reasonably be expected to be safe. Any reference to published information offered in support of the notification shall be accompanied by reprints or photostatic copies of such references. If any part of the material submitted is in a foreign language, it shall be accompanied by an accurate and complete English translation; and

(5) The signature of an authorized official of the manufacturer or distributor of the dietary supplement that contains the new dietary ingredient.

(c) The date that the agency receives the notification submitted under paragraph (a) of this section is the filing date for the notification. For 75 days after the filing date, the manufacturer or distributor of a dietary supplement that contains a new dietary ingredient shall not introduce, or deliver for introduction, into interstate commerce the dietary supplement that contains the new dietary ingredient.

(d) If the manufacturer or distributor of a dietary supplement that contains a new dietary ingredient, or of the new dietary ingredient, provides additional information in support of the new dietary ingredient notification, the date of receipt by FDA of the additional information in support of the new dietary ingredient notification shall constitute the filling date.

(e) FDA will not disclose the existence of, or the information contained in, the new dietary ingredient notification for 90 days after the filing date of the notification. After the 90th day, all information in the notification will be placed on public display, except for any information that is trade secret or otherwise confidential commercial information.

(f) Failure of the agency to respond to a notification does not constitute a finding by the agency that the new dietary ingredient or the dietary supplement that contains the new dietary ingredient is safe or is not adulterated under section 402 of the act.

Dated: September 19, 1996.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 96–24752 Filed 9–26–96; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–209826–96]

RIN 1545–AU29

Application of the Grantor Trust Rules to Nonexempt Employees' Trusts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the application of the grantor trust rules to nonexempt employees' trusts. The proposed regulations clarify that the grantor trust rules generally do not apply to domestic nonexempt employees' trusts, and clarify the interaction between the grantor trust rules, the rules generally governing the taxation of nonqualified deferred compensation arrangements, and the antideferral rules for United States persons holding interests in foreign entities. The proposed regulations affect nonexempt employees' trusts funding deferred compensation arrangements, as well as U.S. persons holding interests in certain foreign corporations and foreign partnerships with deferred compensation arrangements funded through foreign nonexempt employees' trusts. In addition, the proposed regulations affect U.S. persons that have deferred compensation arrangements funded through certain foreign nonexempt employees' trusts. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by December 26, 1996. Requests to speak (with outlines of oral comments to be discussed) at the public hearing scheduled for January 15, 1997, at 10:00 a.m. must be submitted by December 24, 1996.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–209826–96), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–209826–96), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, James A. Quinn, (202) 622–3060; Linda S. F. Marshall, (202) 622–6030; Kristine K. Schlaman (202) 622–3840; and M. Grace Fleeman (202) 622–3850; concerning submissions and the hearing, Michael Slaughter, (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224. Comments on the collection of information should be received by November 26, 1996. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this proposed regulation is in § 1.671–1(h)(3)(iii). This information is required by the IRS to determine accurately the portion of certain foreign employees' trusts properly treated as owned by the employer. This information will be used to notify the Commissioner that certain

entities are relying on an exception for reasonable funding. The collection of information is mandatory. The likely respondents are businesses or other for-profit organizations.

Estimated total annual reporting burden: 1,000 hours.

The estimated annual burden per respondent varies from .5 hours to 1.5 hours, depending on individual circumstances, with an estimated average of 1 hour.

Estimated number of respondents: 1,000.

Estimated annual frequency of responses: On occasion.

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 assigned by the Office of Management and Budget.

Books or 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

On May 7, 1993, the IRS issued proposed regulations under section 404A (58 FR 27219). The section 404A proposed regulations provide that section 404A is the exclusive means by which an employer may take a deduction or reduce earnings and profits for amounts used to fund deferred compensation in situations other than those in which a deduction or reduction of earnings and profits is permitted under section 404 (the ''exclusive means'' rule).

The section 404A proposed regulations do not provide rules regarding the treatment of income and ownership of assets of foreign trusts established to fund deferred compensation arrangements, but refer to ''other applicable provisions,'' including the grantor trust rules of subpart E of the Internal Revenue Code of 1986, as amended. Thus, the 1993 proposed section 404A regulations imply that, if an employer cannot or does not elect section 404A treatment for a foreign trust established to fund the employer's deferred compensation arrangements, the employer may be treated as the owner of the entire trust for purposes of subtitle A of the Code under sections 671 through 679 even though all or part of the trust assets are set aside for purposes of satisfying liabilities under the plan. Conversely, some commentators believe that, for U.S. tax purposes, a foreign employer would not be treated as the owner of any portion of a foreign trust established to fund a section 404A qualified foreign plan even though all or part of the trust assets might be used for purposes other than satisfying liabilities under the plan. A number of different rules, in addition to the grantor trust rules, potentially affect the taxation of foreign trusts established to fund deferred compensation arrangements. These rules include: the nonexempt deferred compensation trust rules of sections 402(b) and 404(a)(5); the partnership rules of subchapter K; and the antideferral rules, which include subpart F and the passive foreign investment company (PFIC) rules (sections 1291 through 1297).

Following publication of the proposed 1993 regulations and enactment of section 956A in August of 1993, comments were received concerning both the asset ownership rules for foreign employees' trusts and the ''exclusive means'' rule for deductions or reductions in earnings and profits. These proposed regulations address only comments concerning income and asset ownership rules for foreign employees' trusts for federal income tax purposes. A foreign employees' trust is a nonexempt employees' trust described in section 402(b) that is part of a deferred compensation plan, and that is a foreign trust within the meaning of section 7701(a)(31). Comments concerning the ''exclusive means'' rule will be addressed in future regulations.

Statutory Background

1. Transfers of Property Not Complete for Tax Purposes

In certain situations, assets that are owned by a trust as a legal matter may be treated as owned by another person for tax purposes. Thus, assets may be treated as owned by a pension trust for non-tax legal purposes but not for tax purposes. This occurs, for example, if the person who has purportedly transferred assets to the trust retains the benefits and burdens of ownership. *See, e.g., Frank Lyon Co.* v. *United States,* 435 U.S. 561 (1978); *Corliss* v. *Bowers,* 281 U.S. 376 (1930); *Grodt & McKay Realty, Inc.* v. *Commissioner,* 77 T.C. 1221 (1981); Rev. Proc. 75–21 (1975–1 C.B. 715). If, under these principles, no assets have been transferred to an employees' trust for federal tax purposes, these proposed regulations do not apply.

2. Subpart E—Grantors and Others Treated as Substantial Owners

Even if there has been a completed transfer of trust assets, the subpart E rules may apply to treat the grantor as the owner of a portion of the trust for federal income tax purposes. Subpart E of part I of subchapter J, chapter 1 of the Code (sections 671 through 679) taxes income of a trust to the grantor or another person notwithstanding that the grantor or other person may not be a beneficiary of the trust. Under section 671, a grantor or another person includes in computing taxable income and credits those items of income, deduction, and credit against tax that are attributable to or included in any portion of a trust of which that person is treated as the owner.

Sections 673 through 679 set forth the rules for determining when the grantor or another person is treated as the owner of a portion of a trust for federal income tax purposes. Under sections 673 through 678, the grantor trust rules apply only if the grantor or other person has certain powers or interests. For example, section 676 provides that the grantor is treated as the owner of a portion of a trust where, at any time, the power to revest in the grantor title to that portion is exercisable by the grantor or a nonadverse party, or both. A grantor who is the owner of a trust under subpart E is treated as the owner of the trust property for federal income tax purposes. See Rev. Rul. 85–13 (1985–1 C.B. 184). This document is made available by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

Section 679 generally applies to a U.S. person who directly or indirectly transfers property to a foreign trust, subject to certain exceptions described below. Section 679 generally treats a U.S. person transferring property to a foreign trust as the owner of the portion of the trust attributable to the transferred property for any taxable year of that person for which there is a U.S. beneficiary of any portion of the trust. In general, a trust is treated as having a U.S. beneficiary for a taxable year of the U.S. transferor unless, under the terms of the trust, no part of the income or corpus of the trust may be paid or accumulated during the taxable year to or for the benefit of a U.S. person, and unless no part of the income or corpus of the trust could be paid to or for the benefit of a U.S. person if the trust were terminated at any time during the taxable year. A U.S. person is treated as having made an indirect transfer to the foreign trust of property if a non-U.S. person acts as a conduit with respect to the transfer or if the U.S. person has sufficient control over the non-U.S. person to direct the transfer by the non-U.S. person rather than itself.

Section 679(a) provides several exceptions from the application of section 679 for certain compensatory trusts. Under these exceptions, section 679 does not apply to a trust described in section 404(a)(4) or section 404A. Pursuant to amendments made in section 1903(b) of the Small Business Job Protection Act of 1996 (SBJPA), section 679 also does not apply to any transfer of property after February 6, 1995, to a trust described in section 402(b).

3. Taxability of Beneficiary of Nonexempt Employees' Trust

Section 402(b) provides rules for the taxability of beneficiaries of a nonexempt employees' trust. Under section 402(b)(1), employer contributions to a nonexempt employees' trust generally are included in the gross income of the employee in accordance with section 83. Section 402(b)(2) provides that amounts distributed or made available from a nonexempt employees' trust generally are taxable to the distributee under the rules of section 72 in the taxable year in which distributed or made available. Section 402(b)(4) provides that, under certain circumstances, a highly compensated employee is taxed each year on the employee's vested accrued benefit (other than the employee's investment in the contract) in a nonexempt employees' trust. Under section 402(b)(3), a beneficiary of a nonexempt employees' trust generally is not treated as the owner of any portion of the trust under subpart E. The rules of section 402(b) apply to a beneficiary of a nonexempt employees' trust regardless of whether the trust is a domestic trust or a foreign trust.

4. Employer Deduction for Contributions to a Nonexempt Employees' Trust

Section 404(a)(5) provides rules regarding the deductibility of contributions to a nonqualified deferred compensation plan. Under section 404(a)(5), any contribution paid by an employer under a deferred compensation plan, if otherwise deductible under chapter 1 of the Code, is deductible only in the taxable year in which an amount attributable to the contribution is includible in the gross income of employees participating in the plan, and only if separate accounts are maintained for each employee. Section 1.404(a)–12(b)(1) clarifies that an employer's deduction for contributions to a nonexempt employees' trust is restricted to the amount of the contribution, and excludes any income received by the trust with respect to contributed amounts.

5. The Partnership Rules of Subchapter K

A partnership is not subject to income taxation. However, a partner must take into account separately on its return its distributive share of the partnership's income, gain, loss, deduction, or credit. A U.S. partner of a foreign partnership is subject to U.S. tax on its distributive share of partnership income. In addition, a foreign partnership may have a controlled foreign corporation (CFC) partner which must take into account its distributive share of partnership income, gain, loss, or deduction in determining its taxable income. These distributive share inclusions of the CFC may result in subpart F income and thus income to a U.S. shareholder of the CFC. If the grantor trust rules do not apply to any portion of a foreign employees' trust, a foreign partnership could fund a foreign employees' trust in excess of the amount needed to meet its obligations to its employees under its deferred compensation plan and yet retain control over the excess amount. As a result, the foreign partnership would not have to include items in taxable income attributable to the excess amount, and consequently the U.S. partner or CFC would not have to include those items in its income.

6. The Antideferral Rules of Subpart F, Including Section 956A, and PFIC

A U.S. person that owns stock in a foreign corporation generally pays no U.S. tax currently on income earned by the foreign corporation. Instead, the United States defers taxation of that income until it is distributed to the U.S. person. The antideferral rules, however, which include subpart F and the PFIC rules, limit this deferral in certain situations.

Subpart F of part III of Subchapter N (sections 951 through 964) applies to CFCs. A foreign corporation is a CFC if more than 50 percent of the total voting power of all classes of stock entitled to vote, or the total value of the stock in the corporation, is owned by ''U.S. shareholders'' (defined as U.S. persons who own ten percent or more of the voting power of all classes of stock entitled to vote) on any day during the foreign corporation's taxable year. The United States generally taxes U.S. shareholders of the CFC currently on their pro rata share of the CFC's subpart F income and sections 956 and 956A amounts. In effect, the U.S. shareholders are treated as having received a distribution out of the earnings and profits (E&P) of the CFC.

The types of income earned by a foreign employees' trust (dividends, interest, income equivalent to interest, rents and royalties, and annuities) are generally subpart F income. The inclusion under section 956 is based on the CFC's investment in U.S. property, which generally includes stock of a U.S. shareholder of the CFC. A U.S. shareholder's section 956A amount for a taxable year is the lesser of two amounts. The first amount is the excess of the U.S. shareholder's pro rata share of the CFC's ''excess passive assets'' over the portion of the CFC's E&P treated as previously included in gross income by the U.S. shareholder under section 956A. For purposes of section 956A, ''passive asset'' includes any asset which produces (or is held for the production of) passive income, and generally includes property that produces dividends, interest, income equivalent to interest, rents and royalties, and annuities, subject to exceptions that generally are not relevant in this context. The second amount is the U.S. shareholder's pro rata share of the CFC's ''applicable earnings'' to the extent accumulated in taxable years beginning after September 30, 1993.

Section 1501(a)(2) of SBJPA repeals section 956A. The repeal is effective for taxable years of foreign corporations beginning after December 31, 1996, and for taxable years of U.S. shareholders with or within which such taxable years of foreign corporations end.

If a CFC employer is not treated for federal income tax purposes as the owner of any portion of a foreign employees' trust under the grantor trust rules, then to the extent that passive assets contributed by a CFC to a nonexempt employees' trust would otherwise result in subpart F consequences for the CFC and its shareholders, the CFC's contribution could allow those consequences to be avoided. For example, a contribution by a CFC of passive assets to its foreign employees' trust could reduce the CFC's subpart F earnings and profits, and its applicable earnings or passive assets for section 956A purposes, and could affect the CFC's increase in investment in U.S. property for purposes of section 956, all of which could affect a U.S. shareholder's pro rata subpart F inclusions for the taxable year.

In contrast to the subpart F rules, the PFIC rules apply to any U.S. person who directly or indirectly owns any stock in a foreign corporation that is a PFIC under either an income or asset test. A foreign corporation, including a CFC, is

a PFIC if either (1) 75 percent or more of its gross income for the taxable year is passive income or (2) at least 50 percent of the value of the corporation's assets produce passive income or are held for the production of passive income. For this purpose, passive income generally is the same type of income (dividends, interest, income equivalent to interest, rents and royalties, and annuities) that would be earned by a foreign employees' trust.

Under the PFIC rules, a U.S. person who is a direct or indirect shareholder of a PFIC is subject to a special tax regime upon either disposition of the PFIC's stock or receipt of certain distributions (excess distributions) from the PFIC. A shareholder, however, may avoid the application of this special regime by electing to include its pro rata share of certain of the PFIC's passive income in the year in which the foreign corporation earns it.

If the grantor trust rules did not apply to any portion of a foreign employees' trust, a contribution by a foreign corporation of passive assets to a nonexempt employees' trust would enable a U.S. person to avoid the PFIC rules if those assets would otherwise generate PFIC consequences for the foreign corporation and its shareholders. For example, by transferring passive assets to its nonexempt employees' trust in excess of the amount needed to meet obligations to its employees under its deferred compensation plan while retaining control over the excess amount, a foreign corporation could divest itself of a sufficient amount of passive assets and the passive income they produce to avoid meeting the income and asset tests. Furthermore, a foreign corporation that is a PFIC could minimize income inclusions for a U.S. shareholder that has made an election to include PFIC income currently by transferring income-producing assets to a foreign employees' trust.

Overview of Proposed Regulations

Under the proposed regulations, an employer is not treated as an owner of any portion of a domestic nonexempt employees' trust described in section 402(b) for federal income tax purposes. Section 404(a)(5) and § 1.404(a)–12(b) provide a deduction to the employer solely for contributions to a nonexempt employees' trust, and not for any income of the trust. This rule is inconsistent with treating the employer as owning any portion of a nonexempt employees' trust, which would require the employer to recognize the trust's income that it may not deduct under section 404(a)(5). Accordingly, such a trust is treated as a separate taxable trust that is taxed under the rules of section 641 et seq. The rule in the proposed regulations is consistent with the holdings of a number of private letter rulings with respect to nonexempt employees' trusts and with the Service's treatment of trusts that no longer qualify as exempt under 501(a) (because they are no longer described in section 401(a)) as separate taxable trusts rather than as grantor trusts. See also Rev. Rul. 74–299 (1974–1 C.B. 154). This document is made available by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

Under the proposed regulations, an employer generally is not treated as the owner of any portion of a foreign nonexempt employees' trust for federal income tax purposes, except as provided under section 679. The proposed regulations, however, also provide that the grantor trust rules apply to determine whether an employer that is a CFC or a U.S. employer is treated as the owner of a specified ''fractional interest'' in a foreign employees' trust. This rule applies whether or not the employer elects section 404A treatment for the trust. Under the proposed regulations, this rule also applies in the case of an employer that is a foreign partnership with one or more partners that are U.S. persons or CFCs (U.S.-related partnership). Such an employer is treated as the owner of a portion of a foreign employees' trust under these proposed regulations only if the employer retains a grantor trust power or interest over a foreign employees' trust and has a specified ''fractional interest'' in the trust.

Under these proposed regulations, the grantor trust rules of subpart E do not apply to a foreign employees' trust with respect to a foreign employer other than a CFC or a U.S.-related foreign partnership, except for cases in which assets are transferred to a foreign employees' trust with a principal purpose of avoiding the PFIC rules. The IRS and Treasury will continue to consider whether these regulations should provide additional antiabuse rules that may be necessary for other purposes, including for purposes of calculating earnings and profits, determining the foreign tax credit limitation, and applying the interest allocation rules of § 1.882–5.

Explanation of Provisions

1. § 1.671–1(g): Domestic Nonexempt Employees' Trusts

The proposed regulations provide that an employer is not treated for federal income tax purposes as an owner of any portion of a nonexempt employees' trust described in section 402(b) that is part of a deferred compensation plan, and that is not a foreign trust within the meaning of section 7701(a)(31), regardless of whether the employer has a power or interest described in sections 673 through 677 over any portion of the trust. This rule is analogous to the rule set forth in § 1.641(a)–0, which provides that subchapter J, including the grantor trust rules, does not apply to tax-exempt employees' trusts.

2. § 1.671–1(h): Subpart E Rules for Certain Foreign Employees' Trusts

The proposed regulations provide Subpart E rules for foreign employees' trusts of CFCs, foreign partnerships, and U.S. employers that apply for all federal income tax purposes. Under the proposed regulations, except as provided under section 679 or the proposed regulations (as described below), an employer is not treated as an owner of any portion of a foreign employees' trust for federal income tax purposes. If an employer is treated as the owner of a portion of a foreign employees' trust for federal income tax purposes as described below, then the employer is considered to own the trust assets attributable to that portion of the trust for all federal income tax purposes. Thus, for example, if an employer is treated as the owner of a portion of a foreign employees' trust for federal income tax purposes as described below, then income of the trust that is attributable to that portion of the trust increases the employer's earnings and profits for purposes of sections 312 and 964.

A foreign employees' trust is a nonexempt employees' trust described in section 402(b) that is part of a deferred compensation plan, and that is a foreign trust within the meaning of section 7701(a)(31). The proposed regulations apply to any foreign employees' trust of a CFC or U.S.-related foreign partnership, whether or not a trust funds a qualified foreign plan (as defined in section 404A(e)). The proposed regulations clarify that the income inclusion and asset ownership rules apply to the entity whose employees or independent contractors are covered under the deferred compensation plan.

A. Plan of CFC Employer

The proposed regulations provide that, if a CFC maintains a deferred compensation plan funded through a foreign employees' trust, then, with respect to the CFC, the provisions of subpart E apply to the portion of the

trust that is the fractional interest of the trust described in the proposed regulations.

B. Plan of U.S. Employer

The proposed regulations provide that if a U.S. person maintains a deferred compensation plan funded through a foreign employees' trust, then, with respect to the U.S. person, the provisions of subpart E apply to the portion of the trust that is the fractional interest of the trust described in the proposed regulations.

C. Plan of U.S.-Related Foreign Partnership Employer

The proposed regulations provide that, if a U.S.-related foreign partnership maintains a deferred compensation plan funded through a foreign employees' trust, then, with respect to the U.S.-related foreign partnership, the provisions of subpart E apply to the portion of the trust that is the fractional interest of the trust described in the proposed regulations. The IRS and Treasury solicit comments on whether these regulations should provide a safe harbor rule for a U.S.-related foreign partnership that maintains a deferred compensation plan funded through a foreign employees' trust if U.S. or CFC partnership interests are de minimis. The IRS and Treasury specifically solicit comments concerning the amount of U.S. or CFC partnership interests that would qualify as ''de minimis.''

D. Plan of Non-CFC Foreign Employer

The proposed regulations provide that a foreign employer that is not a CFC is treated as an owner of a portion of a foreign employees' trust only as provided in the antiabuse rule of § 1.1297–4.

E. Fractional Interest

The fractional interest of a foreign employees' trust described above is defined in the proposed regulations as an undivided fractional interest in the trust for which the fraction is equal to the relevant amount determined for the employer's taxable year divided by the fair market value of trust assets determined for the employer's taxable year.

F. Relevant Amount

The relevant amount for the employer's taxable year is defined in the proposed regulations as the amount, if any, by which the fair market value of trust assets, plus the fair market value of any assets available to pay plan liabilities (including any amount held under an annuity contract that exceeds the amount that is needed to satisfy the liabilities provided for under the contract) that are held in the equivalent of a trust within the meaning of section 404A(b)(5)(A), exceed the plan's accrued liability, determined using a projected unit credit funding method.

The relevant amount is reduced to the extent the taxpayer demonstrates to the Commissioner that the relevant amount is attributable to amounts that were properly contributed to the trust pursuant to a reasonable funding method, or experience that is favorable relative to any actuarial assumptions used that the Commissioner determines to be reasonable. In addition, if an employer that is a controlled foreign corporation otherwise would be treated as the owner of a fractional interest in a foreign employees' trust, the taxpayer may rely on this rule only if it so indicates on a statement attached to a timely filed Form 5471. The IRS and Treasury solicit comments regarding the most appropriate way in which to extend a filing requirement to partners in U.S.-related foreign partnerships and other affected taxpayers.

G. Plan's Accrued Liability

Under the proposed regulations, the plan's accrued liability for a taxable year of the employer is computed as of the plan's measurement date for the employer's taxable year. The plan's accrued liability is determined using a projected unit credit funding method, taking into account only liabilities relating to services performed for the employer or a predecessor employer. In addition, the plan's accrued liability is reduced (but not below zero) by any liabilities that are provided for under annuity contracts held to satisfy plan liabilities.

Because CFCs generally are required to determine their taxable income by reference to U.S. tax principles, the definition of a plan's ''accrued liability'' refers to § 1.412(c)(3)–1. This definition generally is intended to track the method used for calculating pension costs under Statement of Financial Accounting Standards No. 87, Employers' Accounting for Pensions (FAS 87), available from the Financial Accounting Standards Board, 401 Merritt 7, Norwalk, CT 06856. Under the method required to be used to calculate FAS 87's projected benefit obligation (PBO), plan costs are based on projected salary levels. Because many taxpayers already compute PBO annually to determine the pension costs of their nonexempt employees' trusts for financial reporting, the timing, interval and method to compute plan liabilities under § 1.671–1(h) should minimize taxpayer burden. The IRS and Treasury solicit comments regarding the extent to which the proposed regulations conform to existing procedures under FAS 87 and applicable foreign law, and regarding appropriate conforming adjustments.

H. Fair Market Value of Trust Assets

Under the proposed regulations, for a taxable year of the employer, the fair market value of trust assets, and the fair market value of retirement annuities or other assets held in the equivalent of a trust, equals the fair market value of those assets, as of the measurement date for the employer's taxable year. The fair market value of these assets is adjusted to include contributions made between the measurement date and the end of the employer's taxable year.

I. De Minimis Exception

The proposed regulations provide an exception to the general rule for determining the relevant amount. If the relevant amount would not otherwise be greater than the plan's normal cost for the plan year ending with or within the employer's taxable year, then the relevant amount is considered to be zero.

J. Proposed Effective Date and Transition Rules

The proposed regulations are proposed to be prospective. For taxable years ending prior to September 27, 1996, employers generally would not be treated for federal income tax purposes as owning the assets of foreign nonexempt employees' trusts (except as provided under section 679), consistent with the rules applying to domestic nonexempt employees' trusts. A transition rule, for purposes of § 1.671–1(h), exempts certain amounts from the application of the proposed regulations. This exemption is phased out over a ten-year period. There is a special transition rule for any foreign corporation that becomes a CFC after September 27, 1996. In addition, there is a special transition rule for certain entities that become U.S.-related foreign partnerships after September 27, 1996.

3. § 1.671–2: General Asset Ownership Rules

The proposed regulations provide that a person who is treated as the owner of any portion of a trust under subpart E is considered to own the trust assets attributable to that portion of the trust for all federal income tax purposes.

4. § 1.1297–4: Subpart E Rules for Foreign Employers That Are Not Controlled Foreign Corporations

Under the proposed regulations, a foreign employer other than a CFC is not treated as the owner of any portion of a foreign nonexempt employees' trust for purposes of sections 1291 through 1297, except for cases in which a principal purpose for transferring property to the trust is to avoid classification of a foreign corporation as a PFIC (as defined in section 1296) or, if the foreign corporation is classified as a PFIC, in cases in which a principal purpose for transferring property to the trust is to avoid or to reduce taxation of U.S. shareholders of the PFIC under section 1291 or 1293. The effective date of this rule is September 27, 1996.

Income Inclusion and Related Asset Ownership Rules for Foreign Welfare Benefit Plans

The IRS and Treasury solicit comments on the need for (and content of) income inclusion and asset ownership rules for foreign welfare benefit trusts.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations do not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations will primarily affect U.S. owners of significant interests in foreign entities, which owners generally are large multinational corporations. This certification is also based on the fact that the burden imposed by the collection of information in the regulation, which is a requirement that certain entities may rely on an exception for reasonable funding only if they indicate such reliance on a statement attached to a timely filed Form 5471, is minimal, and, therefore, the collection of information will not impose a significant economic impact on such entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for January 15, 1997, at 10:00 a.m. in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments by December 26, 1996, and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by December 24, 1996.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these regulations are James A. Quinn of the Office of Assistant Chief Counsel (Passthroughs and Special Industries), Linda S. F. Marshall of the Office of Associate Chief Counsel (Employee Benefits and Exempt Organizations), and Kristine K. Schlaman and M. Grace Fleeman of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entry for sections 1.1291–10T, 1.1294–1T, 1.1295–1T, and 1.1297–3T and adding entries in numerical order to read as follows:

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

Section 1.671–1 also issued under 26 U.S.C. 404A(h) and 672(f)(2)(B). * * *

Section 1.1291–10T also issued under 26 U.S.C. 1291(d)(2).

Section 1.1294–1T also issued under 26 U.S.C. 1294.

Section 1.1295–1T also issued under 26 U.S.C. 1295.

Section 1.1297–3T also issued under 26 U.S.C. 1297(b)(1).

Section 1.1297–4 also issued under 26 U.S.C. 1297(f). * * *

Par. 2. Section 1.671–1 is amended by adding paragraphs (g) and (h) to read as follows:

§ 1.671–1 Grantors and others treated as substantial owners; scope.

* * * * *

(g) *Domestic nonexempt employees' trust*—(1) *General rule.* An employer is not treated as an owner of any portion of a nonexempt employees' trust described in section 402(b) that is part of a deferred compensation plan, and that is not a foreign trust within the meaning of section 7701(a)(31), regardless of whether the employer has a power or interest described in sections 673 through 677 over any portion of the trust. See section 402(b)(3) and § 1.402(b)–1(b)(6) for rules relating to treatment of a beneficiary of a nonexempt employees' trust as the owner of a portion of the trust.

(2) *Example.* The following example illustrates the rules of paragraph (g)(1) of this section:

Example. Employer X provides nonqualified deferred compensation through Plan A to certain of its management employees. Employer X has created Trust T to fund the benefits under Plan A. Assets of Trust T may not be used for any purpose other than to satisfy benefits provided under Plan A until all plan liabilities have been satisfied. Trust T is classified as a trust under § 301.7701–4 of this chapter, and is not a foreign trust within the meaning of section 7701(a)(31). Under § 1.83–3(e), contributions to Trust T are considered transfers of property to participants within the meaning of section 83. On these facts, Trust T is a nonexempt employees' trust described in section 402(b). Because Trust T is a nonexempt employees' trust described in section 402(b) that is part of a deferred compensation plan, and that is not a foreign trust within the meaning of section 7701(a)(31), Employer X is not treated as an owner of any portion of Trust T.

(h) *Foreign employees' trust*—(1) *General rules.* Except as provided under section 679 or as provided under this paragraph (h)(1), an employer is not treated as an owner of any portion of a foreign employees' trust (as defined in paragraph (h)(2) of this section), regardless of whether the employer has a power or interest described in sections

673 through 677 over any portion of the trust.

(i) *Plan of CFC employer.* If a controlled foreign corporation (as defined in section 957) maintains a deferred compensation plan funded through a foreign employees' trust, then, with respect to the controlled foreign corporation, the provisions of subpart E apply to the portion of the trust that is the fractional interest described in paragraph (h)(3) of this section.

(ii) *Plan of U.S. employer.* If a United States person (as defined in section 7701(a)(30)) maintains a deferred compensation plan that is funded through a foreign employees' trust, then, with respect to the U.S. person, the provisions of subpart E apply to the portion of the trust that is the fractional interest described in paragraph (h)(3) of this section.

(iii) *Plan of U.S.-related foreign partnership employer*—(A) *General rule.* If a U.S.-related foreign partnership (as defined in paragraph (h)(1)(iii)(B) of this section) maintains a deferred compensation plan funded through a foreign employees' trust, then, with respect to the U.S.-related foreign partnership, the provisions of subpart E apply to the portion of the trust that is the fractional interest described in paragraph (h)(3) of this section.

(B) *U.S.-related foreign partnership.* For purposes of this paragraph (h), a U.S.-related foreign partnership is a foreign partnership in which a U.S. person or a controlled foreign corporation owns a partnership interest either directly or indirectly through one or more partnerships.

(iv) *Application of § 1.1297–4 to plan of foreign non-CFC employer.* A foreign employer that is not a controlled foreign corporation may be treated as an owner of a portion of a foreign employees' trust as provided in § 1.1297–4.

(v) *Application to employer entity.* The rules of paragraphs (h)(1)(i) through (h)(1)(iv) of this section apply to the employer whose employees benefit under the deferred compensation plan funded through a foreign employees' trust, or, in the case of a deferred compensation plan covering independent contractors, the recipient of services performed by those independent contractors, regardless of whether the plan is maintained through another entity. Thus, for example, where a deferred compensation plan benefitting employees of a controlled foreign corporation is funded through a foreign employees' trust, the controlled foreign corporation is considered to be the grantor of the foreign employees' trust for purposes of applying paragraph (h)(1)(i) of this section.

(2) *Foreign employees' trust.* A foreign employees' trust is a nonexempt employees' trust described in section 402(b) that is part of a deferred compensation plan, and that is a foreign trust within the meaning of section 7701(a)(31).

(3) *Fractional interest for paragraph (h)(1)*—(i) *In general.* The fractional interest for a foreign employees' trust used for purposes of paragraph (h)(1) of this section for a taxable year of the employer is an undivided fractional interest in the trust for which the fraction is equal to the relevant amount for the employer's taxable year divided by the fair market value of trust assets for the employer's taxable year.

(ii) *Relevant amount*—(A) *In general.* For purposes of applying paragraph (h)(3)(i) of this section, and except as provided in paragraph (h)(3)(iii) of this section, the relevant amount for the employer's taxable year is the amount, if any, by which the fair market value of trust assets, plus the fair market value of any assets available to pay plan liabilities that are held in the equivalent of a trust within the meaning of section 404A(b)(5)(A), exceed the plan's accrued liability. The following rules apply for this purpose:

(*1*) The plan's accrued liability is determined using a projected unit credit funding method that satisfies the requirements of § 1.412(c)(3)–1, taking into account only liabilities relating to services performed through the measurement date for the employer or a predecessor employer.

(*2*) The plan's accrued liability is reduced (but not below zero) by any liabilities that are provided for under annuity contracts held to satisfy plan liabilities.

(*3*) Any amount held under an annuity contract that exceeds the amount that is needed to satisfy the liabilities provided for under the contract (e.g., the value of a participation right under a participating annuity contract) is added to the fair market value of any assets available to pay plan liabilities that are held in the equivalent of a trust.

(*4*) If the relevant amount as determined under this paragraph (h)(3)(ii), without regard to this paragraph (h)(3)(ii)(A)(*4*), is greater than the fair market value of trust assets, then the relevant amount is equal to the fair market value of trust assets.

(B) *Permissible actuarial assumptions for accrued liability.* For purposes of paragraph (h)(3)(ii)(A) of this section, a plan's accrued liability must be calculated using an interest rate and other actuarial assumptions that the Commissioner determines to be reasonable. It is appropriate in determining this interest rate to look to available information about rates implicit in current prices of annuity contracts, and to look to rates of return on high-quality fixed-income investments currently available and expected to be available during the period prior to maturity of the plan benefits. If the qualified business unit computes its income or earnings and profits in dollars pursuant to the dollar approximate separate transactions method under § 1.985–3, the employer must use an exchange rate that can be demonstrated to clearly reflect income, based on all relevant facts and circumstances, including appropriate rates of inflation and commercial practices.

(iii) *Exception for reasonable funding.* The relevant amount does not include an amount that the taxpayer demonstrates to the Commissioner is attributable to amounts that were properly contributed to the trust pursuant to a reasonable funding method, applied using actuarial assumptions that the Commissioner determines to be reasonable, or any amount that the taxpayer demonstrates to the Commissioner is attributable to experience that is favorable relative to any actuarial assumptions used that the Commissioner determines to be reasonable. For this paragraph (h)(3)(iii) to apply to a controlled foreign corporation employer described in paragraph (h)(1)(i) of this section, the taxpayer must indicate on a statement attached to a timely filed Form 5471 that the taxpayer is relying on this rule. For purposes of this paragraph (h)(3)(iii), an amount is considered contributed pursuant to a reasonable funding method if the amount is contributed pursuant to a funding method permitted to be used under section 412 (e.g., the entry age normal funding method) that is consistently used to determine plan contributions. In addition, for purposes of this paragraph (h)(3)(iii), if there has been a change to that method from another funding method, an amount is considered contributed pursuant to a reasonable funding method only if the prior funding method is also a funding method described in the preceding sentence that was consistently used to determine plan contributions. For purposes of this paragraph (h)(3)(iii), a funding method is considered reasonable only if the method provides for any initial unfunded liability to be amortized over a period of at least 6 years, and for any net change in accrued liability resulting from a change in

funding method to be amortized over a period of at least 6 years.

(iv) *Reduction for transition amount.* The relevant amount is reduced (but not below zero) by any transition amount described in paragraphs (h)(5), (h)(6), or (h)(7) of this section.

(v) *Fair market value of assets.* For purposes of paragraphs (h)(3) (i) and (ii) of this section, for a taxable year of the employer, the fair market value of trust assets, and the fair market value of other assets held in the equivalent of a trust within the meaning of section 404A(b)(5)(A), equals the fair market value of those assets, as of the measurement date for the employer's taxable year, adjusted to include contributions made after the measurement date and by the end of the employer's taxable year.

(vi) *Annual valuation.* For purposes of determining the relevant amount for a taxable year of the employer, the fair market value of plan assets, and the plan's accrued liability as described in paragraphs (h)(3) (ii) and (iii) of this section, and the normal cost as described in paragraph (h)(4) of this section, must be determined as of a consistently used annual measurement date within the employer's taxable year.

(vii) *Special rule for plan funded through multiple trusts.* In cases in which a plan is funded through more than one foreign employees' trust, the fractional interest determined under paragraph (h)(3)(i) of this section in each trust is determined by treating all of the trusts as if their assets were held in a single trust for which the fraction is determined in accordance with the rules of this paragraph (h)(3).

(4) *De minimis exception.* If the relevant amount is not greater than the plan's normal cost for the plan year ending with or within the employer's taxable year, computed using a funding method and actuarial assumptions as described in paragraph (h)(3)(ii) of this section or as described in paragraph (h)(3)(iii) of this section if the requirements of that paragraph are met, that are used to determine plan contributions, then the relevant amount is considered to be zero for purposes of applying paragraph (h)(3)(i) of this section.

(5) *General rule for transition amount*—(i) *General rule.* If paragraphs (h)(6) and (h)(7) of this section do not apply to the employer, the transition amount for purposes of paragraph (h)(3)(iv) of this section is equal to the preexisting amount multiplied by the applicable percentage for the year in which the employer's taxable year begins.

(ii) *Preexisting amount.* The preexisting amount is equal to the relevant amount of the trust, determined without regard to paragraphs (h)(3)(iv) and (h)(4) of this section, computed as of the measurement date that immediately precedes September 27, 1996 disregarding contributions to the trust made after the measurement date.

(iii) *Applicable percentage.* The applicable percentage is equal to 100 percent for the employer's first taxable year ending after this document is published as a final regulation in the Federal Register and prior taxable years of the employer, and is reduced (but not below zero) by 10 percentage points for each subsequent taxable year of the employer.

(6) *Transition amount for new CFCs*—(i) *General rule.* In the case of a new controlled foreign corporation employer, the transition amount for purposes of paragraph (h)(3)(iv) is equal to the pre-change amount multiplied by the applicable percentage for the year in which the new controlled foreign corporation employer's taxable year begins.

(ii) *Pre-change amount.* The pre-change amount for purposes of paragraph (h)(6)(i) is equal to the relevant amount of the trust, determined without regard to paragraphs (h)(3)(iv) and (h)(4) of this section and disregarding contributions to the trust made after the measurement date, for the new controlled foreign corporation employer's last taxable year ending before the corporation becomes a new controlled foreign corporation employer.

(iii) *Applicable percentage*—(A) *General rule.* Except as provided in paragraph (h)(6)(iii)(B) of this section, the applicable percentage is equal to 100 percent for a new controlled foreign corporation employer's first taxable year ending after the corporation becomes a controlled foreign corporation. The applicable percentage is reduced (but not below zero) by 10 percentage points for each subsequent taxable year of the new controlled foreign corporation.

(B) *Interim rule.* For any taxable year of a new controlled foreign corporation employer that ends on or before the date this document is published as a final regulation in the Federal Register, the applicable percentage is equal to 100 percent. The applicable percentage is reduced by 10 percentage points for each subsequent taxable year of the new controlled foreign corporation employer that ends after the date this document is published as a final regulation in the Federal Register.

(iv) *New CFC employer.* For purposes of paragraph (h)(6) of this section, a new controlled foreign corporation employer is a corporation that first becomes a controlled foreign corporation within the meaning of section 957 after September 27, 1996. A new controlled foreign corporation employer includes a corporation that was a controlled foreign corporation prior to, but not on, September 27, 1996 and that first becomes a controlled foreign corporation again after September 27, 1996.

(v) *Anti-stuffing rule.* Notwithstanding paragraph (h)(6)(iii) of this section, if, prior to becoming a controlled foreign corporation, a corporation contributes amounts to a foreign employees' trust with a principal purpose of obtaining tax benefits by increasing the pre-change amount, the applicable percentage with respect to those amounts is 0 percent for all taxable years of the new controlled foreign corporation employer.

(7) *Transition amount for new U.S.-related foreign partnerships*—(i) *General rule.* In the case of a new U.S.-related foreign partnership employer, the transition amount for purposes of paragraph (h)(3)(iv) of this section is equal to the pre-change amount multiplied by the applicable percentage for the year in which the new U.S.-related foreign partnership employer's taxable year begins.

(ii) *Pre-change amount.* The pre-change amount for purposes of paragraph (h)(7)(i) of this section is equal to the relevant amount of the trust, determined without regard to paragraphs (h)(3)(iv) and (h)(4) of this section and disregarding contributions to the trust made after the measurement date, for the entity's last taxable year ending before the entity becomes a new U.S.-related foreign partnership employer.

(iii) *Applicable percentage*—(A) *General rule.* Except as provided in paragraph (h)(7)(iii)(B) of this section, the applicable percentage is equal to 100 percent for a new U.S.-related foreign partnership employer's first taxable year ending after the entity becomes a new U.S.-related foreign partnership employer. The applicable percentage is reduced (but not below zero) by 10 percentage points for each subsequent taxable year of the new U.S.-related foreign partnership employer.

(B) *Interim rule.* For any taxable year of a new U.S.-related foreign partnership employer that ends on or before the date this document is published as a final regulation in the Federal Register, the applicable percentage is equal to 100 percent. The applicable percentage is reduced by 10 percentage points for each subsequent

taxable year of the new U.S.-related foreign partnership employer that ends after the date this document is published as a final regulation in the Federal Register.

(iv) *New U.S.-related foreign partnership employer.* For purposes of paragraph (h)(7) of this section, a new U.S.-related foreign partnership employer is an entity that was a foreign corporation other than a controlled foreign corporation, or that was a foreign partnership other than a U.S.-related foreign partnership, and that changes from this status to a U.S.-related foreign partnership after September 27, 1996. A new U.S.-related foreign partnership employer includes a corporation that was a U.S.-related foreign partnership prior to, but not on, September 27, 1996 and that first becomes a U.S.-related foreign partnership again after September 27, 1996.

(v) *Anti-stuffing rule.* Notwithstanding paragraph (h)(7)(iii) of this section, if, prior to becoming a new U.S.- related foreign partnership employer, an entity contributes amounts to a foreign employees' trust with a principal purpose of obtaining tax benefits by increasing the pre-change amount, the applicable percentage with respect to those amounts is 0 percent for all taxable years of the new U.S.-related foreign partnership employer.

(8) *Examples.* The following examples illustrate the rules of paragraph (h) of this section. In each example, the employer has a power or interest described in sections 673 through 677 over the foreign employees' trust, and the monetary unit is the applicable functional currency (FC) determined in accordance with section 985(b) and the regulations thereunder.

Example 1. (i) Employer X is a controlled foreign corporation (as defined in section 957). Employer X maintains a defined benefit retirement plan for its employees. Employer X's taxable year is the calendar year. Trust T, a foreign employees' trust, is the sole funding vehicle for the plan. Both the plan year of the plan and the taxable year of Trust T are the calendar year.

(ii) As of December 31, 1997, Trust T's measurement date, the fair market value (as described in paragraph (h)(3)(iv) of this section) of Trust T's assets is FC 1,000,000, and the amount of the plan's accrued liability is FC 800,000, which includes a normal cost for 1997 of FC 50,000. The preexisting amount for Trust T is FC 40,000. Thus, the relevant amount for 1997 is FC 160,000 (which is greater than the plan's normal cost for the year). Employer X's shareholder does not indicate on a statement attached to a timely filed Form 5471 that any of the relevant amount qualifies for the exception described in paragraph (h)(3)(iii) of this section. Therefore, the fractional interest for Employer X's taxable year ending on December 31, 1997, is 16 percent. Employer X is treated as the owner for federal income tax purposes of an undivided 16 percent interest in each of Trust T's assets for the period from January 1, 1997 through December 31, 1997. Employer X must take into account a 16 percent pro rata share of each item of income, deduction or credit of Trust T during this period in computing its federal income tax liability.

Example 2. Assume the same facts as in Example 1, except that Employer X's shareholder indicates on a statement attached to a timely filed Form 5471 and can demonstrate to the satisfaction of the Commissioner that, in reliance on paragraph (h)(3)(iii) of this section, FC 100,000 of the fair market value of Trust T's assets is attributable to favorable experience relative to reasonable actuarial assumptions used. Accordingly, the relevant amount for 1997 is FC 60,000. Because the plan's normal cost for 1997 is less than FC 60,000, the de minimis exception of paragraph (h)(4) of this section does not apply. Therefore, the fractional interest for Employer X's taxable year ending on December 31, 1997, is 6 percent. Employer X is treated as the owner for federal income tax purposes of an undivided 6 percent interest in each of Trust T's assets for the period from January 1, 1997, through December 31, 1997. Employer X must take into account a 6 percent pro rata share of each item of income, deduction or credit of Trust T during this period in computing its federal income tax liability.

(9) *Effective date.* Paragraphs (g) and (h) of this section apply to taxable years of an employer ending after September 27, 1996.

Par. 3. Section 1.671–2 is amended by adding paragraph (f) to read as follows:

§ 1.671–2 Applicable principles

* * * * *

(f) For purposes of subtitle A of the Internal Revenue Code, a person that is treated as the owner of any portion of a trust under subpart E is considered to own the trust assets attributable to that portion of the trust.

Par. 4. Section 1.1297–4 is added to read as follows:

§ 1.1297–4 Application of subpart E of subchapter J with respect to foreign employees' trusts.

(a) *General rules.* For purposes of part VI of subchapter P, chapter 1 of the Code, a foreign employer that is not a controlled foreign corporation is not treated as the owner of any portion of a foreign employees' trust (as defined in § 1.671–1(h)(2)) except as provided in this paragraph (a), regardless of whether the employer has a power or interest described in sections 673 through 677 over any portion of the trust.

(1) *Principal purpose to avoid classification as a passive foreign investment company.* If a principal purpose for a transfer of property by any person to a foreign employees' trust (as defined in § 1.671–1(h)(2)) is to avoid classification of a foreign corporation as a passive foreign investment company, then the following rule applies. If the foreign employer has a power or interest described in sections 673 through 677 over the trust, then the grantor trust rules of subpart E of part I of subchapter J, chapter 1 of the Code will apply, for purposes of part VI of subchapter P, to a fixed dollar amount in the trust that is equal to the fair market value of the property that is transferred for the purpose of avoiding classification as a passive foreign investment company. Whether a principal purpose for a transfer is the avoidance of classification as a passive foreign investment company will be determined on the basis of all of the facts and circumstances, including whether the amount of assets held by the foreign employees' trust is reasonably related to the plan's anticipated liabilities, taking into account any local law and practice relating to proper funding levels.

(2) *Principal purpose to reduce or eliminate taxation under section 1291 or 1293.* If a principal purpose for a transfer of property by any person to a foreign employees' trust (as defined in § 1.671–1(h)(2)) is to reduce or eliminate taxation under section 1291 or 1293, then the following rule applies. If the foreign employer has a power or interest described in sections 673 through 677 over the trust, then the provisions of subpart E will apply, for purposes of part VI of subchapter P, to a fixed dollar amount in the trust that is equal to the fair market value of the property transferred for the purpose of reducing or eliminating taxation under section 1291 or 1293. Whether a principal purpose for a transfer is to reduce or eliminate taxation under section 1291 or 1293 will be determined on the basis of all the facts and circumstances, including whether the amount of assets held by the foreign employees' trust is reasonably related to the plan's anticipated liabilities, taking into account any local law and practice relating to proper funding levels.

(3) *Application to employer entity.* The rules of this section apply to the employer whose employees benefit under the deferred compensation plan funded through the foreign employees' trust, or, in the case of a deferred compensation plan covering independent contractors, the recipient of services performed by those independent contractors, regardless of whether the plan is maintained through another entity. Thus, for example, where a deferred compensation plan benefitting employees of a foreign

employer that is not a controlled foreign corporation is funded through a foreign employees' trust, the foreign employer is considered to be the grantor of the foreign employees' trust for purposes of this paragraph (a).

(b) *Effective date.* This section applies to taxable years of a foreign corporation ending after September 27, 1996.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 96–24864 Filed 9–26–96; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD033–7157b; FRL–5603–2]

Approval and Promulgation of Air Quality Implementation Plans; Maryland 1990 Base Year Emission Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Maryland for the purpose of establishing 1990 ozone base year emission inventories for the Maryland ozone nonattainment areas. In the Final Rules section of this Federal Register, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by October 28, 1996.

ADDRESSES: Comments may be mailed to David Arnold, Section Chief, Ozone/CO & Mobile Sources Section, Mailcode 3AT21, Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the EPA office listed above; and Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland 21224.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 566–2182, at the EPA Region III office, or via e-mail at quinto.rose@epamail.epa.gov. While information may be requested via e-mail, comments must be submitted in writing in the above Region III address.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title, Maryland 1990 Base Year Emission Inventory, which is located in the Rules and Regulations section of this Federal Register.

Authority: 42 U.S.C. 7401–7671q.

Dated: August 21, 1996.

W. Michael McCabe,

Regional Administrator, Region III.

[FR Doc. 96–24525 Filed 9–26–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 258, 264, and 265

[FRL–5617–3]

RIN 2050–A77

Financial Assurance Mechanisms Corporate Owners and Operators of Municipal Solid Waste Landfill Facilities and Hazardous Waste Treatment, Storage, and Disposal Facilities

AGENCY: Environmental Protection Agency.

ACTION: Notice of data availability.

SUMMARY: EPA is soliciting public comment on a document that the Agency relied upon in promulgating a notice of proposed rulemaking on October 12, 1994. The Agency inadvertently omitted the document from the rulemaking docket for part of the public comment period on the proposal. The October 12, 1994, proposal relates to financial assurance mechanisms for corporate owners and operators of municipal landfill facilities and hazardous waste treatment, storage, and disposal facilities. Today's notice provides additional time to submit comments on the missing document. Today's request for comment is limited to the issues addressed by the missing document; it does not solicit comment on other aspects of the October 12, 1994, proposal.

DATES: Written comments must be received on or before October 28, 1996.

ADDRESSES: Written comments on the document should be addressed to the docket clerk at the following address: U.S. Environmental Protection Agency, RCRA Docket (OS–305), 401 M Street SW., Washington, DC 20460. Commenters should send one original and two copies and place the docket number (F–93–FTMP–FFFFF) in the comments. The docket is open from 9 a.m. to 4 p.m., Monday through Friday, except for Federal holidays. Docket materials may be reviewed by appointment by calling (202) 260–9327. Copies of docket material may be made at no cost, with a maximum of 100 pages of material from any one regulatory docket. Additional copies are $0.15 per page.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline at 1–800–424–9346 (in Washington, D.C., call (703) 412–9810), or Dale Ruhter (703) 308–8192, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: On October 12, 1994 EPA proposed to amend the financial assurance regulations under the Resource Conservation and Recovery Act by adding two financial assurance mechanisms to those currently available to assure closure, post-closure, or corrective action costs associated with municipal solid waste landfills under subtitle D: (1) A financial test for use by corporate owners and operators, and (2) a guarantee for use by firms that wish to guarantee the costs for an owner or operator (59 FR 51523).

In developing the Agency's proposed corporate financial test, the Agency considered an alternate financial test developed by the Meridian Corporation. The alternative test had been submitted for EPA's consideration by the National Solid Waste Management Association (NSWMA). As discussed in the October 12, 1994, proposal (59 FR at 51531), the Agency determined that the alternate financial test was not as effective in minimizing public and private costs as the Agency's previously proposed financial test (56 FR 30201, July 1, 1991). Accordingly, the Agency indicated that it would not conduct further analysis of the Meridian Corporation's alternate financial test.

The October 12, 1994, proposal indicated that the Agency had included an analysis of the Meridian Corporation's alternate financial test in the rulemaking docket. However, the analysis, Evaluation of the Meridian Report on Financial Assurance (October 4, 1989, 14 pages), had been inadvertently omitted from the rulemaking docket at the beginning of the public comment period. The Agency's analysis was placed in the docket on December 1, 1994. The public