FOR FURTHER INFORMATION CONTACT: Dr. Albert P. Morgan, Chief of Operational Support, Center for Veterinary Biologics, Licensing and Policy Development, APHIS, USDA, 4700 River Road Unit 148, Riverdale, MD 20737–1231; (301) 734–8245.

SUPPLEMENTARY INFORMATION:

Background

On May 15, 2002, we published in the **Federal Register** (67 FR 34630–34633, Docket No. 93–129–1) a proposed rule to amend the Virus-Serum-Toxin Act regulations concerning Standard Requirements for veterinary biologics by adding a Standard Requirement for Equine Influenza Vaccine, Killed Virus. In that document, we proposed to require that such vaccines be shown to protect vaccinates for at least 60 days based on a vaccination-challenge study conducted in horses. In addition, we proposed to establish a serum hemagglutination inhibition test in guinea pigs as the serial release potency test for the vaccine; establish procedures for adding and removing strains of virus based on evidence of changes in the antigenic character of the equine influenza viruses in current circulation; and add labeling requirements to the regulations.

Comments on the proposed rule were required to be received or postmarked by July 15, 2002. Based on a request received during the comment period, we are reopening and extending the comment period for the proposed rule until August 15, 2002. This action will allow interested persons additional time to prepare and submit comments.

Authority: 21 U.S.C. 151–159; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 23rd day of July, 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–19422 Filed 7–31–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–106879–00]

RIN 1545–AY27

Dual Consolidated Loss Recapture Events

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rule making and notice of public hearing.

SUMMARY: This document contains proposed regulations under section 1503(d) regarding the events that require the recapture of dual consolidated losses. These regulations are issued to facilitate compliance by taxpayers with the dual consolidated loss provisions. The proposed regulations generally provide that certain events will not trigger recapture of a dual consolidated loss or payment of the associated interest charge. The proposed regulations provide for the reporting of certain information in such cases. This document also proposes conforming changes to the current regulations and provides notice of a public hearing on these proposed regulations.

DATES: Written and electronic comments must be received by October 30, 2002. Requests to speak (with outlines of oral comments to be discussed) at the public hearing scheduled for, December 3, 2002, at 10 a.m. must be received by, November 12, 2002.

ADDRESSES: Send submissions to CC:IT:A:RU (REG–106879–00), 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:ITA:RU (REG–108679–00), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically directly to the IRS Internet site at www.irs.gov/regs. The public hearing will be held in room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Kenneth D. Allison or Kathryn T. Holman, (202) 622–3860 (not a toll-free number); concerning submissions and the hearing, Sonya M. Cruse, (202) 622–7180 (not a toll-free number).

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, W:CAR:MP:FP:S Washington, DC 20224. Comments on the collection of information should be received by September 30, 2002. 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 service to provide information.

The collection of information in this proposed regulation is in §§ 1.1503–2(g)(2)(iv)(A)(*4*) and (*5*). This information is required to ensure the proper performance of the function of the IRS because it notifies the IRS that a future triggering event may require the recapture of specified dual consolidated losses by the new consolidated group. This information will be used to identify the acquisition of an unaffiliated dual resident corporation, an unaffiliated domestic owner of a dual resident corporation, or a consolidated group that includes a dual resident corporation or a domestic owner. The identification of such an acquisition pursuant to these regulations may allow taxpayers to avoid or defer recapture of a dual consolidated loss and the payment of an interest charge. The collection of information is mandatory. The likely respondents will be corporations acquiring overseas business operations.

Estimated total annual reporting and/or recordkeeping burden: 60 hours.

Estimated average annual burden hours per respondent and/or recordkeeper: 2 hours.

Estimated number of respondents and/or recordkeepers: 30.

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 it 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 September 8, 1989, proposed and temporary regulations implementing section 1503(d) were published in the **Federal Register** at 54 FR 37314. Written comments were received in response to the proposed regulations, and a public hearing was held on March 2, 1990. After consideration of all the comments, the proposed regulations were amended and adopted as final regulations by, TD 8434 on, September 9, 1992, and published in the **Federal Register** at 57 FR 41079.

Explanation of Provisions

Section 1503(d) generally provides that a ''dual consolidated loss'' of a domestic corporation cannot offset the taxable income of any other member of the corporation's consolidated group. The statute, however, authorizes the issuance of regulations permitting the use of a dual consolidated loss to offset the income of a domestic affiliate if the loss does not offset the income of a foreign corporation under foreign law.

Section 1.1503–2(g)(2) of the final regulations permits a taxpayer to elect to use a dual consolidated loss of a dual resident corporation or separate unit to offset the income of a domestic affiliate by entering into an agreement under which the taxpayer certifies that the dual consolidated loss has not been, and will not be, used to offset the income of another person under the laws of a foreign country. Section 1.1503–2(g)(2)(iii) of the final regulations provides that, in the year of a so-called ''triggering event,'' the taxpayer must recapture and report as gross income the amount of a dual consolidated loss subject to this agreement, as well as pay an interest charge.

Two such triggering events are (1) an unaffiliated dual resident corporation that filed the agreement or an unaffiliated domestic owner of a separate unit that filed the agreement becomes a member of a consolidated group, consisting of itself and a formerly unaffiliated domestic corporation or an existing consolidated group; and (2) a consolidated group that filed the agreement and that includes a dual resident corporation or domestic owner of a separate unit is acquired by an unaffiliated domestic corporation or a consolidated group, resulting in a new consolidated group. Section 1.1503–2(g)(2)(iv)(B) of the final regulations, however, provides that these events are not considered to be triggering events under certain conditions.

One such condition is that the parties to the transaction enter into a closing agreement with the IRS, as provided in section 7121 of the Code. Thus, in the first case described above, the unaffiliated dual resident corporation or unaffiliated domestic owner that filed the agreement and the unaffiliated domestic corporation or consolidated group must enter into a closing agreement; or, in the second case described above, the acquired consolidated group and the acquiring unaffiliated domestic corporation or consolidated group must enter into a closing agreement. The closing agreement must provide that the unaffiliated dual resident corporation, unaffiliated domestic owner, or consolidated group and the unaffiliated domestic corporation or existing consolidated group will be jointly and severally liable for the total amount of the recapture of the dual consolidated loss and the interest charge if there is a subsequent triggering event.

The IRS and Treasury believe that this requirement, that the parties to the transaction enter into a closing agreement with the IRS, imposes an unnecessary administrative burden in cases where liability for the dual consolidated loss recapture amount and interest charge would be imposed by § 1.1502–6. Section 1.1502–6 generally provides that the common parent corporation and each member of a consolidated group are severally liable for the tax computed on their consolidated U.S. income tax return for the taxable year. In certain circumstances, the several liability imposed by § 1.1502–6 provides for liability comparable to that provided by a closing agreement under § 1.1503–2(g)(2)(iv)(B)(2) and section 7121 of the Code.

Accordingly, the proposed regulations amend the final regulations by providing that a triggering event generally does not occur when an unaffiliated dual resident corporation or unaffiliated domestic owner becomes a member of a consolidated group. Under § 1.1502–6, the dual resident corporation or domestic owner, as well as the other members of the consolidated group of which it becomes a member, are liable for the recapture amount and the interest charge in the event of a subsequent triggering event. The proposed regulations would remove § 1.1503–2(g)(2)(iv)(B)(*1*)(*ii*) of the final regulations, which addresses this particular set of circumstances only.

The proposed regulations similarly would amend the final regulations by providing that a triggering event generally does not occur when a dual resident corporation or domestic owner that is a member of a consolidated group that filed an agreement under § 1.1503–2(g)(2) becomes a member of another consolidated group in an acquisition, so long as each member of the acquired group that is an includible corporation under § 1504(b) is included immediately after the acquisition in a consolidated U.S. income tax return filed by the acquiring group. Under § 1.1502–6, each member of the new consolidated group, including each member of the former group that included the dual resident corporation or domestic owner, is liable for the recapture amount and the interest charge upon the occurrence of a subsequent triggering event.

In both cases described in the proposed regulations, a statement must be attached to the first consolidated return of the new consolidated group that includes the dual resident corporation or domestic owner. The statement must reference these proposed regulations and must set forth the information required in § 1.1503–2(g)(2)(i)(B), the amount of each dual consolidated loss, and the year incurred. The proposed regulations further require the continued reporting of certain information, when applicable, by the new consolidated group on its subsequently filed consolidated U.S. income tax returns, as provided in § 1.1503–2(g)(2)(vi).

Proposed Effective Date

These regulations amending the dual consolidated loss rules under § 1.1503–2 are proposed to apply to transactions otherwise constituting triggering events occurring on or after **[DATE THE FINAL REGULATIONS ARE PUBLISHED IN THE FEDERAL REGISTER**].

Special Analyses

It has been determined that this notice of proposed rule making 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 affiliated groups of corporations that also have a foreign affiliate, which tend to be larger businesses. Moreover, the number of taxpayers affected and the average burden are minimal. 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 Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

A public hearing has been scheduled for, December 3, 2002, at 10 a.m., room 4718, in the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Because of access restrictions, visitors must enter at the main entrance, located at 1111 Constitution Avenue, NW. All visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend hearing, see the **FOR FURTHER INFORMATION CONTACT** portion of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments must submit written or electronic comments and an outline of the topic to be discussed and time to be devoted to each topic (preferably a signed original and eight (8) copies) by, November 12, 2002. 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 Kenneth D. Allison and Kathryn T. Holman 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

1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

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

§ 1.1503–2 also issued under 26 U.S.C. 1502 * * *

2. In § 1.1503–2, paragraphs (g)(2)(iv)(A)(*4*), (*5*) and (D) are added; paragraph (g)(2)(iv)(B)(*1*)(*ii*) is removed and paragraphs (g)(2)(iv)(B)(*1*)(*iii*) and (*iv*) are redesignated as paragraphs (g)(2)(iv)(B)(1)(*ii*) and (*iii*), respectively; and a sentence is added to paragraph (h)(1) to read as follows:

§ 1.1503–2 Dual consolidated loss.

* * * * *

(g) * * *

(2) * * *

(iv) * * *

(A) Acquisition by a member of the consolidated group.

* * * * *

(*4*) An unaffiliated dual resident corporation or unaffiliated domestic owner that filed an agreement under paragraph (g)(2)(i) of this section becomes a member of a consolidated group. A statement referencing this paragraph (g)(2)(iv)(A)(*4*) must be attached to the timely filed (including extensions) consolidated income tax return of the consolidated group, setting forth the information required in paragraph (g)(2)(i)(B) of this section, the amount of each dual consolidated loss, and the year incurred. The consolidated group also must continue to comply in subsequent years with the reporting requirements in paragraph (g)(2)(vi) of this section for each dual consolidated loss.

(*5*) A dual resident corporation, or domestic owner, that is a member of a consolidated group that filed an agreement under paragraph (g)(2)(i) of this section (the acquired group) becomes a member of another consolidated group (the acquiring group), provided that each member of the acquired group that is an includible corporation (within the meaning of section 1504(b)) in the new consolidated group must be included immediately after the acquisition in a consolidated income tax return filed by the acquiring group. A statement referencing this paragraph (g)(2)(iv)(A)(*5*) must be attached to the timely filed (including extensions) consolidated income tax return of the acquiring group, setting forth the information required in paragraph (g)(2)(i)(B) of this section, the amount of each dual consolidated loss, and the year incurred. The acquiring group also must continue to comply in subsequent years with the reporting requirements in paragraph (g)(2)(vi) of this section for each dual consolidated loss.

* * * * *

(D) Example. The following example illustrates the operation of paragraph (g)(2)(iv)(A)(*5*) of this section.

Example. (i) Facts. C is the common parent of a consolidated group (the ''C Group'') that includes DRC, a domestic corporation. DRC is a dual resident corporation and incurs a dual consolidated loss in its taxable year ending December 31, Year 1. The C Group complies with paragraph (g)(2)(i) of this section and its associated requirements with respect to the Year 1 dual consolidated loss. The C Group does not incur a dual consolidated loss in Year 2. On December 31, Year 2, stock constituting section 1504(a)(2) ownership of C is acquired by D, an unaffiliated domestic corporation. Immediately after and as a result of the acquisition, the C Group ceases to exist, and all the C Group members, including DRC, become includible members of a consolidated group of which D is the common parent (the ''D Group'').

(ii) Acquisition not a triggering event. Under paragraph (g)(2)(iv)(A)(*5*) of this section, the acquisition by D of the C Group is not an event requiring the recapture of the Year 1 dual consolidated loss of DRC, or the payment of an interest charge, as described in paragraph (g)(2)(vii) of this section, provided that the D Group files the statement described in paragraph (g)(2)(iv)(A)(*5*) of this section and continues to comply with the reporting requirements of paragraph (g)(2)(vi) of this section.

(iii) Subsequent event. A triggering event occurs on December 31, Year 3, that requires recapture by DRC of the dual consolidated loss it incurred for Year 1 and any dual consolidated loss incurred in Year 3, as well as the payment of an interest charge, as provided in paragraph (g)(2)(vii) of this section. Each member of the D Group, including DRC and the other former members of the C Group, is severally liable under § 1.1502–6 for the additional tax (and the interest charge) due upon the recapture of the dual consolidated loss of DRC.

* * * * *

(h) * * *

(1) * * * Paragraphs (g)(2)(iv)(A)(*4*) and (*5*) of this section, and paragraphs (g)(2)(iv)(B)(*1*)(*ii*) and (*iii*) of this section, shall apply with respect to transactions otherwise constituting triggering events occurring on or after **[DATE THE FINAL REGULATIONS ARE PUBLISHED IN THE FEDERAL REGISTER**].

* * * * *

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 02–19237 Filed 7–31–02; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–126–1–7477; FRL–7254–4]

Finding of Failure to Implement a State Implementation Plan; Texas, Houston/Galveston Nonattainment Area; Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to find that the approved severe area ozone State Implementation Plan for the Houston/Galveston area is not being implemented according to its terms. If EPA makes final this proposed non-implementation finding, Texas will have to correct the identified deficiencies within 18 months or the first set of sanctions will begin pursuant to sections 179(a) and (b) of the Clean Air Act (Act).

DATES: Written comments must be received on or before September 3, 2002.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD-L), at the EPA Region 6 Office listed below. Copies of documents relevant to this action, are available for public inspection during normal business hours at the following locations.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park Circle, Austin, Texas 78753.

Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

FOR FURTHER INFORMATION CONTACT: Guy R. Donaldson, Air Planning Section (6PD-L), 1445 Ross Avenue, Dallas, Texas 75202–2733. Telephone Number (214) 665–7242, E-mail Address: *Donaldson.Guy@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' means EPA.

Table of Contents

I. Summary

A. What Portion of the Approved State Implementation Plan Are we Finding Texas Is not Fully Implementing?

We are proposing to find that Texas is not fully implementing the Texas Emission Reduction Program. Section 110(a)(2)(E) of the Act requires a SIP to have adequate funding. The TERP program was passed as part of Senate Bill 5 during the 77th Texas Legislative Session in 2001. This measure was submitted to EPA as part of a SIP revision in a letter from the Governor of Texas dated October 4, 2001. We approved this revision to the SIP on November 14, 2001 (66 FR 57159) through parallel processing. This legislation included, (1) a grant program designed to accelerate the early introduction and use of lower emitting diesel technologies in the nonattainment and near nonattainment areas of Texas, (2) a grant program to fund improved energy efficiency in public buildings, (3) purchase and lease incentives to encourage the introduction of clean light duty cars into the Texas fleet and, (4) funding for research into new air pollution reducing technologies.

The bill provided funding mechanisms for the program and the State anticipated that about $133 million in new fees would be collected to fund the emission controls contemplated. Unfortunately, the major funding source, a tax on out-of-state vehicle registrations was found to be in violation of the commerce clause of the Fourteenth Amendment of United States Constitution and Article I. Section 3 of the Texas Constitution. *See H.M. Dodd Motor Co. Inc. and Autoplex Automotive, LP.* v. *Texas Department of Public Safety, et al.,* Cause No GNID2585(200th Judicial District Court, Travis County, February 21, 2002). Without sufficient funding TNRCC will not be able to achieve all of the emission reductions projected for the TERP in the State Implementation Plan.

B. Why Is it Important That Texas Fully Implement This Program?

The TERP program is a vital portion of the State Implementation Plan. At the time the Legislature enacted SB 5, it mandated the removal of two control measures the State was relying on in its attainment plan: a ban on construction activities during the morning hours and a requirement that owners and operators of diesel non-road equipment of 50 Horsepower or greater accelerate the purchase of engines meeting Tier 2 and 3 emission standards. For more information on Tier 2 and Tier 3 Standards, see 40 CFR 89.112. The state anticipated that approximately 19 tons per day of the TERP reductions would be needed to compensate for the loss of emission reductions from the two control measures. The EPA estimated that, with the previously anticipated funding level, the TERP program could achieve 27–36 tons per day of emission reductions in the HG area.

It was expected that the remaining reductions in excess of 19 tons per day would contribute significantly to reducing the emission reduction shortfall in the HG SIP. The State has estimated that an additional 56 tons per day of emission reductions need to be adopted in the HG area to meet the National Ambient Air Quality Standard. The State has committed to adopt, by May 2004, rules to address this shortfall. Texas committed to submit adopted controls to meet 25% of the shortfall by December 2002 and the State anticipated that the remaining TERP reductions could be used to meet all or part of that commitment.

The remaining TERP reductions provide, among other things, incentives for the owners and operators of heavy duty diesel equipment to upgrade their equipment with new engines or with retrofit devices to reduce emissions. Diesel engines have been targeted because of their relatively high NO_x emissions and because their long operating life makes the widespread introduction of new cleaner engines into the fleet through normal turnover a lengthy process. With the current level of funding, Texas will not be able to accelerate the introduction of a sufficient number of cleaner diesel engines into the fleet to achieve the emission reductions necessary to demonstrate attainment by November 15, 2007.

C. What Are the Consequences if We Make Final This Proposed Finding of Failure To Implement?

Under the authority of section 179(a)(4) of the Act, if we make a finding that a provision of an approved plan is not being implemented, then the deficiency identified in the finding must be corrected within 18 months or sanctions will begin to apply. There are two types of sanctions: Highway