

*T. Accounting for Expenses or Liabilities Paid by Principal Stockholder(s)*

**Facts:** Company X was a defendant in litigation for which the company had not recorded a liability in accordance with Statement 5. A principal stockholder<sup>108</sup> of the company transfers a portion of his shares to the plaintiff to settle such litigation. If the company had settled the litigation directly, the company would have recorded the settlement as an expense.

**Question:** Must the settlement be reflected as an expense in the company's financial statements, and if so, how?

**Interpretive Response:** Yes. The value of the shares transferred should be reflected as an expense in the company's financial statements with a corresponding credit to contributed (paid-in) capital.

The staff believes that such a transaction is similar to those described in paragraph 11 of Statement of Financial Accounting Standards Statement No. 123 (revised 2004), *Share-Based Payment* (Statement 123R), which states that "share-based payments awarded to an employee of the reporting entity by a related party or other holder of an economic interest<sup>109</sup> in the entity as compensation for services provided to the entity are share-based payment transactions to be accounted for under this Statement unless the transfer is clearly for a purpose other than compensation for services to the reporting entity." As explained in paragraph 11 of Statement 123R, the substance of such a transaction is that the economic interest holder makes a capital contribution to the reporting entity, and the reporting entity makes a share-based payment to its employee in exchange for services rendered.

The staff believes that the problem of separating the benefit to the principal stockholder from the benefit to the company cited in Statement 123R is not limited to transactions involving stock compensation. Therefore, similar accounting is required in this and

other<sup>110</sup> transactions where a principal stockholder pays an expense for the company, unless the stockholder's action is caused by a relationship or obligation completely unrelated to his position as a stockholder or such action clearly does not benefit the company.

Some registrants and their accountants have taken the position that since Statement 57 applies to these transactions and requires only the disclosure of material related party transactions, the staff should not analogize to the accounting called for by Statement 123R, paragraph 11 for transactions other than those specifically covered by it. The staff notes, however, that Statement 57 does not address the measurement of related party transactions and that, as a result, such transactions are generally recorded at the amounts indicated by their terms.<sup>111</sup> However, the staff believes that transactions of the type described above differ from the typical related party transactions.

The transactions for which Statement 57 requires disclosure generally are those in which a company receives goods or services directly from, or provides goods or services directly to, a related party, and the form and terms of such transactions may be structured to produce either a direct or indirect benefit to the related party. The participation of a related party in such a transaction negates the presumption that transactions reflected in the financial statements have been consummated at arm's length. Disclosure is therefore required to compensate for the fact that, due to the related party's involvement, the terms of the transaction may produce an accounting measurement for which a more faithful measurement may not be determinable.

However, transactions of the type discussed in the facts given do not have such problems of measurement and appear to be transacted to provide a

benefit to the stockholder through the enhancement or maintenance of the value of the stockholder's investment. The staff believes that the substance of such transactions is the payment of an expense of the company through contributions by the stockholder. Therefore, the staff believes it would be inappropriate to account for such transactions according to the form of the transaction.

[FR Doc. 05-6457 Filed 3-31-05; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### 23 CFR Part 772

[FHWA Docket No. FHWA-2004-18309]

RIN 2125-AF03

#### Procedures for Abatement of Highway Traffic Noise and Construction Noise

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the FHWA regulation that specifies the traffic noise prediction method to be used in highway traffic noise analyses. The final rule requires the use of the FHWA Traffic Noise Model (FHWA TNM) or any other model determined by the FHWA to be consistent with the methodology of the FHWA TNM. It also updates the specific reference to acceptable highway traffic noise prediction methodology and removes references to a noise measurement report and vehicle noise emission levels that no longer need to be included in the regulation. Finally, it makes four ministerial corrections to the section on Federal participation.

**DATES:** *Effective Date(s):* May 2, 2005. The incorporation by reference of the publication listed in this rule is approved by the Director of the Federal Register as of May 2, 2005.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark Ferroni, Office of Natural and Human Environment, HEPN, (202) 366-3233, or Mr. Robert Black, Office of the Chief Counsel, HCC-30, (202) 366-1359, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590.

#### SUPPLEMENTARY INFORMATION:

##### Electronic Access

This document and all comments received by the U.S. DOT Docket Facility, Room PL-401, may be viewed

<sup>108</sup> Statement 57, paragraph 24e, defines principal owners as "owners of record or known beneficial owners of more than 10 percent of the voting interests of the enterprise."

<sup>109</sup> Statement 123R defines an economic interest in an entity as "any type or form of pecuniary interest or arrangement that an entity could issue or be a party to, including equity securities; financial instruments with characteristics of equity, liabilities or both; long-term debt and other debt-financing arrangements; leases; and contractual arrangements such as management contracts, service contracts, or intellectual property licenses." Accordingly, a principal stockholder would be considered a holder of an economic interest in an entity.

<sup>110</sup> For example, SAB Topic 1.B indicates that the separate financial statements of a subsidiary should reflect any costs of its operations which are incurred by the parent on its behalf. Additionally, the staff notes that AICPA Technical Practice Aids § 4160 also indicates that the payment by principal stockholders of a company's debt should be accounted for as a capital contribution.

<sup>111</sup> However, in some circumstances it is necessary to reflect, either in the historical financial statements or a pro forma presentation (depending on the circumstances), related party transactions at amounts other than those indicated by their terms. Two such circumstances are addressed in Staff Accounting Bulletin Topic 1.B.1, Questions 3 and 4. Another example is where the terms of a material contract with a related party are expected to change upon the completion of an offering (*i.e.*, the principal shareholder requires payment for services which had previously been contributed by the shareholder to the company).

through the Docket Management System (DMS) at <http://dms.dot.gov>. The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of this Web site.

An electronic copy of this document may be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512-1661. Internet users may also reach the Office of the Federal Register's home page at: <http://www.archives.gov/> and the Government Printing Office's Web page at: <http://www.access.gpo.gov/nara>.

### Background

The FHWA noise regulations (23 CFR 772) were developed as a result of the Federal-Aid Highway Act of 1970 (Pub. L. 91-605, 84 Stat. 1713) and applied to Federal-aid highway construction projects. This regulation requires a State DOT to determine if there will be traffic noise impacts in areas adjacent to federally-aided highways when a project is proposed for the construction of a highway on a new location or the reconstruction of an existing highway to either significantly change the horizontal or vertical alignment or increase the number of through-traffic lanes.

Analysts must use a highway traffic noise prediction model to calculate future traffic noise levels and determine traffic noise impacts. The FHWA developed its first prediction model described in "FHWA Highway Traffic Noise Prediction Model" (Report No. FHWA-RD-77-108), December 1978.<sup>1</sup>

To incorporate over two decades of improvements in predicting highway traffic noise, as well as continued advancements in computer technology, the FHWA, with assistance from the Volpe National Transportation Systems Center in Cambridge, Massachusetts (Volpe Center) developed a new state of the art highway traffic noise prediction model in 1998, "FHWA Traffic Noise Model," Version 1.0 (FHWA TNM).<sup>2</sup> This model bases its calculations on totally new acoustical prediction algorithms as well as newly measured vehicle emission levels for automobiles, medium trucks, heavy trucks, buses and motorcycles.

<sup>1</sup> A printed copy of "FHWA Highway Traffic Noise Prediction Model" (Report No. FHWA-RD-77-108), December 1978, is available on the docket.

<sup>2</sup> A printed copy of "FHWA Traffic Noise Model Technical Manual" (Report No. FHWA-RD-96-010), February 1998, is available on the docket.

The Volpe Center, using funds from the FHWA and 25 State departments of transportation, directed and assisted the development of the FHWA TNM to accurately analyze the extremely wide range of frequencies found in highway traffic noise. The FHWA TNM also allows noise analysts to predict noise for both constant-flow and interrupted-flow traffic and enables them to accurately predict the results of multiple noise barriers, as well as the effects of vegetation and rows of buildings along highways.

As part of the initial establishment of the FHWA technical procedures for the analysis of highway traffic noise, e.g., traffic noise measurement and prediction methodologies, the FHWA's noise regulation included references to "Sound Procedures for Measuring Highway Noise: Final Report"<sup>3</sup> and to vehicle emission levels. This was done to aid in everyone's knowledge and understanding of the new technology of highway traffic noise prediction. However, since this technology has now been well established and documented for more than two decades, the FHWA noise regulation no longer needs to include any reference to a measurement report or to vehicle emission levels.

With the development of the FHWA TNM, a new state of the art highway traffic noise prediction model, the FHWA has proposed to update 23 CFR part 772 to include this new model and remove reference to vehicle emission levels. Therefore, the FHWA published a notice of proposed rulemaking (NPRM) on August 20, 2004, (69 FR 51620) proposing to require the use of the FHWA TNM or any other noise model determined by the FHWA to be consistent with the FHWA TNM methodology.

### Discussion of Comments

The agency received comments from five State Departments of Transportation (Arizona, Colorado, Minnesota, New York and Pennsylvania), one State environmental agency (Minnesota Pollution Control Agency), a noise consultant from the URS Corporation, and one private citizen.

The New York and Pennsylvania State DOTs commented that they are currently using the FHWA TNM and have no objections amending the regulation to require the use of this methodology.

The Arizona State DOT commented it was in the process of implementing the

use of the FHWA TNM and, thus, had no comment on the practical effects of the change in prediction models. The Arizona State DOT also offered an additional comment regarding the use of pavement types in the FHWA TNM. This comment is beyond the scope of this rule.

The Colorado State DOT commented that it generally supports the use of the FHWA TNM, and appreciated the FHWA's efforts to address the model's over predictions. This comment acknowledged the FHWA and Volpe Center's determination to correct the general over-predictions that FHWA TNM was making on vehicle emission levels. The FHWA TNM Version 2.5 is the result of these efforts, which essentially eliminates the vehicle emission level over-predictions.

The Colorado State DOT expressed its concern on using national vehicle noise emission levels (REMELs). The FHWA has determined that differences in vehicle noise emission levels are not the result of a State-specific vehicle fleet and that further studies of the effects of pavement (type, surface texture, and temperature) and atmospheric on traffic noise levels need to be completed to determine their influence on vehicle noise emission levels. Until the effects of pavement and atmospheric are researched in greater depth, the FHWA strongly recommends the use of the FHWA TNM's national vehicle noise emission levels and strongly discourages the development of State-specific vehicle noise emission levels.

The Colorado State DOT commented that it discovered several anomalies with the performance of the FHWA TNM related to pavement width, ground zones, and terrain lines. The FHWA and the Volpe Center have worked with the Colorado State DOT to resolve these issues. It was found that the anomalies stated by the Colorado State DOT were based on inappropriate comparisons. The sound level results, including trends, predicted with the FHWA TNM Version 2.5 were compared to expectations that were too generalized. The stated expectations did not always consider the specifics of each geometry and corresponding acoustical effects, and therefore were not location-dependent. A response has been sent to the Colorado State DOT on this matter offering detailed information on how to analyze highway sites to accurately identify location-dependent expectations. The FHWA and the Volpe Center will continue to offer the Colorado State DOT assistance in resolving their issues and providing guidance for those using the FHWA TNM in Colorado.

<sup>3</sup> A printed copy of "Sound Procedures for Measuring Highway Noise: Final Report" (Report No. FHWA-DP-45-1R), August 1981, is available on the docket.

Lastly, the Colorado State DOT commented that it believes the FHWA TNM predicts greater noise reductions than the old prediction model, which may result in noise barrier with shorter heights. The FHWA disagrees because the validation data taken to date [see Validation of FHWA's Traffic Noise Model (TNM): Phase 1, August 2002 and Preview of Validation of FHWA's Traffic Noise Model (TNM): Phase 1 (TNM v2.5 Addendum), April 9, 2004<sup>4</sup>] indicates that the FHWA TNM performs accurately when predicting noise barrier performance, and there are no inherent biases leading to the design of shorter noise barriers.

The Minnesota State DOT and the Minnesota Pollution Control Agency provided virtually the same two comments, one related to the FHWA TNM's methodology and the uncertainty in its ability to accurately predict noise levels, and the other related to the FHWA TNM's inability to calculate L<sub>10</sub> to L<sub>50</sub> noise levels.

The Minnesota State DOT and the Minnesota Pollution Control Agency commented that the Stamina 2.0 based MINNOISE Version 0.2 generally proved more accurate than the FHWA TNM. This is a concern for Minnesota since Minnesota State law requiring that public health and welfare be addressed using the most accurate methods reasonable available. The Minnesota DOT is basing this comment on a report they generated entitled "Mn/DOT Noise Model Comparison Summary" which compared the FHWA TNM and the measured data at several locations. A copy of "Mn/DOT Noise Model Comparison Summary," August 26, 2004 was provided as an attachment with Mn/DOT's comments and is available on the docket. After a thorough review and analysis of this comparison report and of additional information requested and received from the Minnesota State DOT, the FHWA and the Volpe Center found no indication that the discrepancies presented in the comparison report are due to problems associated with the FHWA TNM program. In fact, the review revealed that the discrepancies between the FHWA TNM and the measured data presented in the report are the result of an inaccurate measurement technique and three inaccurate modeling techniques.

The inaccurate measurement technique relates to the accounting for

wind speeds. The wind speeds presented in the comparison report exceeded the FHWA-prescribed limit of 12 miles per hour and should have been discounted. The wind effects on sound propagation were also not considered when comparing measured data to predicted data. When wind is accurately accounted for in the model, comparative results improve between FHWA TNM and the measured data.

The three inaccurate modeling techniques include the inaccurate use of parallel barrier configurations, ground types, and pavement types. Although the effects of parallel barrier were accounted for in the Minnesota State DOT's noise model, the effects were not accounted for in the FHWA TNM predictions. When the parallel barrier module in the FHWA TNM was used, the results again showed a more favorable comparison between FHWA TNM and the measured data. The Minnesota State DOT applied the "field grass" ground type to all FHWA TNM predicitions. This ground type is often misused, and the use of a more appropriate ground type, such as lawn, loose soil, or hard soil, again improves comparative results for FHWA TNM and measured data. Lastly, the use of "average" pavement type of roadways was applied to all FHWA TNM calculations. The use of "average" pavement type is required for federally funded projects, but can be modified if substantiated and approved by the FHWA. Pavements that are typically considered to be "loud," i.e., transverse-tined concrete pavements, were present for at least two of the four measurement sites. Since the comment is claiming lack of accuracy in the FHWA TNM, the actual pavement type was used despite the required use of "average" pavement type in the model. When actual pavement type is considered in the model, comparative results again improve for FHWA TNM versus the measured data.

The second comment from the Minnesota State DOT and the Minnesota Pollution Control Agency indicated that Minnesota State law requires the use of L<sub>10</sub> and L<sub>50</sub> descriptors, which are not provided by the FHWA TNM. The Minnesota State DOT, due to its State law, will be provided the capabilities to calculate L<sub>10</sub> and L<sub>50</sub> in connection with the FHWA TNM. The FHWA and the Volpe Center are currently developing these capabilities, and will provide them to the Minnesota State DOT once completed. It is estimated that the L<sub>10</sub> and L<sub>50</sub> capabilities will be provided to Minnesota State DOT in late Spring 2005. The Minnesota State DOT will be the only State DOT to receive this

capability, and will not be required to use the FHWA TNM until this capability is provided to them.

A noise consultant of the URS Corporation indicated that he agreed with the proposal to require the use of the FHWA TNM. Additionally, the consultant recommended updating, rather than removing, the reference to the FHWA noise measurement report, indicating that local regulations using the report reference would become moot if the report reference were removed. The FHWA notes that FHWA reports may be referenced in local regulations, regardless of their inclusion in or exclusion from the FHWA noise regulations. Lastly, the consultant offered an additional comment that was beyond the scope of the NPRM.

Finally, a private citizen offered a comment stating that the regulations from 1970 are outdated and obsolete, and should be updated.

After considering all the submitted comments, the FHWA has decided to go final with the proposed rule with no changes.

#### Rulemaking Analyses and Notices

##### *Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures*

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking will be minimal, since the final rule simply revises requirements for traffic noise prediction on Federal-aid highway projects to be consistent with the current state of the art technology for traffic noise prediction.

This final rule will not adversely affect, in a material way, any sector of the economy. In addition, these changes will not interfere with any action taken or planned by another agency and will not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs.

##### *Regulatory Flexibility Act*

In compliance with the Regulatory Flexibility Act (RFA) (Pub. L. 96-354, 5 U.S.C. 601-612) the FHWA has evaluated the effects of this action on small entities and has determined that the action will not have a significant economic impact on a substantial number of small entities. This final rule addresses traffic noise prediction on certain State highway projects. As such, it affects only States, and States are not

<sup>4</sup> A printed copy of the "Validation of FHWA's Traffic Noise Model (TNM): Phase 1" (Report no. FHWA-EP-02-031), August 2002, and "Preview of Validation of FHWA's Traffic Noise Model (TNM): Phase 1" (TNM v2.5 Addendum), April 9, 2004 are available on the docket.

included in the definition of small entities.

*Unfunded Mandates Reform Act of 1995*

This rule does not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, March 22, 1995, 109 Stat. 48). This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$120.7 million or more in any one year (2 U.S.C. 1532). The definition of "Federal Mandate" in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal government. The Federal-aid highway program permits this type of flexibility.

*Executive Order 13132 (Federalism)*

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and the FHWA has determined that this action does not have a substantial direct effect or sufficient federalism implications on States that would limit the policymaking discretion of the States. Nothing in this final rule directly preempts any State law or regulation or affects the States' ability to discharge traditional State governmental functions.

*Executive Order 12372 (Intergovernmental Review)*

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

*Paperwork Reduction Act*

This final rule contains no collection of information requirements for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3520.

*National Environmental Policy Act*

The FHWA has analyzed this action for the purpose of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and has determined that this action will not have any effect on the quality of the human and natural environment because it will update the specific reference to acceptable highway traffic noise prediction methodology and remove unneeded references to a

specific noise measurement report and vehicle noise emission levels.

*Executive Order 12630 (Taking of Private Property)*

This action will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Government Actions and interface with Constitutionally Protected Property Rights.

*Executive Order 12988 (Civil Justice Reform)*

This final rule meets applicable standards §§ 3(a) and 3(b)(2) of Executive order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

*Executive Order 13045 (Protection of Children)*

We have analyzed this final rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This action does not involve an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

*Executive Order 13175 (Tribal Consultation)*

The FHWA has analyzed this final rule under Executive Order 13175, dated November 6, 2000, and believes that this action will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal law. Therefore, a tribal summary impact statement is not required.

*Executive Order 13211 (Energy Effects)*

We have analyzed this final rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a significant energy action under that order because it is not a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

*Regulation Identification Number*

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in the Spring and Fall of each year. The RIN number contained in the heading of this

document can be used to cross-reference this action with the Unified Agenda.

**List of Subjects in 23 CFR Part 772**

Highways and roads, Incorporation by reference, Noise control.

Issued on: March 23, 2005.

**Mary E. Peters,**

*Federal Highway Administrator.*

■ In consideration of the foregoing, the FHWA is amending part 772 of title 23, Code of Federal Regulations, as follows:

**PART 772—PROCEDURES FOR ABATEMENT OF HIGHWAY TRAFFIC NOISE AND CONSTRUCTION NOISE**

■ 1. the authority citation for part 772 continues to read as follows:

**Authority:** 23 U.S.C. 109(h) and (i); 42 U.S.C. 4331, 4332; sec. 339(b), Pub. L. 104-59, 109 Stat. 568, 605; 49 CFR 1.48(b)

■ 2. In § 772.13 revise paragraphs (c) introductory text, (c)(1), (c)(4), and (d) to read as follows:

**§ 772.113 Federal participation.**

\* \* \* \* \*

(c) The noise abatement measures listed below may be incorporated in Type I and Type II projects to reduce traffic noise impacts. The costs of such measures may be included in Federal-aid participating project costs with the Federal share being the same as that for the system on which the project is located.

(1) Traffic management measures (e.g., traffic control devices and signing for prohibition of certain vehicle types, time-use restrictions for certain vehicle types, modified speed limits, and exclusive lane designations).

\* \* \* \* \*

(4) Construction of noise barriers (including landscaping for aesthetic purposes) whether within or outside the highway right-of-way.

\* \* \* \* \*

(d) There may be situations where severe traffic noise impacts exist or are expected, and the abatement measures listed above are physically infeasible or economically unreasonable. In these instances, noise abatement measures other than those listed in paragraph (c) of this section may be proposed for Types I and II projects by the highway agency and approved by the FHWA on a case-by-case basis when the conditions of paragraph (a) of this section have been met.

■ 3. Revise § 772.17(a) to read as follows:

**§ 772.17 Traffic noise prediction.**

(a) Any analysis required by this subpart must use the FHWA Traffic Noise Model (FHWA TNM), which is

described in "FHWA Traffic Noise Model" Report No. FHWA-PD-96-010, including Revision No. 1, dated April 14, 2004, or any other model determined by the FHWA to be consistent with the methodology of the FHWA TNM. These publications are incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 and are on file at the National Archives and Record Administration (NARA). For information on the availability of this material at NARA call (202) 741-6030, or go to [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html). These documents are available for copying and inspection at the Federal Highway Administration, 400 Seventh Street, SW., Room 3240, Washington, DC 20590, as provided in 49 CFR part 7. These documents are also available on the FHWA's Traffic Noise Model Web site at the following URL: <http://www.trafficnoisemodel.org/main.html>.

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[FR Doc. 05-6514 Filed 3-31-05; 8:45 am]

BILLING CODE 4910-22-M

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 301

[TD 9195]

RIN 1545-BA89

#### Designated IRS Officer or Employee Under Section 7602(a)(2) of the Internal Revenue Code

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations and removal of temporary regulations.

**SUMMARY:** This document contains final regulations relating to administrative summonses under section 7602(a) of the Internal Revenue Code. The regulations adopt the rules of the temporary regulations, which confirm that officers and employees of the Office of Chief Counsel may be included as persons designated to receive summoned books, papers, records, or other data and to take summoned testimony under oath.

**DATES:** *Effective Dates:* These regulations are effective April 1, 2005.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Rawlins at (202) 622-3630 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Background

This document contains final regulations amending 26 CFR part 301 under section 7602 of the Internal Revenue Code of 1986. The final regulations define officers or employees of the Office of Chief Counsel as persons who may be designated to receive summoned books, papers, records, or other data or to take testimony under oath. The final regulations also provide that more than one person may be designated to receive summoned information and testimony. Additionally, the final regulations clarify that a summons need not show the designation of the specific officer or employee who is authorized to take testimony and receive summoned materials.

On September 10, 2002, temporary regulations (TD 9015; 67 FR 57330) and a notice of proposed rulemaking (REG-134026-02; 67 FR 57354) containing these regulatory provisions were published in the **Federal Register**. No written comments were received on the temporary and proposed regulations; no public hearing was requested, and none was scheduled or held. Accordingly, the final regulations adopt the rules of the temporary regulations without change.

### Explanation of Provisions

This document contains final regulations amending the Procedure and Administration Regulations (26 CFR part 301) under section 7602 of the Internal Revenue Code of 1986. The final regulations make permanent three changes established in the temporary regulations regarding the persons who may be designated to receive summoned books, papers, records, or other data or to take testimony under oath. Although IRS examiners will continue to be responsible for developing and conducting examinations, these changes will allow, among other things, officers and employees of the Office of Chief Counsel to participate fully along with an IRS employee or officer in a summoned interview.

For purposes of identifying persons who may receive summoned information or take testimony under oath, the final regulations define an officer or employee of the IRS to include all persons who administer and enforce the internal revenue laws or any other laws administered by the IRS and who are appointed or employed by, or subject to the directions, instructions, or orders of the Secretary of the Treasury or the Secretary's delegate. This amendment clarifies that officers and employees of the Office of Chief Counsel may be designated as persons

authorized to take testimony under oath and to receive summoned books, papers, records, or other data.

The final regulations also expressly provide that more than one person may be designated to receive summoned information or to take testimony under oath during a summoned interview. Finally, the final regulations clarify the existing regulations by providing that a summons document need not designate the specific officer or employee who is authorized to take testimony under oath and to receive and examine books, papers, records, or other data.

### 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, and because these regulations do not impose a collection of information on small entities, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply. Pursuant to section 7805(f), the preceding temporary regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

### Drafting Information

The principal author of this regulation is Elizabeth Rawlins of the Office of the Associate Chief Counsel (Procedure and Administration), Collection, Bankruptcy and Summonses Division.

### List of Subjects in 26 CFR Part 301

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

### Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 301 is amended as follows:

#### PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 1.** The authority citation for part 301 continues to read in part as follows:

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

■ **Par. 2.** In § 301.7602-1, paragraphs (b) and (d) are revised to read as follows:

#### § 301.7602-1 Examination of books and witnesses.

\* \* \* \* \*