form 5712–A impedes electronic filing of corporate income tax returns because Form 5712–A cannot yet be signed electronically. These regulations eliminate the signature requirement and permit the election to be made using an unsigned Form 5712–A that is verified by signing the return.

10. Form 8832: Entity Classification Election

An eligible business entity may file Form 8832 to specify the way in which it is to be classified for federal tax purposes. The form must be signed under penalties of perjury. Section 301.7701–3(c)(1)(ii) provides that in certain circumstances the entity must attach a copy of Form 8832 to its tax or information returns. The requirement to attach a copy of Form 8832 impedes electronic filing of tax and information returns because a copy of the signed form cannot yet be incorporated into all electronic returns. These regulations provide that the requirement to attach a copy of Form 8832 to a return may be satisfied with an unsigned copy.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), refer to the Special Analyses section of the preamble to the cross-reference notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, these temporary and final 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 regulations is Nathan Rosen, Office of Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR parts 1, 301 and 602 are 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 1.170A–11 is amended by revising paragraph (b)(2) to read as follows:

§ 1.170A–11 Limitation on, and carryover of, contributions by corporations.

* * * * *

(b) * * *

(2) [Reserved]. For further guidance *see* § 1.170A–11T(b)(2).

* * * * *

■ **Par. 3.** Section 1.170A–11T is added to read as follows:

§ 1.170A–11T Limitation on, and carryover of, contributions by corporations (temporary).

(a) [Reserved]. For further guidance, *see* § 1.170A–11(a).

(b) Election by corporations on an accrual method—(1) [Reserved]. For further guidance, *see* § 1.170A–11(b)(1).

(2) The election must be made at the time the return for the taxable year is filed, by reporting the contribution on the return. There shall be attached to the return when filed a written declaration stating that the resolution authorizing the contribution was adopted by the board of directors during the taxable year. For taxable years beginning before January 1, 2003, the declaration shall be verified by a statement signed by an officer authorized to sign the return that it is made under penalties of perjury, and there shall also be attached to the return when filed a copy of the resolution of the board of directors authorizing the contribution. For taxable years beginning after December 31, 2002, the declaration must also include the date of the resolution, the declaration shall be verified by signing the return, and a copy of the resolution of the board of directors authorizing the contribution is a record that the taxpayer must retain and keep available for inspection in the manner required by § 1.6001–1(e).

(c) through (d) [Reserved]. For further guidance, *see* § 1.170A–11(c) through (d).

■ **Par. 4.** Section 1.556–2 is amended by revising paragraph (e)(2)(vii) and adding paragraph (e)(3) to read as follows:

§ 1.556–2 Adjustments to taxable income.

* * * * *

(e) * * *

(2) * * *

(vii) [Reserved]. For further guidance, *see* § 1.556–2T(e)(2)(vii) and (3).

* * * * *

(3) [Reserved]. For further guidance, *see* § 1.556–2T(e)(3).

* * * * *

■ **Par. 5.** Section 1.556–2T is added to read as follows:

§ 1.556–2T Adjustments to taxable income (temporary).

(a) through (e)(2)(vi) [Reserved]. For further guidance, *see* § 1.556–2(a) through (e)(2)(vi).

(e)(2)(vii) In the case of a return for a taxable year beginning before January 1, 2003, a copy of the contract, lease, or rental agreement;

(e)(2)(viii) through (xi) [Reserved]. For further guidance *see* § 1.556–2(e)(2)(viii) through (xi).

(3) If the statement described in § 1.556–2(e)(2) is attached to a taxpayer's income tax return for a taxable year beginning after December 31, 2002, a copy of the applicable contract, lease or rental agreement is not required to be submitted with the return, but must be retained by the taxpayer and kept available for inspection in the manner required by § 1.6001–1(e).

(f) [Reserved]. For further guidance, *see* § 1.556–2(f).

■ **Par. 6.** Section 1.565–1 is amended by revising paragraph (b)(3) to read as follows:

§ 1.565–1 General rule.

* * * * *

(b) * * *

(3) [Reserved]. For further guidance, *see* § 1.565–1T(b)(3).

* * * * *

■ **Par. 7.** Section 1.565–1T is added to read as follows:

§ 1.565–1T General rule (temporary).

(a) through (b)(2) [Reserved]. For further guidance, *see* § 1.565–1(a) through (b)(2).

(b)(3) A consent may be filed at any time not later than the due date of the corporation's income tax return for the taxable year for which the dividends paid deduction is claimed. With such return, and not later than the due date thereof, the corporation must file Forms 972 for each consenting shareholder, and a return on Form 973 showing by classes the stock outstanding on the first and last days of the taxable year, the dividend rights of such stock, distributions made during the taxable year to shareholders, and giving all the other information required by the form. For taxable years beginning before January 1, 2003, the Form 973 filed with the corporation's income tax return shall contain or be verified by a written declaration that is made under the penalties of perjury and the Forms 972 filed with the return must be duly executed by the consenting shareholders. For taxable years beginning after December 31, 2002, the Form 973 filed with the corporation's income tax return shall be verified by signing the return and the Forms 972 filed with the return must be duly executed by the consenting shareholders or, if unsigned, must contain the same information as the duly executed originals. If the corporation submits unsigned Forms 972 with its return for a taxable year beginning after December 31, 2002, the duly executed originals are records that the corporation must retain and keep available for inspection in the manner required by § 1.6001–1(e).

(c) [Reserved]. For further guidance, *see* § 1.565–1(c).

■ **Par. 8.** Section 1.936–7 is amended by:

■ 1. Designating the undesignated introductory text as paragraph (a).

■ 2. Redesignating paragraphs (a) through (c) as paragraphs (b) through (d), respectively.

■ 3. Revising newly designated paragraph (b), Q. & A.1.

■ The revision reads as follows:

§ 1.936–7 Manner of making election under section 936(h)(5); special election for export sales; revocation of election under section 936(a).

* * * * *

(b) * * *

Q. 1. [Reserved]. For further guidance, *see* § 1.936–7T(b) Q. 1.

A. 1. [Reserved]. For further guidance, *see* § 1.936–7T(b) A. 1.

* * * * *

■ **Par. 9.** Section 1.936–7T is added to read as follows:

§ 1.936–7T Manner of making election under section 936(h)(5); special election for export sales; revocation of election under section 936(a) (temporary).

(a) [Reserved]. For further guidance, *see* § 1.936–7 (a).

(b) *Manner of making election.*

Q. 1: How does a possessions corporation make an election to use the cost sharing method or profit split method?

A.1: A possessions corporation makes an election to use the cost sharing or profit split method by filing Form 5712–A ("Election and Verification of the Cost Sharing or Profit Split Method Under Section 936(h)(5)") and attaching it to its tax return. Form 5712–A must be filed on or before the due date (including extensions) of the tax return of the possessions corporation for its first taxable year beginning after December 31, 1982. The electing corporation must set forth on the form the name and the taxpayer identification number or address of all members of the affiliated group (including foreign affiliates not required to file a U.S. tax return). All members of the affiliated group must consent to the election. For elections filed with respect to taxable years beginning before January 1, 2003, an authorized officer of the electing corporation must sign the statement of election and must declare that he has received a signed statement of consent from an authorized officer, director, or other appropriate official of each member of the affiliated group. Elections filed for taxable years beginning after December 31, 2002, will incorporate a declaration by the electing corporation that it has received a signed consent from an authorized officer, director, or other appropriate official of each member of the affiliated group and will be verified by signing the return. The election is not valid for a taxable year unless all affiliates consent. A failure to obtain an affiliate's written consent will not invalidate the election out if the possessions corporation made a good faith effort to obtain all the necessary consents or the failure to obtain the missing consent was inadvertent. Subsequently created or acquired affiliates are bound by the election. If an election out is revoked under section 936(h)(5)(F)(iii), a new election out with respect to that product area cannot be made without the consent of the Commissioner. The possessions corporation shall file an amended Form 5712–A with its timely filed income tax return to reflect any changes in the names or number of the members of the affiliated group for any taxable year after the first taxable year to which the election out applies. By consenting to the election out, all affiliates agree to provide information necessary to compute the cost sharing payment under the cost sharing method or combined taxable income under the profit split method, and failure to provide such information shall be treated as a request to revoke the election out under section 936(h)(5)(F)(iii).

Q. & A. 2 through 8 [Reserved]. For further guidance, *see* § 1.936–7(b), Q. & A. 2 through 8.

(c) and (d) [Reserved]. For further guidance, *see* § 1.936–7(c) and (d).

■ **Par. 10.** Section 1.1017–1 is amended by revising paragraph (g)(2)(iii)(B) to read as follows:

§ 1.1017–1 Basis reductions following a discharge of indebtedness.

* * * * *

(g) * * *

(2) * * *

(iii) * * *

(B) [Reserved] For further guidance, *see* § 1.1017–1T(g)(2)(iii)(B).

* * * * *

■ **Par. 11.** Section 1.1017–1T is amended by revising paragraphs (c) through (i) to read as follows:

§ 1.1017–1T Basis reductions following a discharge of indebtedness (temporary).

* * * * *

(c) through (g)(2)(iii)(A) [Reserved]. For further guidance, see § 1.1017–1(c) through (g)(2)(iii)(A).

(g)(2)(iii)(B) *Taxpayer's requirement.* For taxable years beginning before January 1, 2003, statements described in § 1.1017–1(g)(2)(iii)(A) must be attached to a taxpayer's timely filed (including extensions) Federal income tax return for the taxable year in which the taxpayer has COD income that is excluded from gross income under section 108(a). For taxable years beginning after December 31, 2002, taxpayers must retain the statements and keep them available for inspection in the manner required by § 1.6001–1(e), but are not required to attach the statements to their returns.

(g)(2)(iv) through (i) [Reserved]. For further guidance, *see* § 1.1017–1(g)(2)(iv) through (i).

■ **Par. 12.** Section 1.1368–1 is amended by revising paragraphs (f)(5)(iii) and (g)(2)(iii) to read as follows:

§ 1.1368–1 Distributions by S corporations.

* * * * *

(f) * * *

(5) * * *

(iii) [Reserved]. For further guidance, *see* § 1.1368–1T(f)(5)(iii).

* * * * *

(g) * * *

(2) * * *

(iii) [Reserved]. For further guidance, *see* § 1.1368–1T(g)(2)(iii).

* * * * *

■ **Par. 13.** Section 1.1368–1T is added to read as follows:

§ 1.1368–1T Distributions by S corporations (temporary).

(a) through (f)(5)(ii) [Reserved]. For further guidance, *see* § 1.1368–1(a) through (f)(5)(ii).

(f)(5)(iii) *Corporate statement regarding elections.* A corporation makes an election for a taxable year under § 1.1368–1(f) by attaching a statement to a timely filed original or amended return required to be filed under section 6037 for that taxable year. In the statement, the corporation must identify the election it is making under § 1.1368–1(f) and must state that each shareholder consents to the election. In the case of elections for taxable years beginning before January 1, 2003, an officer of the corporation must sign under penalties of perjury the statement on behalf of the corporation. In the case of elections for taxable years beginning after December 31, 2002, the statement described in this paragraph (f)(5)(iii) shall be verified by signing the return. A statement of election to make a deemed dividend under § 1.1368–1(f) must include the amount of the deemed dividend that is distributed to each shareholder.

(f)(5)(iv) through (g)(2)(ii) [Reserved]. For further guidance, *see* § 1.1368–1(f)(5)(iv) through (g)(2)(ii).

(g)(2)(iii) *Time and manner of making election.* A corporation makes an election under § 1.1368–1(g)(2)(i) for a taxable year by attaching a statement to a timely filed original or amended return required to be filed under section 6037 for a taxable year (without regard to the election under § 1.1368–1(g)(2)(i)). In the statement, the corporation must state that it is electing for the taxable year under § 1.1368–1(g)(2)(i) to treat the taxable year as if it consisted of separate taxable years. The corporation also must set forth facts in the statement relating to the qualifying disposition (*e.g.*, sale, gift, stock issuance, or redemption), and state that each shareholder who held stock in the corporation during the taxable year (without regard to the election under § 1.1368–1(g)(2)(i)) consents to this election. For purposes of this election, a shareholder of the corporation for the taxable year is a shareholder as described in section 1362(a)(2). A single election statement may be filed for all elections made under § 1.1368–1(g)(2)(i) for the taxable year. An election made under § 1.1368–1(g)(2)(i) of this section is irrevocable. In the case of elections for taxable years beginning before January 1, 2003, the statement through which a corporation makes an election under § 1.1368–1(g)(2)(i) must be signed by an officer of the corporation under penalties of perjury. In the case of elections for taxable years beginning after December 31, 2002, the statement described in the preceding sentence shall be verified by signing the return.

(g)(2)(iv) [Reserved]. For further guidance, *see* § 1.1368–1(g)(2)(iv).

■ **Par. 14.** Section 1.1377–1 is amended by revising paragraph (b)(5)(i)(C) to read as follows:

§ 1.1377–1 Pro rata share.

* * * * *

(b) * * *

(5) * * *

(i) * * *

(C) [Reserved]. For further guidance, *see* § 1.1377–1T(b)(5)(i)(C).

* * * * *

■ **Par. 15.** Section 1.1377–1T is added to read as follows:

§ 1.1377–1T Pro rata share (temporary).

(a) through (b)(5)(i)(B) [Reserved]. For further guidance, *see* § 1.1377–1(a) through (b)(5)(i)(B).

(b)(5)(i)(C) The signature on behalf of the S corporation of an authorized officer of the corporation under penalties of perjury, except that for taxable years beginning after December 31, 2002, the election statement described in § 1.1377–1(b)(5)(i) shall be verified, and the requirement of this paragraph (b)(5)(i)(C) is satisfied, by the signature on the Form 1120S filed by the S corporation.

(b)(5)(i)(D) through (c) [Reserved]. For further guidance, *see* § 1.1377–1 (b)(5)(i)(D) through (c).

■ **Par. 16.** Section 1.1502–21 is amended by revising paragraphs (b)(2)(iii), (b)(3)(i) and (b)(3)(ii)(B) to read as follows:

§ 1.1502–21 Net operating losses.

* * * * *

(b) * * *

(2) * * *

(iii) [Reserved]. For further guidance, *see* § 1.1502–21T(b)(2)(iii).

* * * * *

(3) * * * (i) [Reserved]. For further guidance, *see* § 1.1502–21T(b)(3)(i).

(ii) * * * (A) * * *

(b)(3)(ii)(B) [Reserved]. For further guidance, *see* § 1.1502–21T(b)(3)(ii)(B).

* * * * *

■ **Par. 17.** Section 1.1502–21T is amended by revising paragraphs (b)(2)(iii) and (b)(3) through (b)(3)(ii)(B) to read as follows:

§ 1.1502–21T Net operating losses (temporary).

* * * * *

(b)(2)(iii) [Reserved]. For further guidance, *see* § 1.1502–21(b)(2)(iii).

* * * * *

(b)(3) *Special rules*—(i) *Election to relinquish carryback.* A group may make an irrevocable election under section 172(b)(3) to relinquish the entire carryback period with respect to a CNOL for any consolidated return year. Except as provided in paragraph (b)(3)(ii)(B) of this section, the election may not be made separately for any member (whether or not it remains a member), and must be made in a

separate statement entitled "THIS IS AN ELECTION UNDER § 1.1502–21(b)(3)(i) TO WAIVE THE ENTIRE CARRYBACK PERIOD PURSUANT TO SECTION 172(b)(3) FOR THE [insert consolidated return year] CNOLs OF THE CONSOLIDATED GROUP OF WHICH [insert name and employer identification number of common parent] IS THE COMMON PARENT". The statement must be filed with the group's income tax return for the consolidated return year in which the loss arises. If the consolidated return year in which the loss arises begins before January 1, 2003, the statement making the election must be signed by the common parent. If the consolidated return year in which the loss arises begins after December 31, 2002, the election may be made in an unsigned statement.

(b)(3)(ii) through (b)(3)(ii)(A) [Reserved]. For further guidance, *see* § 1.1502–21 (b)(3)(ii) through (b)(3)(ii)(A).

(B) *Acquisition of member from another consolidated group.* If one or more members of a consolidated group becomes a member of another consolidated group, the acquiring group may make an irrevocable election to relinquish, with respect to all consolidated net operating losses attributable to the member, the portion of the carryback period for which the corporation was a member of another group, provided that any other corporation joining the acquiring group that was affiliated with the member immediately before it joined the acquiring group is also included in the waiver. This election is not a yearly election and applies to all losses that would otherwise be subject to a carryback to a former group under section 172. The election must be made in a separate statement entitled "THIS IS AN ELECTION UNDER § 1.1502–21(b)(3)(ii)(B)(2) TO WAIVE THE PRE-[insert first taxable year for which the member (or members) was not a member of another group] CARRYBACK PERIOD FOR THE CNOLs attributable to [insert names and employer identification number of members]." The statement must be filed with the acquiring consolidated group's original income tax return for the year the corporation (or corporations) became a member. If the year in which the corporation (or corporations) became a member begins before January 1, 2003, the statement must be signed by the common parent and each of the members to which it applies. If the year in which the corporation (or corporations) became a member begins after December 31, 2002, the election may be made in an unsigned statement.

* * * * *

■ **Par. 18.** Section 1.1502–75 is amended by revising paragraph (h)(2) to read as follows:

§ 1.1502–75 Filing of consolidated returns.

* * * * *

(h) * * *

(2) [Reserved]. For further guidance, *see* § 1.1502–75T(h)(2).

* * * * *

■ **Par. 19.** Section 1.1502–75T is added to read as follows:

§ 1.1502–75T Filing of consolidated returns (temporary).

(a) through (h)(1) [Reserved]. For further guidance, *see* § 1.1502–75(a) through (h)(1).

(2) *Filing of Form 1122 for first year.* If, under the provisions of § 1.1502–75 (a)(1) , a group wishes to file a consolidated return for a taxable year, then a Form 1122 ("Authorization and Consent of Subsidiary Corporation To Be Included in a Consolidated Income Tax Return") must be executed by each subsidiary. For taxable years beginning before January 1, 2003, the executed Forms 1122 must be attached to the consolidated return for the taxable year. For taxable years beginning after December 31, 2002, the group must attach either executed Forms 1122 or unsigned copies of the completed Forms 1122 to the consolidated return. If the group submits unsigned Forms 1122 with its return, it must retain the signed originals in its records in the manner required by § 1.6001–1(e). Form 1122 is not required for a taxable year if a consolidated return was filed (or was required to be filed) by the group for the immediately preceding taxable year.

(h)(3) through (k) [Reserved]. For further guidance, *see* § 1.1502–75(h)(3) through (k).

■ **Par. 20.** Section 1.1503–2 is amended by revising paragraphs (g)(2)(i), (g)(2)(iv)(B)(3)(iii) and (g)(2)(vi)(B) to read as follows:

§ 1.1503–2 Dual consolidated loss.

* * * * *

(g) * * *

(2) * * *

(i) [Reserved]. For further guidance, *see* § 1.1503–2T(g)(2)(i).

* * * * *

(iv) * * *

(B) * * *

(3) * * *

(iii) [Reserved]. For further guidance, *see* § 1.1503–2T(g)(2)(iv)(B)(*3*)(*iii*)

* * * * *

(vi) * * *

(B) [Reserved]. For further guidance, *see* § 1.1503–2T(g)(2)(vi)(B).

* * * * *

■ **Par. 21.** Section 1.1503–2T is added to read as follows:

§ 1.1503–2T Dual consolidated loss (temporary).

(a) through (g)(1) [Reserved]. For further guidance, *see* § 1.1503–2(a) through (g)(1).

(2) *Elective relief provision*—(i) *In general.* Paragraph (b) of this section shall not apply to a dual consolidated loss if the consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner elects to be bound by the provisions of § 1.1503–2(g)(2) and this paragraph (g)(2). In order to elect relief under § 1.1503–2(g)(2) and this paragraph (g)(2), the consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner must attach to its timely filed U.S. income tax return for the taxable year in which the dual consolidated loss is incurred an agreement described in paragraph (g)(2)(i)(A) of this section. The agreement must be signed under penalties of perjury by the person who signs the return. For taxable years beginning after December 31, 2002, the agreement attached to the income tax return of the consolidated group, unaffiliated dual resident corporation or unaffiliated domestic owner pursuant to the preceding sentence may be an unsigned copy. If an unsigned copy is attached to the return, the consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner must retain the original in its records in the manner specified by § 1.6001–1(e). The agreement must include the following items, in paragraphs labeled to correspond with the items set forth in paragraphs (g)(2)(i)(A) through (F) of this section:

(A) A statement that the document submitted is an election and an agreement under the provisions of § 1.1503–2(g)(2) of the Income Tax Regulations.

(B) The name, address, identifying number, and place and date of incorporation of the dual resident corporation, and the country or countries that tax the dual resident corporation on its worldwide income or on a residence basis, or, in the case of a separate unit, identification of the separate unit, including the name under which it conducts business, its principal activity, and the country in which its principal place of business is located.

(C) An agreement by the consolidated group, unaffiliated dual resident

corporation, or unaffiliated domestic owner to comply with all of the provisions of paragraphs (g)(2)(iii) through (vii) of § 1.1503–2 and this section.

(D) A statement of the amount of the dual consolidated loss covered by the agreement.

(E) A certification that no portion of the dual resident corporation's or separate unit's losses, expenses, or deductions taken into account in computing the dual consolidated loss has been, or will be, used to offset the income of any other person under the income tax laws of a foreign country.

(F) A certification that arrangements have been made to ensure that no portion of the dual consolidated loss will be used to offset the income of another person under the laws of a foreign country and that the consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner will be informed of any such foreign use of any portion of the dual consolidated loss.

(g)(2)(ii) through (iv)(B)(*3*)(*ii*) [Reserved] For further guidance, *see* § 1.1503–2(g)(2)(ii) through (iv)(B)(3)(ii).

(g)(2)(iv)(B)(*3*)(*iii*) The unaffiliated domestic corporation or new consolidated group must file, with its timely filed income tax return for the taxable year in which the event described in § 1.1503–2(g)(2)(iv)(B)(*1*) or (*2*) occurs, an agreement described in paragraph (g)(2)(i) of this section (new (g)(2)(i) agreement), whereby it assumes the same obligations with respect to the dual consolidated loss as the corporation or consolidated group that filed the original (g)(2)(i) agreement with respect to that loss. The new (g)(2)(i) agreement must be signed under penalties of perjury by the person who signs the return and must include a reference to § 1.1503–2(g)(2)(iv)(B)(*3*)(*iii*) or this paragraph (g)(2)(iv)(B)(*3*)(*iii*). For taxable years beginning after December 31, 2002, the agreement attached to the return pursuant to the preceding sentence may be an unsigned copy. If an unsigned copy is attached to the return, the corporation or consolidated group must retain the original in its records in the manner specified by § 1.6001–1(e).

(g)(2)(iv)(C) through (vi)(A) [Reserved]. For further guidance, *see* § 1.1503–2(g)(2)(iv)(C) through (vi)(A).

(B) *Annual certification.* Except as provided in § 1.1503–2(g)(2)(vi)(C), until and unless Form 1120 or the Schedules thereto contain questions pertaining to dual consolidated losses, the consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner must file with its income tax return for each of the 15 taxable years following the taxable year in which the dual consolidated loss is incurred a certification that the losses, expenses, or deductions that make up the dual consolidated loss have not been used to offset the income of another person under the tax laws of a foreign country. For taxable years beginning before January 1, 2003, the annual certification must be signed under penalties of perjury by a person authorized to sign the agreement described in paragraph (g)(2)(i) of this section. For taxable years beginning after December 31, 2002, the certification is verified by signing the return with which the certification is filed. The certification for a taxable year must identify the dual consolidated loss to which it pertains by setting forth the taxpayer's year in which the loss was incurred and the amount of such loss. In addition, the certification must warrant that arrangements have been made to ensure that the loss will not be used to offset the income of another person under the laws of a foreign country and that the taxpayer will be informed of any such foreign use of any portion of the loss. If dual consolidated losses of more than one taxable year are subject to the rules of this paragraph (g)(2)(vi)(B), the certifications for those years may be combined in a single document but each dual consolidated loss must be separately identified.

(g)(2)(vii) through (h) [Reserved]. For further guidance, *see* § 1.1503–2(g)(2)(vi) through (h).

■ **Par. 22.** Section 1.6038B–1 is amended by revising paragraphs (b)(1)(i) and (b)(1)(ii) to read as follows:

§ 1.6038B–1 Reporting of certain transfers to foreign corporations.

* * * * *

(b)(1)(i) and (ii) [Reserved]. For further guidance, *see* § 1.6038B–1T(b)(1)(i) and (ii).

* * * * *

■ **Par. 23.** Section 1.6038B–1T is amended by revising paragraphs (a) through (b)(3) to read as follows:

§ 1.6038B–1T Reporting of certain transactions to foreign corporations (temporary).

(a) [Reserved]. For further guidance, *see* § 1.6038B–1(a).

(b) *Time and manner of reporting*—(1) *Ingeneral*—(i) *Reporting procedure.* Except for stock or securities qualifying under the special reporting rule of § 1.6038B–1(b)(2) , and certain exchanges described in section 354 (listed below), any U.S. person that makes a transfer described in section 6038B(a)(1)(A), 367(d) or (e), is required to report pursuant to section 6038B and the rules of § 1.6038B–1 and this section and must attach the required information to Form 926, "Return by Transferor of Property to a Foreign Corporation." For special rules regarding cash transfers made in tax years beginning after February 5, 1999, see § 1.6038B–1(b)(3) and (g) . For purposes of determining a U.S. transferor that is subject to section 6038B, the rules of § 1.367(a)–1T(c) and § 1.367(a)–3(d) shall apply with respect to a transfer described in section 367(a), and the rules of § 1.367(a)–1T(c) shall apply with respect to a transfer described in section 367(d). Additionally, if in an exchange described in section 354, a U.S. person exchanges stock of a foreign corporation in a reorganization described in section 368(a)(1)(E), or a U.S. person exchanges stock of a domestic or foreign corporation for stock of a foreign corporation pursuant to an asset reorganization described in section 368(a)(1)(C), (D), or (F), that is not treated as an indirect stock transfer under section 367(a), then the U.S. person exchanging stock is not required to report under section 6038B. Notwithstanding any statement to the contrary on Form 926, the form and attachments must be attached to, and filed by the due date (including extensions) of the transferor's income tax return for the taxable year that includes the date of the transfer (as defined in § 1.6038B–1T(b)(4)). For taxable years beginning before January 1, 2003, any attachment to Form 926 required under the rules of this section is filed subject to the transferor's declaration under penalties of perjury on Form 926 that the information submitted is true, correct and complete to the best of the transferor's knowledge and belief. For taxable years beginning after December 31, 2002, Form 926 and any attachments shall be verified by signing the income tax return with which the form and attachments are filed.

(ii) *Reporting by corporate transferor.* For transfers by corporations in taxable years beginning before January 1, 2003, Form 926 must be signed by an authorized officer of the corporation if the transferor is not a member of an affiliated group under section 1504(a)(1) that files a consolidated Federal income tax return and by an authorized officer of the common parent corporation if the transferor is a member of such an affiliated group. For transfers by corporations in taxable years beginning after December 31, 2002, Form 926 shall be verified by signing the income tax return to which the form is attached.

(b)(2) through (b)(3) [Reserved]. For further guidance, *see* § 1.6038B–1(h)(2) through (b)(3).

* * * * *

PART 301—PROCEDURE AND ADMINISTRATION

■ **Par. 24.** The authority citation for part 301 continues to read as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 25.** Section 301.7701–3 is amended by revising paragraph (c)(1)(ii) to read as follows:

§ 301.7701–3 Classification of certain business entities.

* * * * *

(c) * * * (1) * * *

(ii) [Reserved]. For further guidance, *see* § 301.7701–3T(c)(1)(ii).

* * * * *

■ **Par. 26.** Section 301.7701–3T is added to read as follows:

§ 301.7701–3T Classification of certain business entities (temporary).

(a) through (c)(1)(i) [Reserved]. For further guidance, *see* § 301.7701–3(a) through (c)(1)(i).

(ii) *Further notification of elections.* An eligible entity required to file a federal tax or information return for the taxable year for which an election is made under § 301.7701–3(c)(1)(i) must attach a copy of its Form 8832 to its federal tax or information return for that year. If the entity is not required to file a return for that year, a copy of its Form 8832 ("Entity Classification Election") must be attached to the federal income tax or information return of any direct or indirect owner of the entity for the taxable year of the owner that includes the date on which the election was effective. An indirect owner of the entity does not have to attach a copy of the Form 8832 to its return if an entity in which it has an interest is already filing a copy of the Form 8832 with its return. If an entity, or one of its direct or indirect owners, fails to attach a copy of a Form 8832 to its return as directed in this section, an otherwise valid election under § 301.7701–3(c)(1)(i) will not be invalidated, but the non-filing party may be subject to penalties, including any applicable penalties if the federal tax or information returns are inconsistent with the entity's election under § 301.7701–3(c)(1)(i). In the case of returns for taxable years beginning after December 31, 2002, the copy of Form 8832 attached to a return pursuant to this paragraph (c)(1)(ii) is not required to be a signed copy.

(c)(1)(iii) through (h) [Reserved]. For further guidance, *see* § 301.7701–3(c)(1)(iii) through (h).

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 27.** The authority citation for part 602 continues to read in part as follows:

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

■ **Par. 28.** In § 602.101, paragraph (b) is amended by adding the following entry in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.170A–11T	1545–1868
* * * * *	

Robert E. Wenzel,

Deputy Commission for Services and Enforcement.

Approved: December 2, 2003.

Gregory Jenner,

Deputy Assistant Secretary of the Treasury (Tax Policy).

(FR Doc. 03–31238 Filed 12–18–03; 8:45 am)

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners: Prisoners Serving Sentences Under the United States and District of Columbia Codes

AGENCY: United States Parole Commission, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule is designed to provide a fair and expeditious means of handling the case of an accused parole violator who is found to be mentally incompetent to proceed with a scheduled parole revocation hearing. Under the Commission's present rule, such a parolee is sent to the Bureau of Prisons for a mental health examination, with a report every six months, until the parolee regains sufficient competence to participate in a revocation hearing. This rule can result in the indefinite detention of the mentally incompetent parolee, without any provision for bringing the revocation matter to resolution. The interim rule authorizes the Commission to conduct a revocation hearing notwithstanding the parolee's lack of mental competency, so long as the Commission obtains a current mental health report, ensures that the parolee has counsel to present a defense, and takes the parolee's mental condition into account in its determination.

DATES: *Effective date:* January 20, 2004. Comments must be received by February 17, 2004.

ADDRESSES: Send comments to Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815.

FOR FURTHER INFORMATION CONTACT: Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, telephone (301) 492–5959. Questions about this publication are welcome, but inquiries concerning individual cases cannot be answered over the telephone.

SUPPLEMENTARY INFORMATION: A recent case in the District of Columbia has illustrated the problems that can arise when the Commission finds that a parolee who is charged with parole violations is not mentally competent to participate a revocation hearing, and successive efforts to hold a revocation hearing are frustrated by the parolee's inability to regain competency. Other pending revocation cases potentially raise similar difficulties. Under the Commission's present regulation, 28 CFR 2.8, such a parolee must be kept in prison with a report as to his mental competency submitted every six months. A revocation hearing is attempted only when the mental health report indicates that the parolee may be competent to proceed. The regulation can result in indefinite delays in holding the revocation hearing, because the rule lacks any provision for resolving the parolee's situation.

The rule at § 2.8 is grounded, in part, on the policy judgment that the Commission cannot responsibly return accused parole violators to parole supervision solely by reason of their mental incompetency. This result would be incompatible with a primary purpose of parole, *i.e.*, to promote the reintegration of criminal offenders into society as law-abiding citizens through closely supervising their activities in the community and facilitating their rehabilitation. Effective supervision can only be carried out when parolees

asset values for agency financial statement purposes. Therefore, it is essential that required reports be received no later than October 15. A final report is required within 30 days after expiration of the agreement.

* * * * *

■ 4. The authority citation for 14 CFR part 1274 continues to read as follows:

Authority: 42 U.S.C. 2451 *et seq.*, and 31 U.S.C. 6301 to 6308.

PART 1274—COOPERATIVE AGREEMENTS WITH COMMERCIAL FIRMS

■ 5. In section 1274.923, revise the date in the introductory text and paragraph (f) to read as follows:

§ 1274.923 Equipment and Other Property.

Equipment and Other Property (February 2004)

* * * * *

(f) Recipients shall submit annually a NASA Form 1018, NASA Property in the Custody of Contractors, in accordance with the instructions on the form, the provisions of 48 CFR (NFS) 1845.71 and any supplemental instructions that may be issued by NASA for the current reporting period. The original NF 1018 shall be submitted to the center Deputy Chief Financial Officer, Finance, with three copies sent concurrently to the center Industrial Property Officer. The annual reporting period shall be from October 1 of each year through September 30 of the following year. The report shall be submitted in time to be received by October 15. Negative reports (*i.e.* no reportable property) are required. The information contained in the reports is entered into the NASA accounting system to reflect current asset values for agency financial statement purposes. Therefore, it is essential that required reports be received no later than October 15. A final report is required within 30 days after expiration of the agreement.

* * * * *

[FR Doc. 04–2073 Filed 2–2–04; 8:45 am]

BILLING CODE 7510–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 301 and 602

[TD 9100]

RIN 1545–BC62

Guidance Necessary to Facilitate Business Electronic Filing; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final and temporary regulations.

SUMMARY: This document contains corrections to final regulations (TD 9100), which were published in the **Federal Register** on Friday, December 19, 2003 (68 FR 70701), relating to the elimination of regulatory impediments to the electronic filing of certain business income tax returns and other forms.

DATES: These corrections are effective December 19, 2003.

FOR FURTHER INFORMATION CONTACT: Nathan Rosen at (202) 622–4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are subject to these corrections are under section 170A of the Internal Revenue Code.

Need for Correction

As published, final regulation (TD 9100), contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

■ Accordingly, the publication of final regulation (TD 9100), which was the subject of FR Doc. 03–31238, is corrected as follows:

PART 1—INCOME TAXES

■ 1. On page 70701, column 1, in the preamble under the caption **DATES:**, line 5 of section titled, Applicability Date:, the language "2T 1.565–1T, 1.936–7T, 1.1017–1T," is corrected to read "2T, 1.565–1T, 1.936–7T, 1.1017–1T,".

§ 1.556–2T [Corrected]

■ 2. On page 70705, column 1, paragraph (e)(2)(viii) through (xi), line 2, the language "further guidance see § 1.556–2(e)(2)(viii)" is corrected to read "further guidance, see § 1.556–2(e)(2)(viii)".

§ 1.1017–1 [Corrected]

■ 3. On page 70706, column 1, paragraph (B), line 1, the language "[Reserved] For further guidance," is corrected to read "[Reserved]. For further guidance.".

§ 1.1377–1T [Corrected]

■ 4. On page 70706, column 3, instructional paragraph Par. 16., line 2, the language "by revising paragraphs (b)(2)(iii), (b)(3)(i)" is corrected to read "by revising paragraphs (b)(3)(i)".

§ 1.1502–21 [Corrected]

■ 5. On page 70706, column 3, § 1.1502–21 is corrected by removing paragraphs (2) and (iii), and the five asterisks following paragraph (iii).

■ 6. On page 70706, column 3, instructional paragraph Par. 17., line 3, the language "(b)(2)(iii) and (b)(3) through (b)(3)(ii)(B)" is corrected to read "(b)(3) through (b)(3)(ii)(B)".

§ 1.1502–21T [Corrected]

■ 7. On page 70706, column 3, § 1.1502–21T is corrected by removing paragraph (b)(2)(iii) and the five asterisks following the paragraph.

§ 1.6038B–1T [Corrected]

■ 8. On page 70708, column 3, paragraph (b)(1)(i), line 3 from the top of the paragraph, the language "information to Form 926, "Return by" is corrected to read "information to Form 926, "Return by a U.S.".

PART 301—PROCEDURE AND ADMINISTRATION

■ 9. On page 70709, column 1, instructional paragraph Par. 24., line 2, the language "301 continues to read as follows:" is corrected to read "301 continues to read in part as follows:".

■ 10. On page 70709, column 1, instructional paragraph Par. 24., the Authority citation, the language "Authority: 26 U.S.C. 7805." is corrected to read "Authority: 26 U.S.C. 7805 * * *."

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ 11. On page 70709, column 2, instructional paragraph Par. 27., line 2, the language "602 continues to read in part as follows:" is corrected to read "602 continues to read as follows:".

■ 12. On page 70709, column 2, instructional paragraph Par. 27., the Authority citation, the language "Authority: 26 U.S.C. 7805 * * *" is corrected to read "Authority: 26 U.S.C. 7805.".

Cynthia E. Grigsby,

Acting Chief, Publications & Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedures & Administration).

[FR Doc. 04–2078 Filed 2–2–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–04–003]

Drawbridge Operation Regulations; Berwick Bay, Morgan City, LA

AGENCY: Coast Guard, DHS.

Corrections

Federal Register

Vol. 69, No. 22

Tuesday, February 3, 2004

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9100]

RIN 1545–BC62

Guidance Necessary to Facilitate Business Electronic Filing

Correction

In rule document 03–31238 beginning on page 70701 in the issue of Friday, December 19, 2003, make the following corrections:

1. On page 70703, in the first column, under the heading "*5. Form 1120: U.S. Corporation Income Tax Return*", in the first paragraph, in the 20th line from the bottom, "(g)(2)(iv)(B)(3)(iii)" should read "(g)(2)(iv)(B)(*3*)(*iii*)".

2. On the same page, in the same column, under the same heading, in the same paragraph, in the 13th line from the bottom, "(iv)(B)(3)(iii)" should read "(iv)(B)(*3*)(*iii*)".

§ 1.1503–2 [Corrected]

3. On page 70707, in the second column, in § 1.1503–2, in paragraph (g)(2)(iv)(B)(*3*), "(3)" should read "(*3*)".

4. On the same page, in the same column, in the same section, in paragraph (g)(2)(iv)(B)(*3*)(*iii*), in the first line, "(iii)" should read "(*iii*)".

[FR Doc. C3–31238 Filed 2–2–04; 8:45 am]

BILLING CODE 1505–01–D

to lat. 31°38'01" N., long. 81°26'59" W.;
to lat. 31°37'31" N., long. 81°28'14" W.;
to lat. 31°32'31" N., long. 81°27'29" W.;
to lat. 31°26'16" N., long. 81°31'29" W.;
to lat. 31°25'31" N., long. 81°35'59" W.;
thence northwest along the Altamaha River to the point of beginning.

Designated altitudes. 13,000 feet MSL to FL 250.

Time of designation. 0700–2200 local time, Monday–Friday; other times by NOTAM at least 24 hours in advance.

Controlling agency. FAA, Jacksonville ARTCC.

Using agency. ANG, Savannah Combat Readiness Training Center, GA.

R–3007E Townsend, GA (Remove)

* * * * *

Issued in Washington, DC, on January 20, 2004.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 04–2178 Filed 2–2–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 77

[Docket No. FAA–2004–16982; Notice No. 04–01]

Colo Void Clause Coalition; Antenna Systems Co-Location; Voluntary Best Practices

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability and request for comments.

SUMMARY: This document announces the availability of a letter dated December 23, 2003, from the Colo Void Clause Coalition (CVCC) proposing "voluntary best practices" that would apply to the co-location of antenna systems, for certain designated frequencies, that are within one nautical mile of an FAA facility. The FAA seeks comments on the CVCC proposal.

DATES: Comments must be received on or before February 13, 2004.

ADDRESSES: You may send comments, identified by Docket Number FAA–2004–16982, using any of the following methods:

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Fax: 1–202–493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For more information on this process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. For more information, see the Privacy Act discussion in the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: To read the CVCC document and other pertinent documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Rene J. Balanga, Spectrum Policy and Management, ASR–100, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone number: (202) 267–3819.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to comment on the CVCC's proposed voluntary best practices document by submitting written comments, data, or views. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this document. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the web address in the **ADDRESSES** section.

Privacy Act: Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov.*

Before adopting any policy changes based on the CVCC proposed voluntary best practices, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay.

If you want the FAA to acknowledge receipt of your comments, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Discussion

On December 23, 2003, the CVCC wrote to Marion C. Blakey, FAA Administrator, and attached a Voluntary Best Practices Agreement Regarding the Potential for Electromagnetic Interference Upon FAA Facilities (Best Practices Agreement). The CVCC is a coalition of wireless carriers, tower companies, and trade associations that currently own or manage a majority of the radio towers throughout the United States. The FAA is reviewing the submitted Best Practices Agreement and will consider all submitted comments in determining whether any changes are warranted to current FAA notification policies with respect to co-location of antenna systems, for certain designated frequencies, that are within one nautical mile of FAA facilities.

Issued in Washington, DC, on January 29, 2004.

Oscar Alvarez,

Acting Program Director, Spectrum Policy and Management.

[FR Doc. 04–2216 Filed 1–29–04; 4:36 pm]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[REG–116664–01]

RIN 1545–BC15

Guidance Necessary To Facilitate Business Electronic Filing; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document contains corrections to a notice of proposed rulemaking by cross-reference to

temporary regulations (REG–116664–01), which was published in the **Federal Register** on Friday, December 19, 2003 (68 FR 70747), relating to the elimination of regulatory impediments to the electronic filing of certain business income tax returns and other forms.

FOR FURTHER INFORMATION CONTACT: Nathan Rosen at (202) 622–4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking by cross-reference to temporary regulations that is the subject of these corrections is under section 170A of the Internal Revenue Code.

Need for Correction

As published, REG–116664–01 contains errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking by cross-reference to temporary regulations (REG–11664–01), which is the subject of FR Doc. 03–31239, is corrected as follows:

PART 1—INCOME TAXES

§ 1.1377–1 [Corrected]

1. On page 70749, column 1, instructional paragraph Par. 9., line 2, the language "by revising paragraphs (b)(2)(iii)," is corrected to read "by revising paragraphs".

§ 1.1502–21 [Corrected]

2. On page 70749, column 1, paragraph (b)(2)(iii), the language "[The text of the proposed amendments to § 1.1502–21(b)(2)(iii) is the same as the text of § 1.1502–21T(b)(2)(iii) published elsewhere in this issue of the **Federal Register**]." Is corrected to read "(b) * * *".

3. On page 70749, column 1, the five asterisks following paragraph (b)(2)(iii) are removed.

PART 301—PROCEDURE AND ADMINISTRATION

4. On page 70749, column 3, instructional paragraph Par. 13., line 2, the language "301 continues to read as follows:" is corrected to read "301 continues to read in part as follows:".

Cynthia E. Grigsby,

Acting Chief, Publications & Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedures & Administration).

[FR Doc. 04–2077 Filed 2–2–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

[TX–051–FOR]

Texas Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing receipt of a proposed amendment to the Texas regulatory program (Texas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Texas proposes revisions to and additions of regulations regarding coal combustion by-products and coal combustion products. Texas intends to revise its program to clarify how the use and disposal of coal combustion by-products and coal combustion products are regulated at coal mine sites in Texas.

This document gives the times and locations that the Texas program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., c.s.t., March 4, 2004. If requested, we will hold a public hearing on the amendment on March 1, 2004. We will accept requests to speak at a hearing until 4 p.m., c.s.t. on February 18, 2004.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Michael C. Wolfrom, Director, Tulsa Field Office, at the address listed below.

You may review copies of the Texas program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Tulsa Field Office.

Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6547, Telephone: (918) 581–6430, Internet address: *mwolfrom@osmre.gov.*

Surface Mining and Reclamation Division, Railroad Commission of Texas, 1701 North Congress Avenue, Capitol Station, P.O. Box 12967, Austin, Texas 78711–2967, Telephone (512) 463–6900.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa Field Office. Telephone: (918) 581–6430. Internet address: *mwolfrom@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Texas Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Texas program effective February 16, 1980. You can find background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Texas program in the February 27, 1980, **Federal Register** (45 FR 12998). You can also find later actions concerning the Texas program and program amendments at 30 CFR 943.10, 943.15 and 943.16.

II. Description of the Proposed Amendment

By letter dated December 9, 2003 (Administrative Record No. TX–656), Texas sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Texas sent the amendment at its own initiative. Below is a summary of the changes proposed by Texas. The full text of the program amendment is

CODE

[¶1700] IRC §170. Charitable, etc., contributions and gifts.

(a) Allowance of deduction.

(1) General rule. There shall be allowed as a deduction any charitable contribution (as defined in subsection (c)) payment of which is made within the taxable year. A charitable contribution shall be allowable as a deduction only if verified under regulations prescribed by the Secretary.

(2) Corporations on accrual basis. In the case of a corporation reporting its taxable income on the accrual basis, *if*—

(A) the board of directors authorizes a charitable contribution during any taxable year, and

(B) payment of such contribution is made after the close of such taxable year and on or before the 15th day of the third month following the close of such taxable year,

then the taxpayer may elect to treat such contribution as paid during such taxable year. The election may be made only at the time of the filing of the return for such taxable year, and shall be signified in such manner as the Secretary shall by regulations prescribe.

(3) Future interests in tangible personal property. For purposes of this section, payment of a charitable contribution which consists of a future interest in tangible personal property shall be treated as made only when all intervening interests in, and rights to the actual possession or enjoyment of, the property have expired or are held by persons other than the taxpayer or those standing in a relationship to the taxpayer described in section 267(b) or 707(b). For purposes of the preceding sentence, a fixture which is intended to be severed from the real property shall be treated as tangible personal property.

(b) Percentage limitations.

(1) Individuals. In the case of an individual, the deduction provided in subsection (a) shall be limited as provided in the succeeding subparagraphs.

(A) General rule. Any charitable contribution to—

(i) a church or a convention or association of churches,

(ii) an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on,

(iii) an organization the principal purpose or functions of which are the providing of medical or hospital care or medical education or medical research, if the organization is a hospital, or if the organization is a medical research organization directly engaged in the continuous active conduct of medical research in conjunction with a hospital, and during the calendar year in which the contribution is made such organization is committed to spend such contributions for such research before January 1 of the fifth calendar year which begins after the date such contribution is made,

(iv) an organization which normally receives a substantial part of its support (exclusive of income received in the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501(a)) from the United States or any State or political subdivision thereof or from direct or indirect contributions from the general public, and which is organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to or for the benefit of a college or university which is an organization referred to in clause (ii) of this subparagraph and which is an agency or instrumentality of a State or political subdivision thereof, or which is owned or operated by a State or political subdivision thereof or by an agency or instrumentality of one or more States or political subdivisions,

(v) a governmental unit referred to in subsection (c)(1),

(vi) an organization referred to in subsection (c)(2) which normally receives a substantial part of its support (exclusive of income received in the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501(a)) from a governmental unit referred to in subsection (c)(1) or from direct or indirect contributions from the general public,

(vii) a private foundation described in subparagraph (E), or

(viii) an organization described in section 509(a)(2) or (3),

shall be allowed to the extent that the aggregate of such contributions does not exceed 50 percent of the taxpayer's contribution base for the taxable year.

(B) Other contributions. Any charitable contribution other than a charitable contribution to which subparagraph (A) applies shall be allowed to the extent that the aggregate of such contributions does not exceed the lesser of—

(i) 30 percent of the taxpayer's contribution base for the taxable year, or

(ii) the excess of 50 percent of the taxpayer's contribution base for the taxable year over the amount of charitable contributions allowable under subparagraph (A) (determined without regard to subparagraph (C)).

If the aggregate of such contributions exceeds the limitation of the preceding sentence, such excess shall be treated (in a manner consistent with the rules of subsection (d)(1)) as a charitable contribution (to which subparagraph (A) does not apply) in each of the 5 succeeding taxable years in order of time.

(C) Special limitation with respect to contributions described in subparagraph (A) of certain capital gain property.

(i) In the case of charitable contributions described in subparagraph (A) of capital gain property to which subsection (e)(1)(B) does not apply, the total amount of contributions of such property which may be taken into account under subsection (a) for any taxable year shall not exceed 30 percent of the taxpayer's contribution base for such year. For purposes of this subsection, contributions of capital gain property to which this subparagraph applies shall be taken into account after all other charitable contributions (other than charitable contributions to which subparagraph (D) applies).

(ii) If charitable contributions described in subparagraph (A) of capital gain property to which clause (i) applies exceeds 30 percent of the taxpayer's contribution base for any taxable year, such excess shall be treated, in a manner consistent with the rules of subsection (d)(1), as a charitable contribution of capital gain property to which clause (i) applies in each of the 5 succeeding taxable years in order of time.

(iii) At the election of the taxpayer (made at such time and in such manner as the Secretary prescribes by regulations), subsection (e)(1) shall apply to all contributions of capital gain property (to which subsection (e)(1)(B) does not otherwise apply) made by the taxpayer during the taxable year. If such an election is made, clauses (i) and (ii) shall not apply to contributions of capital gain property made during the taxable year, and, in applying subsection (d)(1) for such taxable year with respect to contributions of capital gain property made in any prior contribution year for which an election was not made under this clause, such contributions shall be reduced as if subsection (e)(1) had applied to such contributions in the year in which made.

(iv) For purposes of this paragraph, the term "capital gain property" means, with respect to any contribution, any capital asset the sale of which at its fair market value at the time of the contribution would have resulted in gain which would have been long-term capital gain. For purposes of the preceding sentence, any property which is property used in the trade or business (as defined in section 1231(b)) shall be treated as a capital asset.

(D) Special limitation with respect to contributions of capital gain property to organizations not described in subparagraph (A).

(i) In general. In the case of charitable contributions (other than charitable contributions to which subparagraph (A) applies) of capital gain property, the total amount of

such contributions of such property taken into account under subsection (a) for any taxable year shall not exceed the lesser of—

(I) 20 percent of the taxpayer's contribution base for the taxable year, or

(II) the excess of 30 percent of the taxpayer's contribution base for the taxable year over the amount of the contributions of capital gain property to which subparagraph (C) applies.

For purposes of this subsection, contributions of capital gain property to which this subparagraph applies shall be taken into account after all other charitable contributions.

(ii) Carryover. If the aggregate amount of contributions described in clause (i) exceeds the limitation of clause (i), such excess shall be treated (in a manner consistent with the rules of subsection (d)(1)) as a charitable contribution of capital gain property to which clause (i) applies in each of the 5 succeeding taxable years in order of time.

(E) Certain private foundations. The private foundations referred to in subparagraph (A)(vii) and subsection (e)(1)(B) are—

(i) a private operating foundation (as defined in section 4942(j)(3)),

(ii) any other private foundation (as defined in section 509(a)) which, not later than the 15th day of the third month after the close of the foundation's taxable year in which contributions are received, makes qualifying distributions (as defined in section 4942(g), without regard to paragraph (3) thereof), which are treated, after the application of section 4942(g)(3), as distributions out of corpus (in accordance with section 4942(h)) in an amount equal to 100 percent of such contributions, and with respect to which the taxpayer obtains adequate records or other sufficient evidence from the foundation showing that the foundation made such qualifying distributions, and

(iii) a private foundation all of the contributions to which are pooled in a common fund and which would be described in section 509(a)(3) but for the right of any substantial contributor (hereafter in this clause called "donor") or his spouse to designate annually the recipients, from among organizations described in paragraph (1) of section 509(a), of the income attributable to the donor's contribution to the fund and to direct (by deed or by will) the payment, to an organization described in such paragraph (1), of the corpus in the common fund attributable to the donor's contribution; but this clause shall apply only if all of the income of the common fund is required to be (and is) distributed to one or more organizations described in such paragraph (1) not later than the 15th day of the third month after the close of the taxable year in which the income is realized by the fund and only if all of the corpus attributable to any donor's contribution to the fund is required to be (and is) distributed to one or more of such organizations not later than one year after his death or after the death of his surviving spouse if she has the right to designate the recipients of such corpus.

(F) Contribution base defined. For purposes of this section, the term "contribution base" means adjusted gross income (computed without regard to any net operating loss carryback to the taxable year under section 172).

(2) Corporations. In the case of a corporation, the total deductions under subsection (a) for any taxable year shall not exceed 10 percent of the taxpayer's taxable income computed without regard to—

(A) this section,

(B) part VIII (except section 248),

(C) any net operating loss carryback to the taxable year under section 172, and

(D) any capital loss carryback to the taxable year under section 1212(a)(1).

(c) Charitable contribution defined.

For purposes of this section, the term "charitable contribution" means a contribution or gift to or for the use of—

(1) A State, a possession of the United States, or any political subdivision of any of the foregoing, or the United States or the District of Columbia, but only if the contribution or gift is made for exclusively public purposes.

(2) A corporation, trust, or community chest, fund, or foundation—

(A) created or organized in the United States or in any possession thereof, or under the law of the United States, any State, the District of Columbia, or any possession of the United States;

(B) organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals;

(C) no part of the net earnings of which inures to the benefit of any private shareholder or individual; and

(D) which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

A contribution or gift by a corporation to a trust, chest, fund, or foundation shall be deductible by reason of this paragraph only if it is to be used within the United States or any of its possessions exclusively for purposes specified in subparagraph (B). Rules similar to the rules of section 501(j) shall apply for purposes of this paragraph.

(3) A post or organization of war veterans, or an auxiliary unit or society of, or trust or foundation for, any such post or organization—

(A) organized in the United States or any of its possessions, and

(B) no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(4) In the case of a contribution or gift by an individual, a domestic fraternal society, order, or association, operating under the lodge system, but only if such contribution or gift is to be used exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals.

(5) A cemetery company owned and operated exclusively for the benefit of its members, or any corporation chartered solely for burial purposes as a cemetery corporation and not permitted by its charter to engage in any business not necessarily incident to that purpose, if such company or corporation is not operated for profit and no part of the net earnings of such company or corporation inures to the benefit of any private shareholder or individual.

For purposes of this section, the term "charitable contribution" also means an amount treated under subsection (g) as paid for the use of an organization described in paragraph (2), (3), or (4).

(d) Carryovers of excess contributions.

(1) Individuals.

(A) In general. In the case of an individual, if the amount of charitable contributions described in subsection (b)(1)(A) payment of which is made within a taxable year (hereinafter in this paragraph referred to as the "contribution year") exceeds 50 percent of the taxpayer's contribution base for such year, such excess shall be treated as a charitable contribution described in subsection (b)(1)(A) paid in each of the 5 succeeding taxable years in order of time, but, with respect to any such succeeding taxable year, only to the extent of the lesser of the two following amounts:

(i) the amount by which 50 percent of the taxpayer's contribution base for such succeeding taxable year exceeds the sum of the charitable contributions described in subsection (b)(1)(A) payment of which is made by the taxpayer within such succeeding taxable year (determined without regard to this subparagraph) and the charitable contributions described in subsection (b)(1)(A) payment of which was made in

taxable years before the contribution year which are treated under this subparagraph as having been paid in such succeeding taxable year; or

(ii) in the case of the first succeeding taxable year, the amount of such excess, and in the case of the second, third, fourth, or fifth succeeding taxable year, the portion of such excess not treated under this subparagraph as a charitable contribution described in subsection (b)(1)(A) paid in any taxable year intervening between the contribution year and such succeeding taxable year.

(B) Special rule for net operating loss carryovers. In applying subparagraph (A), the excess determined under subparagraph (A) for the contribution year shall be reduced to the extent that such excess reduces taxable income (as computed for purposes of the second sentence of section 172(b)(2)) and increases the net operating loss deduction for a taxable year succeeding the contribution year.

(2) Corporations.

(A) In general. Any contribution made by a corporation in a taxable year (hereinafter in this paragraph referred to as the "contribution year") in excess of the amount deductible for such year under subsection (b)(2) shall be deductible for each of the 5 succeeding taxable years in order of time, but only to the extent of the lesser of the two following amounts: (i) the excess of the maximum amount deductible for such succeeding taxable year under subsection (b)(2) over the sum of the contributions made in such year plus the aggregate of the excess contributions which were made in taxable years before the contribution year and which are deductible under this subparagraph for such succeeding taxable year; or (ii) in the case of the first succeeding taxable year, the amount of such excess contribution, and in the case of the second, third, fourth, or fifth succeeding taxable year, the portion of such excess contribution not deductible under this subparagraph for any taxable year intervening between the contribution year and such succeeding taxable year.

(B) Special rule for net operating loss carryovers. For purposes of subparagraph (A), the excess of—

(i) the contributions made by a corporation in a taxable year to which this section applies, over

(ii) the amount deductible in such year under the limitation in subsection (b)(2),

shall be reduced to the extent that such excess reduces taxable income (as computed for purposes of the second sentence of section 172(b)(2)) and increases a net operating loss carryover under section 172 to a succeeding taxable year.

(e) Certain contributions of ordinary income and capital gain property.

• ***Caution:*** Para. (e)(1), following, is effective for estates of decedents dying before 1/1/2010. For para. (e)(1), effective for estates of decedents dying after 12/31/2009, see below. For sunset provisions, see Sec. 901 of P.L. 107-16 reproduced in the history of this Code Sec.

(1) General rule. The amount of any charitable contribution of property otherwise taken into account under this section shall be reduced by the sum of—

(A) the amount of gain which would not have been long-term capital gain if the property contributed had been sold by the taxpayer at its fair market value (determined at the time of such contribution), and

(B) in the case of a charitable contribution—

(i) of tangible personal property, if the use by the donee is unrelated to the purpose or function constituting the basis for its exemption under section 501 (or, in the case of a governmental unit, to any purpose or function described in subsection (c)), or

(ii) to or for the use of a private foundation (as defined in section 509(a)), other than a private foundation described in subsection (b)(1)(E),

the amount of gain which would have been long-term capital gain if the property contributed had been sold by the taxpayer at its fair market value (determined at the time of such contribution).

For purposes of applying this paragraph (other than in the case of gain to which section 617(d)(1), 1245(a), 1250(a), 1252(a), or 1254(a) applies), property which is property used in the trade or business (as defined in section 1231(b)) shall be treated as a capital asset. For purposes of applying this paragraph in the case of a charitable contribution of stock in an S corporation, rules similar to the rules of section 751 shall apply in determining whether gain on such stock would have been long-term capital gain if such stock were sold by the taxpayer.

• ***Caution:*** Para. (e)(1), following, is effective for estates of decedents dying after 12/31/2009. For para. (e)(1), effective for estates of decedents dying before 1/1/2010, see above. For sunset provisions, see Sec. 901 of P.L. 107-16 reproduced in the history of this Code Sec.

(1) General rule. The amount of any charitable contribution of property otherwise taken into account under this section shall be reduced by the sum of—

(A) the amount of gain which would not have been long-term capital gain if the property contributed had been sold by the taxpayer at its fair market value (determined at the time of such contribution), and

(B) in the case of a charitable contribution—

(i) of tangible personal property, if the use by the donee is unrelated to the purpose or function constituting the basis for its exemption under section 501 (or, in the case of a governmental unit, to any purpose or function described in subsection (c)), or

(ii) to or for the use of a private foundation (as defined in section 509(a)), other than a private foundation described in subsection (b)(1)(E),

the amount of gain which would have been long-term capital gain if the property contributed had been sold by the taxpayer at its fair market value (determined at the time of such contribution).

For purposes of applying this paragraph (other than in the case of gain to which section 617(d)(1), 1245(a), 1250(a), 1252(a), or 1254(a) applies), property which is property used in the trade or business (as defined in section 1231(b)) shall be treated as a capital asset. For purposes of applying this paragraph in the case of a charitable contribution of stock in an S corporation, rules similar to the rules of section 751 shall apply in determining whether gain on such stock would have been long-term capital gain if such stock were sold by the taxpayer. For purposes of this paragraph, the determination of whether property is a capital asset shall be made without regard to the exception contained in section 1221(a)(3)(C) for basis determined under section 1022.

(2) Allocation of basis. For purposes of paragraph (1), in the case of a charitable contribution of less than the taxpayer's entire interest in the property contributed, the taxpayer's adjusted basis in such property shall be allocated between the interest contributed and any interest not contributed in accordance with regulations prescribed by the Secretary.

(3) Special rule for certain contributions of inventory and other property.

(A) Qualified contributions. For purposes of this paragraph, a qualified contribution shall mean a charitable contribution of property described in paragraph (1) or (2) of section 1221(a), by a corporation (other than a corporation which is an S corporation) to an organization which is described in section 501(c)(3) and is exempt under section 501(a) (other than a private foundation, as defined in section 509(a), which is not an operating foundation, as defined in section 4942(j)(3)), but only if—

(i) the use of the property by the donee is related to the purpose or function constituting the basis for its exemption under section 501 and the property is to be used by the donee solely for the care of the ill, the needy, or infants;

(ii) the property is not transferred by the donee in exchange for money, other property, or services;

(iii) the taxpayer receives from the donee a written statement representing that its use and disposition of the property will be in accordance with the provisions of clauses (i) and (ii); and

(iv) in the case where the property is subject to regulation under the Federal Food, Drug, and Cosmetic Act, as amended, such property must fully satisfy the applicable requirements of such Act and regulations promulgated thereunder on the date of transfer and for one hundred and eighty days prior thereto.

(B) Amount of reduction. The reduction under paragraph (1)(A) for any qualified contribution (as defined in subparagraph (A)) shall be no greater than the sum of—

(i) one-half of the amount computed under paragraph (1)(A) (computed without regard to this paragraph), and

(ii) the amount (if any) by which the charitable contribution deduction under this section for any qualified contribution (computed by taking into account the amount determined in clause (i), but without regard to this clause) exceeds twice the basis of such property.

(C) This paragraph shall not apply to so much of the amount of the gain described in paragraph (1)(A) which would be long-term capital gain but for the application of sections 617, 1245, 1250, or 1252.

(4) Special rule for contributions of scientific property used for research.

(A) Limit on reduction. In the case of a qualified research contribution, the reduction under paragraph (1)(A) shall be no greater than the amount determined under paragraph (3)(B).

(B) Qualified research contributions. For purposes of this paragraph, the term "qualified research contribution" means a charitable contribution by a corporation of tangible personal property described in paragraph (1) of section 1221(a), but only if—

(i) the contribution is to an organization described in subparagraph (A) or subparagraph (B) of section 41(e)(6),

(ii) the property is constructed by the taxpayer,

(iii) the contribution is made not later than 2 years after the date the construction of the property is substantially completed,

(iv) the original use of the property is by the donee,

(v) the property is scientific equipment or apparatus substantially all of the use of which by the donee is for research or experimentation (within the meaning of section 174), or for research training, in the United States in physical or biological sciences,

(vi) the property is not transferred by the donee in exchange for money, other property, or services, and

(vii) the taxpayer receives from the donee a written statement representing that its use and disposition of the property will be in accordance with the provisions of clauses (v) and (vi).

(C) Construction of property by taxpayer. For purposes of this paragraph, property shall be treated as constructed by the taxpayer only if the cost of the parts used in the construction of such property (other than parts manufactured by the taxpayer or a related person) do not exceed 50 percent of the taxpayer's basis in such property.

(D) Corporation. For purposes of this paragraph, the term "corporation" shall not include

(i) an S corporation,

(ii) a personal holding company (as defined in section 542), and

(iii) a service organization (as defined in section 414(m)(3)).

(5) Special rule for contributions of stock for which market quotations are readily available.

(A) In general. Subparagraph (B)(ii) of paragraph (1) shall not apply to any contribution of qualified appreciated stock.

(B) Qualified appreciated stock. Except as provided in subparagraph (C), for purposes of this paragraph, the term "qualified appreciated stock" means any stock of a corporation—

(i) for which (as of the date of the contribution) market quotations are readily available on an established securities market, and

(ii) which is capital gain property (as defined in subsection (b)(1)(C)(iv)).

(C) Donor may not contribute more than 10 percent of stock of corporation.

(i) In general. In the case of any donor, the term "qualified appreciated stock" shall not include any stock of a corporation contributed by the donor in a contribution to which paragraph (1)(B)(ii) applies (determined without regard to this paragraph) to the extent that the amount of the stock so contributed (when increased by the aggregate amount of all prior such contributions by the donor of stock in such corporation) exceeds 10 percent (in value) of all of the outstanding stock of such corporation.

(ii) Special rule. For purposes of clause (i), an individual shall be treated as making all contributions made by any member of his family (as defined in section 267(c)(4)).

(D) Repealed.

(6) Special rule for contributions of computer technology and equipment for educational purposes.

(A) Limit on reduction. In the case of a qualified computer contribution, the reduction under paragraph (1)(A) shall be no greater than the amount determined under paragraph (3)(B).

(B) Qualified computer contribution. For purposes of this paragraph, the term "qualified computer contribution" means a charitable contribution by a corporation of any computer technology or equipment, but only if —

(i) the contribution is to—

(I) an educational organization described in subsection (b)(1)(A)(ii),

(II) an entity described in section 501(c)(3) and exempt from tax under section 501(a) other than an entity described in subclause (I)) that is organized primarily for purposes of supporting elementary and secondary education, or

(III) a public library (within the meaning of section 213(2)(A) of the Library Services and Technology Act (20 U.S.C. 9122(2)(A)), as in effect on the date of the enactment of the Community Renewal Tax Relief Act of [1]*2000)*, established and maintained by an entity described in subsection (c)(1),

(ii) the contribution is made not later than 3 years after the date the taxpayer acquired the property (or in the case of property constructed by the taxpayer, the date the construction of the property is substantially completed),

(iii) the original use of the property is by the donor or the donee,

(iv) substantially all of the use of the property by the donee is for use within the United States for educational purposes that are related to the purpose or function of the donee,

(v) the property is not transferred by the donee in exchange for money, other property, or services, except for shipping, installation and transfer costs,

(vi) the property will fit productively into the donee's education plan,

(vii) the donee's use and disposition of the property will be in accordance with the provisions of clauses (iv) and (v), and

(viii) the property meets such standards, if any, as the Secretary may prescribe by regulation to assure that the property meets minimum functionality and suitability standards for educational purposes.

(C) Contribution to private foundation. A contribution by a corporation of any computer technology or equipment to a private foundation (as defined in section 509) shall be treated as a qualified computer contribution for purposes of this paragraph if—

(i) the contribution to the private foundation satisfies the requirements of clauses (ii) and (v) of subparagraph (B), and

(ii) within 30 days after such contribution, the private foundation—

(I) contributes the property to a donee described in clause (i) of subparagraph (B) that satisfies the requirements of clauses (iv) through (vii) of subparagraph (B), and

(II) notifies the donor of such contribution.

(D) Donations of property reacquired by manufacturer. In the case of property which is reacquired by the person who constructed the property—

(i) subparagraph (B)(ii) shall be applied to a contribution of such property by such person by taking into account the date that the original construction of the property was substantially completed, and

(ii) subparagraph (B)(iii) shall not apply to such contribution.

(E) Special rule relating to construction of property. For the purposes of this paragraph, the rules of paragraph (4)(C) shall apply.

(F) Definitions. For the purposes of this paragraph—

(i) Computer technology or equipment. The term "computer technology or equipment" means computer software (as defined by section 197(e)(3)(B)), computer or peripheral equipment (as defined by section 168(i)(2)(B)), and fiber optic cable related to computer use.

(ii) Corporation. The term "corporation" has the meaning given to such term by paragraph (4)(D).

(G) Termination. This paragraph shall not apply to any contribution made during any taxable year beginning after December 31, 2003.

(f) Disallowance of deduction in certain cases and special rules.

(1) In general. No deduction shall be allowed under this section for a contribution to or for the use of an organization or trust described in section 508(d) or 4948(c)(4) subject to the conditions specified in such sections.

(2) Contributions of property placed in trust.

(A) Remainder interest. In the case of property transferred in trust, no deduction shall be allowed under this section for the value of a contribution of a remainder interest unless the trust is a charitable remainder annuity trust or a charitable remainder unitrust (described in section 664), or a pooled income fund (described in section 642(c)(5)).

(B) Income interests, etc. No deduction shall be allowed under this section for the value of any interest in property (other than a remainder interest) transferred in trust unless the interest is in the form of a guaranteed annuity or the trust instrument specifies that the interest is a fixed percentage distributed yearly of the fair market value of the trust property (to be determined yearly) and the grantor is treated as the owner of such interest for purposes of applying section 671. If the donor ceases to be treated as the owner of such an interest for purposes of applying section 671, at the time the donor ceases to be so treated, the donor shall for purposes of this chapter be considered as having received an amount of income equal to the amount of any deduction he received under this section for the contribution reduced by the discounted value of all amounts of income earned by the trust and taxable to him before the time at which he ceases to be treated as the owner of the interest. Such amounts of income shall be discounted to the date of the contribution. The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subparagraph.

(C) Denial of deduction in case of payments by certain trusts. In any case in which a deduction is allowed under this section for the value of an interest in property described in subparagraph (B), transferred in trust, no deduction shall be allowed under this section to the grantor or any other person for the amount of any contribution made by the trust with respect to such interest.

(D) Exception. This paragraph shall not apply in a case in which the value of all interests in property transferred in trust are deductible under subsection (a).

(3) Denial of deduction in case of certain contributions of partial interests in property.

(A) In general. In the case of a contribution (not made by a transfer in trust) of an interest in property which consists of less than the taxpayer's entire interest in such property, a deduction shall be allowed under this section only to the extent that the value of the interest contributed would be allowable as a deduction under this section if such interest had been transferred in trust. For purposes of this subparagraph, a contribution by a taxpayer of the right to use property shall be treated as a contribution of less than the taxpayer's entire interest in such property.

(B) Exceptions. Subparagraph (A) shall not apply to—

(i) a contribution of a remainder interest in a personal residence or farm,

(ii) a contribution of an undivided portion of the taxpayer's entire interest in property, and

(iii) a qualified conservation contribution.

(4) Valuation of remainder interest in real property. For purposes of this section, in determining the value of a remainder interest in real property, depreciation (computed on the straight line method) and depletion of such property shall be taken into account, and such value shall be discounted at a rate of 6 percent per annum, except that the Secretary may prescribe a different rate.

(5) Reduction for certain interest. If, in connection with any charitable contribution, a liability is assumed by the recipient or by any other person, or if a charitable contribution is of property which is subject to a liability, then, to the extent necessary to avoid the duplication of amounts, the amount taken into account for purposes of this section as the amount of the charitable contribution—

(A) shall be reduced for interest (i) which has been paid (or is to be paid) by the taxpayer,

(ii) which is attributable to the liability, and

(iii) which is attributable to any period after the making of the contribution, and

(B) in the case of a bond, shall be further reduced for interest (i) which has been paid (or is to be paid) by the taxpayer on indebtedness incurred or continued to purchase or carry such bond, and (ii) which is attributable to any period before the making of the contribution.

The reduction pursuant to subparagraph (B) shall not exceed the interest (including interest equivalent) on the bond which is attributable to any period before the making of the contribution and which is not (under the taxpayer's method of accounting) includible in the gross income of the taxpayer for any taxable year. For purposes of this paragraph, the term "bond" means any bond, debenture, note, or certificate or other evidence of indebtedness.

(6) Deductions for out-of-pocket expenditures. No deduction shall be allowed under this section for an out-of-pocket expenditure made by any person on behalf of an organization described in subsection (c) (other than an organization described in section 501(h)(5) (relating to churches, etc.)) if the expenditure is made for the purpose of influencing legislation (within the meaning of section 501(c)(3)).

(7) Reformations to comply with paragraph (2).

(A) In general. A deduction shall be allowed under subsection (a) in respect of any qualified reformation (within the meaning of section 2055(e)(3)(B)).

(B) Rules similar to section 2055(e)(3) to apply. For purposes of this paragraph, rules similar to the rules of section 2055(e)(3) shall apply.

(8) Substantiation requirement for certain contributions.

(A) General rule. No deduction shall be allowed under subsection (a) for any contribution of $250 or more unless the taxpayer substantiates the contribution by a contem-

poraneous written acknowledgment of the contribution by the donee organization that meets the requirements of subparagraph (B).

(B) Content of acknowledgment. An acknowledgment meets the requirements of this subparagraph if it includes the following information:

(i) The amount of cash and a description (but not value) of any property other than cash contributed.

(ii) Whether the donee organization provided any goods or services in consideration, in whole or in part, for any property described in clause (i).

(iii) A description and good faith estimate of the value of any goods or services referred to in clause (ii) or, if such goods or services consist solely of intangible religious benefits, a statement to that effect.

For purposes of this subparagraph, the term "intangible religious benefit" means any intangible religious benefit which is provided by an organization organized exclusively for religious purposes and which generally is not sold in a commercial transaction outside the donative context.

(C) Contemporaneous. For purposes of subparagraph (A), an acknowledgment shall be considered to be contemporaneous if the taxpayer obtains the acknowledgment on or before the earlier of—

(i) the date on which the taxpayer files a return for the taxable year in which the contribution was made, or

(ii) the due date (including extensions) for filing such return.

(D) Substantiation not required for contributions reported by the donee organization. Subparagraph (A) shall not apply to a contribution if the donee organization files a return, on such form and in accordance with such regulations as the Secretary may prescribe, which includes the information described in subparagraph (B) with respect to the contribution.

(E) Regulations. The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this paragraph, including regulations that may provide that some or all of the requirements of this paragraph do not apply in appropriate cases.

(9) Denial of deduction where contribution for lobbying activities. No deduction shall be allowed under this section for a contribution to an organization which conducts activities to which section 162(e)(1) applies on matters of direct financial interest to the donor's trade or business, if a principal purpose of the contribution was to avoid Federal income tax by securing a deduction for such activities under this section which would be disallowed by reason of section 162(e) if the donor had conducted such activities directly. No deduction shall be allowed under section 162(a) for any amount for which a deduction is disallowed under the preceding sentence.

(10) Split-dollar life insurance, annuity, and endowment contracts.

(A) In general. Nothing in this section or in section 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522 shall be construed to allow a deduction, and no deduction shall be allowed, for any transfer to or for the use of an organization described in subsection (c) if in connection with such transfer—

(i) the organization directly or indirectly pays, or has previously paid, any premium on any personal benefit contract with respect to the transferor, or

(ii) there is an understanding or expectation that any person will directly or indirectly pay any premium on any personal benefit contract with respect to the transferor.

(B) Personal benefit contract. For purposes of subparagraph (A), the term "personal benefit contract" means, with respect to the transferor, any life insurance, annuity, or endowment contract if any direct or indirect beneficiary under such contract is the transferor, any member of the transferor's family, or any other person (other than an organization described in subsection (c)) designated by the transferor.

(C) Application to charitable remainder trusts. In the case of a transfer to a trust referred to in subparagraph (E), references in subparagraphs (A) and (F) to an organization described in subsection (c) shall be treated as a reference to such trust.

(D) Exception for certain annuity contracts. If, in connection with a transfer to or for the use of an organization described in subsection (c), such organization incurs an obligation to pay a charitable gift annuity (as defined in section 501(m)) and such organization purchases any annuity contract to fund such obligation, persons receiving payments under the charitable gift annuity shall not be treated for purposes of subparagraph (B) as indirect beneficiaries under such contract if—

(i) such organization possesses all of the incidents of ownership under such contract,

(ii) such organization is entitled to all the payments under such contract, and

(iii) the timing and amount of payments under such contract are substantially the same as the timing and amount of payments to each such person under such obligation (as such obligation is in effect at the time of such transfer).

(E) Exception for certain contracts held by charitable remainder trusts. A person shall not be treated for purposes of subparagraph (B) as an indirect beneficiary under any life insurance, annuity, or endowment contract held by a charitable remainder annuity trust or a charitable remainder unitrust (as defined in section 664(d)) solely by reason of being entitled to any payment referred to in paragraph (1)(A) or (2)(A) of section 664(d) if—

(i) such trust possesses all of the incidents of ownership under such contract, and

(ii) such trust is entitled to all the payments under such contract.

(F) Excise tax on premiums paid.

(i) In general. There is hereby imposed on any organization described in subsection (c) an excise tax equal to the premiums paid by such organization on any life insurance, annuity, or endowment contract if the payment of premiums on such contract is in connection with a transfer for which a deduction is not allowable under subparagraph (A), determined without regard to when such transfer is made.

(ii) Payments by other persons. For purposes of clause (i), payments made by any other person pursuant to an understanding or expectation referred to in subparagraph (A) shall be treated as made by the organization.

(iii) Reporting. Any organization on which tax is imposed by clause (i) with respect to any premium shall file an annual return which includes—

(I) the amount of such premiums paid during the year and the name and TIN of each beneficiary under the contract to which the premium relates, and

(II) such other information as the Secretary may require.

The penalties applicable to returns required under section 6033 shall apply to returns required under this clause. Returns required under this clause shall be furnished at such time and in such manner as the Secretary shall by forms or regulations require.

(iv) Certain rules to apply. The tax imposed by this subparagraph shall be treated as imposed by chapter 42 for purposes of this title other than subchapter B of chapter 42.

(G) Special rule where state requires specification of charitable gift annuitant in contract. In the case of an obligation to pay a charitable gift annuity referred to in subparagraph (D) which is entered into under the laws of a State which requires, in order for the charitable gift annuity to be exempt from insurance regulation by such State, that each beneficiary under the charitable gift annuity be named as a beneficiary under an annuity contract issued by an insurance company authorized to transact business in such State, the requirements of clauses (i) and (ii) of subparagraph (D) shall be treated as met if—

(i) such State law requirement was in effect on February 8, 1999,

(ii) each such beneficiary under the charitable gift annuity is a bona fide resident of such State at the time the obligation to pay a charitable gift annuity is entered into, and

(iii) the only persons entitled to payments under such contract are persons entitled to payments as beneficiaries under such obligation on the date such obligation is entered into.

(H) Member of family. For purposes of this paragraph, an individual's family consists of the individual's grandparents, the grandparents of such individual's spouse, the lineal descendants of such grandparents, and any spouse of such a lineal descendant.

(I) Regulations. The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this paragraph, including regulations to prevent the avoidance of such purposes.

(g) Amounts paid to maintain certain students as members of taxpayer's household.

(1) In general. Subject to the limitations provided by paragraph (2), amounts paid by the taxpayer to maintain an individual (other than a dependent, as defined in section 152, or a relative of the taxpayer) as a member of his household during the period that such individual is—

(A) a member of the taxpayer's household under a written agreement between the taxpayer and an organization described in paragraph (2), (3), or (4) of subsection (c) to implement a program of the organization to provide educational opportunities for pupils or students in private homes, and

(B) a full-time pupil or student in the twelfth or any lower grade at an educational organization described in section 170(b)(1)(A)(ii) located in the United States,

shall be treated as amounts paid for the use of the organization.

(2) Limitations.

(A) Amount. Paragraph (1) shall apply to amounts paid within the taxable year only to the extent that such amounts do not exceed $50 multiplied by the number of full calendar months during the taxable year which fall within the period described in paragraph (1). For purposes of the preceding sentence, if 15 or more days of a calendar month fall within such period such month shall be considered as a full calendar month.

(B) Compensation or reimbursement. Paragraph (1) shall not apply to any amount paid by the taxpayer within the taxable year if the taxpayer receives any money or other property as compensation or reimbursement for maintaining the individual in his household during the period described in paragraph (1).

(3) Relative defined. For purposes of paragraph (1), the term "relative of the taxpayer" means an individual who, with respect to the taxpayer, bears any of the relationships described in paragraphs (1) through (8) of section 152(a).

(4) No other amount allowed as deduction. No deduction shall be allowed under subsection (a) for any amount paid by a taxpayer to maintain an individual as a member of his household under a program described in paragraph (1)(A) except as provided in this subsection.

(h) Qualified conservation contribution.

(1) In general. For purposes of subsection (f)(3)(B)(iii), the term "qualified conservation contribution" means a contribution—

(A) of a qualified real property interest,

(B) to a qualified organization,

(C) exclusively for conservation purposes.

(2) Qualified real property interest. For purposes of this subsection, the term "qualified real property interest" means any of the following interests in real property:

(A) the entire interest of the donor other than a qualified mineral interest,

(B) a remainder interest, and

(C) a restriction (granted in perpetuity) on the use which may be made of the real property.

(3) **Qualified organization.** For purposes of paragraph (1), the term "qualified organization" means an organization which—

(A) is described in clause (v) or (vi) of subsection (b)(1)(A), or

(B) is described in section 501(c)(3) and—

(i) meets the requirements of section 509(a)(2), or

(ii) meets the requirements of section 509(a)(3) and is controlled by an organization described in subparagraph (A) or in clause (i) of this subparagraph.

(4) Conservation purpose defined.

(A) In general. For purposes of this subsection, the term "conservation purpose" means—

(i) the preservation of land areas for outdoor recreation by, or the education of, the general public,

(ii) the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem,

(iii) the preservation of open space (including farmland and forest land) where such preservation is—

(I) for the scenic enjoyment of the general public, or

(II) pursuant to a clearly delineated Federal, State, or local governmental conservation policy,

and will yield a significant public benefit, or

(iv) the preservation of an historically important land area or a certified historic structure.

(B) Certified historic structure. For purposes of subparagraph (A)(iv), the term "certified historic structure" means any building, structure, or land area which—

(i) is listed in the National Register, or

(ii) is located in a registered historic district (as defined in section 47(c)(3)(B)) and is certified by the Secretary of the Interior to the Secretary as being of historic significance to the district.

A building, structure, or land area satisfies the preceding sentence if it satisfies such sentence either at the time of the transfer or on the due date (including extensions) for filing the transferor's return under this chapter for the taxable year in which the transfer is made.

(5) Exclusively for conservation purposes. For purposes of this subsection—

(A) Conservation purpose must be protected. A contribution shall not be treated as exclusively for conservation purposes unless the conservation purpose is protected in perpetuity.

(B) No surface mining permitted.

(i) In general. Except as provided in clause (ii), in the case of a contribution of any interest where there is a retention of a qualified mineral interest, subparagraph (A) shall not be treated as met if at any time there may be extraction or removal of minerals by any surface mining method.

(ii) Special rule. With respect to any contribution of property in which the ownership of the surface estate and mineral interests has been and remains separated, subparagraph (A) shall be treated as met if the probability of surface mining occurring on such property is so remote as to be negligible.

(6) Qualified mineral interest. For purposes of this subsection, the term "qualified mineral interest" means—

(A) subsurface oil, gas, or other minerals, and

(B) the right to access to such minerals.

(i) Standard mileage rate for use of passenger automobile.

For purposes of computing the deduction under this section for use of a passenger automobile, the standard mileage rate shall be 14 cents per mile.

(j) Denial of deduction for certain travel expenses.

No deduction shall be allowed under this section for traveling expenses (including amounts expended for meals and lodging) while away from home, whether paid directly or by reimbursement, unless there is no significant element of personal pleasure, recreation, or vacation in such travel.

(k) Disallowance of deductions in certain cases.

For disallowance of deductions for contributions to or for the use of communist controlled organizations, see section 11(a) of the Internal Security Act of 1950 (50 U.S.C. 790).

(l) Treatment of certain amounts paid to or for the benefit of institutions of higher education.

(1) In general. For purposes of this section, 80 percent of any amount described in paragraph (2) shall be treated as a charitable contribution.

(2) Amount described. For purposes of paragraph (1), an amount is described in this paragraph if—

(A) the amount is paid by the taxpayer to or for the benefit of an educational organization—

(i) which is described in subsection (b)(1)(A)(ii), and

(ii) which is an institution of higher education (as defined in section 3304(f)), and

(B) such amount would be allowable as a deduction under this section but for the fact that the taxpayer receives (directly or indirectly) as a result of paying such amount the right to purchase tickets for seating at an athletic event in an athletic stadium of such institution.

If any portion of a payment is for the purchase of such tickets, such portion and the remaining portion (if any) of such payment shall be treated as separate amounts for purposes of this subsection.

(m) Other cross references.

(1) For treatment of certain organizations providing child care, see section 501(k).

(2) For charitable contributions of estates and trusts, see section 642(c).

(3) For nondeductibility of contributions by common trust funds, see section 584.

(4) For charitable contributions of partners, see section 702.

(5) For charitable contributions of nonresident aliens, see section 873.

(6) For treatment of gifts for benefit of or use in connection with the Naval Academy as gifts to or for the use of the United States, see section 6973 of title 10, United States Code.

(7) For treatment of gifts accepted by the Secretary of State, the Director of the International Communication Agency, or the Director of the United States International Development Cooperation Agency, as gifts to or for the use of the United States, see section 25 of the State Department Basic Authorities Act of 1956.

(8) For treatment of gifts of money accepted by the Attorney General for credit to the "Commissary Funds, Federal Prisons" as gifts to or for the use of the United States, see section 4043 of title 18, United States Code.

(9) For charitable contributions to or for the use of Indian Tribal governments (or their subdivisions), see section 7871.

[Endnote IRC §170]

Matter in *italics* in IRC §170(e)(6)(B)(i)(III) added by Sec. 417(7) of the Job Creation and Worker Assistance Act of 2002, P.L. 107-147, 3/9/2002, which struck out:

1. "2000,"

Effective Date effective 3/9/2002.