include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents are to be submitted and are to be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. FDA will publish notice of the objections that the agency has received or lack thereof in the **Federal Register**.

List of Subjects in 21 CFR Part 74

Color additives, Cosmetics, Drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 74 is amended as follows:

PART 74—LISTING OF COLOR ADDITIVES SUBJECT TO CERTIFICATION

■ 1. The authority citation for 21 CFR part 74 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e.

■ 2. Section 74.2052 is added to subpart C to read as follows:

§ 74.2052 D&C Black No. 2.

(a) *Identity.* The color additive D&C Black No. 2 is a high-purity carbon black prepared by the oil furnace process. It is manufactured by the combustion of aromatic petroleum oil feedstock and consists essentially of pure carbon, formed as aggregated fine particles with a surface area range of 200 to 260 meters (m)^2/gram.

(b) *Specifications.* D&C Black No. 2 shall conform to the following specifications and shall be free from impurities other than those named to the extent that such other impurities may be avoided by good manufacturing practice:

(1) Surface area by nitrogen BET (Brunauer, Emmett, Teller) method, 200 to 260 m^2/gram.

(2) Weight loss on heating at 950 °C for 7 minutes (predried for 1 hour at 125 °C), not more than 2 percent.

(3) Ash content, not more than 0.15 percent.

(4) Arsenic (total), not more than 3 milligrams per kilogram (mg/kg) (3 parts per million).

(5) Lead (total), not more than 10 mg/kg (10 parts per million).

(6) Mercury (total), not more than 1 mg/kg (1 part per million).

(7) Total sulfur, not more than 0.65 percent.

(8) Total PAHs, not more than 0.5 mg/kg (500 parts per billion).

(9) Benzo[*e*]pyrene, not more than 0.005 mg/kg (5 parts per billion).

(10) Dibenz[*a,h*]anthracene, not more than 0.005 mg/kg (5 parts per billion).

(11) Total color (as carbon), not less than 95 percent.

(c) *Uses and restrictions.* D&C Black No. 2 may be safely used for coloring the following cosmetics in amounts consistent with current good manufacturing practice: Eyeliner, brush-on-brow, eye shadow, mascara, lipstick, blushers and rouge, makeup and foundation, and nail enamel.

(d) *Labeling.* The label of the color additive shall conform to the requirements of § 70.25 of this chapter.

(e) *Certification.* All batches of D&C Black No. 2 shall be certified in accordance with regulations in part 80 of this chapter.

Dated: July 16, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–17153 Filed 7–27–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9143]

RIN 1545–AP30

Allocation and Apportionment of Deductions for Charitable Contributions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary and final regulations.

SUMMARY: This document contains temporary regulations relating to the allocation and apportionment of the deduction for charitable contributions allowed by sections 170, 873(b)(2), and 882(c)(1)(B). These regulations change the method of allocating and apportioning these deductions from ratable apportionment on the basis of gross income to apportionment on the basis of income from sources within the United States. The temporary regulations will affect individuals and corporations that make contributions to charitable organizations and that have foreign source income and calculate their foreign tax credit limitations under section 904. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the Proposed Rules section in this issue of the **Federal Register**. This document also contains final regulations that remove the existing regulations concerning allocation and apportionment of charitable contribution deductions.

DATES: *Effective Date:* These regulations are effective July 28, 2004.

Applicability Dates: For dates of applicability, see §§ 1.861–8(a)(5), 1.861–8T(e)(12)(iv), and 1.861–14T(e)(6)(ii). The regulations are applicable to charitable contributions made on or after July 28, 2004. Taxpayers may elect to apply these regulations to contributions made before July 28, 2004, but during a taxable year ending after July 28, 2004.

FOR FURTHER INFORMATION CONTACT: Teresa Burridge Hughes (202) 622–3850 (not a toll free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the regulations under section 861 relating to the allocation and apportionment of the deduction for charitable contributions allowed under sections 170, 873(b)(2), and 882(c). Currently, regulations under § 1.861–8(e)(9)(iv) provide that such deductions generally are not definitely related to any gross income and therefore are ratably apportioned to the statutory and residual groupings on the basis of gross income.

In 1991, the Treasury Department and the IRS issued proposed regulations (the 1991 proposed regulations) that would have changed the ratable apportionment rule of the final regulations to a rule that, assuming certain requirements are met, generally would apportion the deduction for a charitable contribution based on where the contribution would be used. Prop. Treas. Reg. § 1.861–8(e)(12), 56 Fed. Reg. 10,395 (1991). More specifically, the 1991 proposed regulations provided that the deduction for a charitable contribution would have been apportioned solely to foreign source gross income if the taxpayer, at the time of the contribution, knows or has reason to know that the contribution will be used solely outside the United States or that the contribution may necessarily be used only outside the United States. The 1991 proposed regulations also provided that the deduction for a charitable contribution would have been apportioned solely to U.S. source gross income if the taxpayer,

at the time of the contribution, both designates the contribution for use solely in the United States and reasonably believes that the contribution will be so used. Under the 1991 proposed regulations, a deduction for a charitable contribution that is not apportionable to United States or foreign source gross income under the foregoing rules would have been ratably apportioned on the basis of gross income.

The preamble to the 1991 proposed regulations requested comments on the effects of the proposed rules on U.S. charities with significant international activities. Numerous comments were received on the 1991 proposed regulations, most of which recommended that the proposed rules not be adopted. The principal reason given was that the 1991 proposed regulations would reduce funding for foreign charitable activities generally. In addition, the designation and place of use requirements were seen as generating significant paperwork and accountability burdens for both the contributors and the recipient charities. Many comments suggested that, instead of the bifurcated allocation and apportionment in the proposed regulations, the deduction for a charitable contribution should be allocated solely to income from sources within the United States.

In response to the comments received, and upon further consideration of the issue, the 1991 proposed regulations are being withdrawn. *See* Notice of Proposed Rulemaking published in the Proposed Rules section of this issue of the **Federal Register**. In addition, the notice of proposed rulemaking includes proposed regulations which cross reference these temporary regulations and proposed regulations with respect to deductions for charitable contributions that are allowed under a U.S. income tax treaty (rather than under sections 170, 873(b)(2), and 882(c)(1)(B)).

Explanation of Provisions

The temporary regulations provide that the deduction for charitable contributions allowed by sections 170, 873(b)(2), and 882(c)(1)(B) is definitely related and allocable to all of the taxpayer's gross income and is apportioned between the statutory grouping (or among the statutory groupings) of gross income and the residual grouping on the basis of the relative amounts of gross income from sources in the United States in each grouping. For example, where a deduction for charitable contributions is allocated and apportioned for purposes of the foreign tax credit limitation, the charitable contribution deduction is allocated to all of the taxpayer's gross income and apportioned solely to the residual grouping consisting of U.S. source gross income. This revision of the regulations is consistent with the policy of the section 170 contribution rules. The revision is intended to ensure that a taxpayer is not discouraged from making a charitable contribution that is deductible under section 170 simply because the allocation and apportionment rules would reduce the taxpayer's foreign source income and, accordingly, the taxpayer's foreign tax credit limitation as a result of the deduction.

The temporary regulations also provide that, where a charitable contribution is made by a member of an affiliated group, the deduction for the charitable contribution is related to and allocated to the income of all of the members of the affiliated group and not to any subset of the group. This rule is consistent with the provisions of Notice 89–91 (1989–2 C.B. 408). Finally, the provisions of the final regulations under § 1.861–8(e)(9)(iv) and § 1.861–8(g), *Example 18,* which provide for ratable allocation and apportionment of deductions for charitable contributions, are removed.

The regulations are effective for charitable contributions made on or after July 28, 2004. Taxpayers may elect to apply these regulations to contributions made before July 28, 2004 but during a taxable year ending on or after July 28, 2004.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), refer to the Special Analyses section of the preamble to the cross-referenced notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses.

Drafting Information

The principal author of these regulations is Teresa Burridge Hughes, Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section § 1.861–8 is amended as follows:

■ 1. Remove the language ''paragraphs (c)(2)'' from paragraph (a)(2) and add the language ''paragraphs (c)(3)'' in its place.

■ 2. Add a new second sentence to paragraph (a)(5)(i).

■ 3. Revise paragraph (e)(1).

■ 4. Remove the language ''paragraph (c)(2)'' from the paragraph (e)(9) introductory text and add the language ''paragraph (c)(3)'' in its place.

■ 5. Add the word ''and'' at the end of paragraph (e)(9)(iii).

■ 6. Remove paragraphs (e)(9)(iv) and (g) *Example 18* (iv).

■ 7. Redesignate paragraph (e)(9)(v) as paragraph (e)(9)(iv).

■ 8. Add new paragraph (e)(12).

■ 9. Redesignate paragraph (g) *Example 18* (i) as paragraph (g) *Example 18* (i)(A).

■ 10. Remove the last three entries in the table following the language ''Total gross income .... 40,000,000'' from newly designated paragraph (g) *Example 18* (i)(A).

■ 11. Add new paragraph (g) *Example 18* (i)(B) immediately following the table in newly designated paragraph (g) *Example 18* (i)(A).

■ 12. Designate the undesignated text following new paragraph (g) *Example 18* (i)(B) as paragraph (g) *Example 18* (i)(C).

The revisions and additions read as follows:

§ 1.861–8 Computation of taxable income from sources within the United States and from other sources and activities.

(a) * * * (1) * * *

(5) * * * (i) * * * Paragraph (g) *Example 18* (i)(B) applies to charitable contributions made on or after July 28, 2004.

* * * * *

(e) *Allocation and apportionment of certain deductions*—(1) *In general.* Paragraphs (e)(2) and (e)(3) of this section contain rules with respect to the allocation and apportionment of interest

expense and research and development expenditures, respectively. Paragraphs (e)(4) through (e)(8) of this section contain rules with respect to the allocation of certain other deductions. Paragraph (e)(9) of this section lists those deductions which are ordinarily considered as not being definitely related to any class of gross income. Paragraph (e)(10) of this section lists special deductions of corporations which must be allocated and apportioned. Paragraph (e)(11) of this section lists personal exemptions which are neither allocated nor apportioned. Paragraph (e)(12) of this section contains rules with respect to the allocation and apportionment of deductions for charitable contributions. Examples of allocation and apportionment are contained in paragraph (g) of this section.

* * * * *

(12) [Reserved]. For further guidance, *see* § 1.861–8T(e)(12).

* * * * *

(g) *General examples.* * * *

Example 18. * * * (i)(A) * * *

(i)(B) In addition, X incurs expenses of its supervision department of $1,600,000.

* * * * *

■ **Par. 3.** Section 1.861–8T is amended as follows:

■ 1. Add new paragraph (e)(12).

■ 2. Add a new second sentence to paragraph (h).

The additions read as follows:

§ 1.861–8T Computation of taxable income from sources within the United States and from other sources and activities (temporary).

* * * * *

(e) * * *

(12) *Deductions for certain charitable contributions*—(i) *In general.* The deduction for charitable contributions that is allowed under sections 170, 873(b)(2), and 882(c)(1)(B) is definitely related and allocable to all of the taxpayer's gross income. The deduction allocated under this paragraph (e)(12)(i) shall be apportioned between the statutory grouping (or among the statutory groupings) of gross income and the residual grouping on the basis of the relative amounts of gross income from sources in the United States in each grouping.

(ii) *Coordination with § 1.861–14T.* A deduction for a charitable contribution by a member of an affiliated group shall be allocated and apportioned under the rules of this section and § 1.861–14T(c)(1).

(iii) *Treaty provisions.* [Reserved]

(iv) *Effective date.* (A) The rules of paragraphs (e)(12)(i) and (ii) shall apply to charitable contributions made on or after July 28, 2004. Taxpayers may apply the provisions of paragraphs (e)(12)(i) and (ii) to charitable contributions made before July 28, 2004 but during the taxable year ending on or after July 28, 2004.

(B) The applicability of this section expires on or before July 27, 2007.

* * * * *

(h) * * * However, *see* paragraph (e)(12)(iv) of this section and § 1.861–14T(e)(6)(ii) for rules concerning the allocation and apportionment of deductions for charitable contributions.

* * *

■ **Par. 4.** Section 1.861–14T is amended by revising the section heading and adding paragraph (e)(6) to read as follows:

§ 1.861–14T Special rules for allocating and apportioning certain expenses (other than interest expense) of an affiliated group of corporations (temporary).

* * * * *

(e) * * *

(6) *Charitable contribution expenses*—(i) *In general.* A deduction for a charitable contribution by a member of an affiliated group shall be allocated and apportioned under the rules of § 1.861–8T(e)(12) and paragraph (c)(1) of this section.

(ii) *Effective date.* (A) The rules of this paragraph shall apply to charitable contributions made on or after July 28, 2004 and, for taxpayers applying the second sentence of § 1.861–8T(e)(12)(iv)(A), to charitable contributions made during the taxable year ending on or after July 28, 2004.

(B) The applicability of this section expires on or before July 27, 2007.

* * * * *

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: July 20, 2004.

Gregory Jenner,

Acting Assistant Secretary of the Treasury.

[FR Doc. 04–17079 Filed 7–27–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

31 CFR Part 50

RIN 1505–AB08

Terrorism Risk Insurance Program; Litigation Management

AGENCY: Departmental Offices, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury (Treasury) is issuing this final rule concerning litigation management as part of its implementation of Title I of the Terrorism Risk Insurance Act of 2002 (Act). That Act established a temporary Terrorism Insurance Program (Program) under which the Federal Government will share with commercial property and casualty insurers the risk of insured losses from certified acts of terrorism that occur on or before the date the Program ends, on December 31, 2005. This final rule is the latest in a series of regulations that Treasury has issued to implement the Program and finalizes a proposed rule concerning litigation management related to insured losses under the Program.

DATES: This final rule is effective August 27, 2004.

FOR FURTHER INFORMATION CONTACT: David Brummond, Legal Counsel, or C. Christopher Ledoux, Senior Attorney, Terrorism Risk Insurance Program, (202) 622–6770 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

A. Terrorism Risk Insurance Act of 2002

On November 26, 2002, the President signed into law the Terrorism Risk Insurance Act of 2002 (Pub. L. 107–297, 116 Stat. 2322). The Act was effective immediately. The Act's purposes are to address market disruptions, ensure the continued widespread availability and affordability of commercial property and casualty insurance for terrorism risk, and to allow for a transition period for the private markets to stabilize and build capacity while preserving State insurance regulation and consumer protections.

Title I of the Act establishes a temporary federal program of shared public and private compensation for insured commercial property and casualty losses resulting from an act of terrorism, which as defined in the Act is certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General. The Act authorizes Treasury to administer and implement the Terrorism Risk Insurance Program, including the issuance of regulations and procedures. The Act provides that the Program ends on December 31, 2005. The Act also provides Treasury with certain continuing authority to take actions as necessary to ensure payment, recoupment, adjustments of compensation, and reimbursement for insured losses arising out of any act of terrorism (as defined under the Act) occurring during the period between November 26, 2002, and December 31, 2005.