his own income after application of the SEIE. *Under the prior rule:* The maximum monthly SEIE amount of $400 would be subtracted from John's earnings ($750 − $400=$350), and $350 would be considered in reducing the living allowance of ineligible student. Since $350 is more than the $272 allocation, there would be no deduction from the mother's earnings of a living allowance allocation for John. *Under the new rule:* The maximum monthly SEIE amount of $1,320 exceeds John's monthly earnings of $750. Therefore, the SEIE would apply to all of John's earnings, and none of those earnings would reduce the living allowance allocation for John. Therefore, a living allowance allocation of $272 each month would be deducted from the amount of the mother's earnings deemed to Mark.

Regulatory Procedures

Pursuant to section 702(a)(5) of the Social Security Act, 42 U.S.C. 902(a)(5), SSA follows the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for dispensing with the notice and public comment procedures in this case. Good cause exists because this rule merely adapts the rules for the SEIE that have always been reflected in our regulations for both eligible and ineligible student children in order to continue SSA's longstanding policy of having the same exclusion amounts apply to both eligible and ineligible children. This final rule contains no substantive changes of interpretation. Therefore, opportunity for prior comment is unnecessary, and we are issuing this as a final rule.

In addition, we find good cause for dispensing with the 30-day delay in the effective date of a substantive rule, provided for by 5 U.S.C. 553(d). As explained above, we are not making any substantive changes in the SEIE provision. However, without these changes, our rules will conflict and may mislead the public. Therefore, we find that it is in the public interest to make this rule effective upon publication.

Executive Order 12866

The Office of Management and Budget (OMB) has reviewed this final rule in accordance with Executive Order (E.O.) 12866.

Regulatory Flexibility Act

We certify that this final rule will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

This final rule does not contain reporting or recordkeeping requirements that require OMB review.

(Catalog of Federal Domestic Assistance Program No. 96.006, Supplemental Security Income)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public Assistance programs, reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: February 26, 2002.

Jo Anne B. Barnhart,

Commissioner of Social Security.

For the reasons set out in the preamble, we are amending part 416 of Chapter III of title 20 of the Code of Federal Regulations as follows:

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart K—[Amended]

1. The authority citation for Subpart K of part 416 continues to read as follows:

Authority: Secs.702(a)(5), 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383); sec. 211, Pub. L. 93–66, 87 Stat. 154 (42 U.S.C. 1382 note).

2. Revise the last sentence of § 416.1161(c) to read as follows:

§ 416.1161 Income of an ineligible spouse, ineligible parent, and essential person for deeming purposes.

* * * * *

(c) * * * In addition, if the ineligible child is a student (see § 416.1861), we exclude his/her earned income subject to the amounts set in § 416.1112(c)(3).

* * * * *

[FR Doc. 02–5858 Filed 3–11–02; 8:45 am]

BILLING CODE 4191–02–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8984]

RIN 1545–BA51

Loss Limitation Rules

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains regulations under sections 337(d) and 1502. These regulations permit certain losses recognized on sales of subsidiary stock by members of a consolidated group. These regulations apply to corporations filing consolidated returns, both during and after the period of affiliation, and also affect purchasers of the stock of members of a consolidated group. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date*: These regulations are effective March 7, 2002.

Applicability Date: For dates of applicability, see §§ 1.337(d)–2T(g), 1.1502–20T(i) and 1.1502–32T(b)(4)(v).

FOR FURTHER INFORMATION CONTACT: Sean P. Duffley (202) 622–7530 or Lola L. Johnson (202) 622–7550 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545–1774. Responses to this collection of information are voluntary.

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.

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden,

please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Books or records relating to the 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

Section 337(d) of the Internal Revenue Code, enacted in 1986, directs the Secretary to prescribe regulations to ensure that the purposes of *General Utilities* repeal, which generally requires a corporation to recognize gain or loss on a disposition of any asset, may not be circumvented through the use of the consolidated return regulations. Pursuant to that directive, in 1990, the IRS and Treasury promulgated § 1.337(d)–2. Section 1.337(d)–2 generally disallows any loss recognized by a member of a consolidated group on the disposition of subsidiary stock, except to the extent the consolidated group disposes of its entire equity interest in a subsidiary to persons not related to any member of the consolidated group within the meaning of section 267(b) or section 707(b)(1) (applying the language ''10 percent'' instead of ''50 percent'') and can establish that such loss is not attributable to the recognition of built-in gain. Section 1.337(d)–2, however, only applies with respect to dispositions and deconsolidations that occur on or after November 19, 1990, and that are not subject to § 1.1502–20.

Section 1.1502–20, which applies to all dispositions and deconsolidations of subsidiary stock that occur on or after February 1, 1991, disallows certain losses recognized by a member of a consolidated group on the disposition of subsidiary stock. The rule disallows losses to the extent of the sum of ''extraordinary gain dispositions,'' ''positive investment adjustments,'' and ''duplicated loss.'' The rule is designed not only to implement *General Utilities* repeal, but also to further single entity principles by preventing the allowance of stock losses that are reflected in a subsidiary's assets or loss carryovers.

In *Rite Aid Corp.* v. *United States*, 255 F.3d 1357 (Fed. Cir. 2001), the United States Court of Appeals for the Federal Circuit held that the duplicated loss component of § 1.1502–20 was an invalid exercise of regulatory authority. As stated in Notice 2002–11, 2002–7 I.R.B. 526, the IRS has decided that the interests of sound tax administration will not be served by continuing to litigate the validity of the loss duplication factor of § 1.1502–20. Moreover, because of the interrelationship in the operation of all of the loss disallowance factors, the IRS and Treasury have decided that new rules governing loss disallowance on sales of stock of a member of a consolidated group should be implemented.

Explanation of Provisions

This Treasury decision adds §§ 1.337(d)–2T, 1.1502–20T(i), and 1.1502–32T(b)(4)(v), as described below.

For dispositions and deconsolidations of subsidiary stock on or after March 7, 2002, unless the disposition or deconsolidation was effected pursuant to a binding written contract entered into before such date that was in continuous effect until the disposition or deconsolidation, this Treasury decision provides that § 1.337(d)–2T, and not § 1.1502–20, governs the amount of loss allowable on such sales, or the amount of basis reduction required on such deconsolidations, of subsidiary stock. In substantial part, § 1.337(d)–2T restates the current § 1.337(d)–2, with certain modifications. As described above, as currently in effect, § 1.337(d)–2 permits recognition of loss only where a consolidated group disposes of its entire equity interest in a member of the group to persons not related to any member of the consolidated group within the meaning of section 267(b) or section 707(b)(1) (applying the language ''10 percent'' instead of ''50 percent''). Section 1.337(d)–2T eliminates those restrictions.

For dispositions and deconsolidations of subsidiary stock before March 7, 2002, and dispositions and deconsolidations of subsidiary stock on or after March 7, 2002, that were effected pursuant to a binding written contract entered into before such date that was in continuous effect until the disposition or deconsolidation, this Treasury decision adds § 1.1502–20T(i). Section 1.1502–20T(i) permits consolidated groups to calculate allowable loss on the sale of subsidiary stock by applying § 1.1502–20 in its entirety or, in lieu thereof, by electing to apply one of two alternative regimes. In particular, the group may elect to apply the provisions of § 1.1502–20 without regard to the duplicated loss factor of the loss disallowance formula, i.e., calculating disallowed loss by taking into account only extraordinary gain dispositions and positive investment adjustment amounts. Alternatively, the group may elect to apply the provisions of § 1.337(d)–2T. Such election may be made with the original return for the taxable year that includes the later of March 7, 2002, and the date of the disposition or deconsolidation of the stock of the subsidiary. Alternatively, the election may be made with an amended return, provided that the amended return is filed before the date the original return for the taxable year that includes March 7, 2002, is due.

An election described in § 1.1502–20(g) to reattribute losses will be respected only if the requirements of § 1.1502–20(g), including the requirement that the election be filed with the group's income tax return for the year of the disposition, have been or are satisfied. The temporary regulations do not extend the time for filing an election under § 1.1502–20(g). If a group made an election described in § 1.1502–20(g) and elects to determine allowable loss by applying one of the alternative regimes pursuant to § 1.1502–20T(i), the amount of loss treated as reattributed may be reduced. If the group elects to determine allowable loss by applying the provisions of § 1.1502–20 without regard to the duplicated loss factor of the loss disallowance formula, the amount of loss treated as reattributed is equal to the amount of loss originally reattributed, reduced to the extent that it exceeds the greater of (1) the loss disallowance amount determined by taking into account only extraordinary gain dispositions and positive investment adjustments (and not the duplicated loss factor of the loss disallowance formula) and (2) the amount of reattributed losses that the common parent of the selling group absorbed in closed years. If the group elects to determine allowable loss by applying § 1.337(d)–2T, the amount of loss treated as reattributed is the greater of (1) zero and (2) the amount of reattributed losses that the common parent of the selling group absorbed in closed years. For this purpose, a taxable year is a closed year to the extent the assessment of a deficiency is prevented by any law or rule of law as of the date the election to apply one of the alternative regimes is filed and at all times thereafter.

To the extent that an election under § 1.1502–20T(i) results in a reduction in the amount of losses treated as reattributed, such excess losses will be treated as available for use by the subsidiary or any other group of which the subsidiary is a member, subject to any applicable limitations (e.g., section 382). In order to permit the subsidiary's use of such losses that are subject to an

existing section 382 limitation, § 1.1502–20T(i) allows the common parent of the group that disposed of the stock to make certain adjustments to the amount of such a limitation apportioned under § 1.1502–95 or § 1.1502–96.

Section 1.1502–20T(i) requires the common parent of the selling group to notify the subsidiary of the recomputed reattribution amount and any adjustment to the apportionment of a section 382 limitation made in connection with the election to apply one of the alternative regimes. In addition, if the acquirer was a member of a consolidated group at the time of the acquisition, the common parent of the selling group must provide such notification to the common parent of the acquirer at the time of the acquisition. The rules set forth in § 1.1502–20T(i) also confirm that any losses treated as reattributed to the common parent of the selling group will not be available to offset income of the subsidiary or any other group of which such subsidiary is a member.

The IRS and Treasury do not intend for a purchasing consolidated group to be unfairly disadvantaged in the event that the common parent of a selling member elects to apply one of the alternative regimes under § 1.1502–20T(i) and, as a result, the amount of losses treated as reattributed to the common parent of the selling group is decreased and the amount of losses treated as available to the subsidiary is increased. Therefore, this Treasury decision adds § 1.1502–32T(b)(4)(v), which provides that, to the extent that the subsidiary's loss carryovers are increased by reason of an election to apply one of the alternative regimes and such loss carryovers expire, or would have been properly used to offset income, in a closed year, the purchasing group will be deemed to have made an election to treat all of such expired loss carryovers as expiring for all Federal income tax purposes immediately before the subsidiary became a member of the purchasing group. Accordingly, no basis reduction under § 1.1502–32 will result from the expiration of, or failure to use, such losses.

Section 1.1502–32T(b)(4)(v) further provides that, to the extent the subsidiary's loss carryovers are increased by reason of an election to apply one of the alternative regimes and such loss carryovers have not expired, and would not have been properly used to offset income, in a closed year, the purchasing group may make an election under § 1.1502–32(b)(4) to treat all or a portion of such loss carryovers as expiring for all Federal income tax purposes immediately before the subsidiary became a member of the purchasing group. The election must be filed with the purchasing group's return for the taxable year in which the subsidiary receives the notification of the recomputed reattributed loss amount.

For purposes of § 1.1502–32T(b)(4)(v), a taxable year is a closed year to the extent the refund of an overpayment is prevented by any law or rule of law as of the date the group files its original return for the taxable year in which the subsidiary receives the notification of the recomputed reattributed loss amount and at all times thereafter.

Special Analyses

In light of the Federal Circuit's decision in *Rite Aid Corp.* v. *United States*, 255 F.3d 1357 (Fed. Cir. 2001), these temporary regulations are necessary in order to provide taxpayers with immediate guidance regarding allowable loss and basis reductions in connection with dispositions and deconsolidations of subsidiary stock and to carry out the principles of *General Utilities* repeal pending the issuance of further guidance. These temporary regulations permit taxpayers to determine the amount of allowable loss or basis reduction by applying § 1.1502–20 in its entirety or, in lieu thereof, by electing to apply the provisions of either § 1.337(d)–2T or 1.1502–20 without regard to § 1.1502–20(c)(1)(iii). In addition, these temporary regulations provide taxpayers with guidance on the effect of elections previously made under § 1.1502–20(g) to reattribute losses to the common parent of a selling group. Accordingly, good cause is found for dispensing with notice and public procedure pursuant to 5 U.S.C. 553(b)(B) and with a delayed effective date pursuant to 5 U.S.C. 553(d)(1) and (3).

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Drafting Information

The principal authors of these regulations are Sean P. Duffley and Lola L. Johnson, Office of Associate Chief Counsel (Corporate). 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.

26 CFR Part 602

Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

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

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

Section 1.337(d)–2T also issued under 26 U.S.C. 337(d). * * *

Section 1.1502–20T(i) also issued under 26 U.S.C. 1502. * * *

Section 1.1502–32T(b)(4)(v) also issued under 26 U.S.C. 1502. * * *

Par. 2. Section 1.337(d)–2 is amended by adding paragraph (g)(4) to read as follows:

§ 1.337(d)–2 Loss limitation window period.

* * * * *

(g) * * *

(4) For dispositions and deconsolidations on and after March 7, 2002, see § 1.337(d)–2T.

Par. 3. Section 1.337(d)–2T is added to read as follows:

§ 1.337(d)–2T Loss limitation window period (temporary).

(a) *Loss disallowance*—(1) *General rule.* No deduction is allowed for any loss recognized by a member of a consolidated group with respect to the disposition of stock of a subsidiary.

(2) *Definitions.* For purposes of this section:

(i) The definitions in § 1.1502–1 apply.

(ii) *Disposition* means any event in which gain or loss is recognized, in whole or in part.

(3) *Coordination with loss deferral and other disallowance rules.* For purposes of this section, the rules of § 1.1502–20(a)(3) apply, with appropriate adjustments to reflect differences between the approach of this section and that of § 1.1502–20.

(b) *Basis reduction on deconsolidation*—(1) *General rule.* If the basis of a member of a consolidated group in a share of stock of a subsidiary exceeds its value immediately before a deconsolidation of the share, the basis of the share is reduced at that time to an amount equal to its value. If both a disposition and a deconsolidation occur with respect to a share in the same transaction, paragraph (a) of this section applies and, to the extent necessary to effectuate the purposes of this section,

this paragraph (b) applies following the application of paragraph (a) of this section.

(2) *Deconsolidation.* Deconsolidation means any event that causes a share of stock of a subsidiary that remains outstanding to be no longer owned by a member of any consolidated group of which the subsidiary is also a member.

(3) *Value. Value* means fair market value.

(c) Allowable Loss—(1) Application. This paragraph (c) applies with respect to stock of a subsidiary only if a separate statement entitled ''§ 1.337(d)–2T(c) statement'' is included with the return in accordance with paragraph (c)(3) of this section.

(2) *General rule.* Loss is not disallowed under paragraph (a)(1) of this section and basis is not reduced under paragraph (b)(1) of this section to the extent the taxpayer establishes that the loss or basis is not attributable to the recognition of built-in gain on the disposition of an asset (including stock and securities). Loss or basis may be attributable to the recognition of built-in gain on the disposition of an asset by a prior group. For purposes of this section, gain recognized on the disposition of an asset is built-in gain to the extent attributable, directly or indirectly, in whole or in part, to any excess of value over basis that is reflected, before the disposition of the asset, in the basis of the share, directly or indirectly, in whole or in part, after applying section 1503(e) and other applicable provisions of the Internal Revenue Code and regulations.

(3) *Contents of statement and time of filing.* The statement required under paragraph (c)(1) of this section must be included with or as part of the taxpayer's return for the year of the disposition or deconsolidation and must contain:

(i) The name and employer identification number (E.I.N.) of the subsidiary.

(ii) The amount of the loss not disallowed under paragraph (a)(1) of this section by reason of this paragraph (c) and the amount of basis not reduced under paragraph (b)(1) of this section by reason of this paragraph (c).

(4) *Example.* The principles of paragraphs (a), (b), and (c) of this section are illustrated by the examples in §§ 1.337(d)–1(a)(5) and 1.1502–20(a)(5) (other than *Examples 3, 4,* and *5*) and (b), with appropriate adjustments to reflect differences between the approach of this section and that of § 1.1502–20, and by the following example. For purposes of the examples in this section, unless otherwise stated, the group files consolidated returns on a calendar year basis, the facts set forth the only corporate activity, and all sales and purchases are with unrelated buyers or sellers. The basis of each asset is the same for determining earnings and profits adjustments and taxable income. Tax liability and its effect on basis, value, and earnings and profits are disregarded. Investment adjustment system means the rules of § 1.1502–32.

Example. Loss offsetting built-in gain in a prior group. (i) P buys all the stock of T for $50 in Year 1, and T becomes a member of the P group. T has 2 assets. Asset 1 has a basis of $50 and a value of $0, and asset 2 has a basis of $0 and a value of $50. T sells asset 2 during Year 3 for $50, and recognizes a $50 gain. Under the investment adjustment system, P's basis in the T stock increased to $100 as a result of the recognition of gain. In Year 5, all of the stock of P is acquired by the P1 group, and the former members of the P group become members of the P1 group. T then sells asset 1 for $0, and recognizes a $50 loss. Under the investment adjustment system, P's basis in the T stock decreases to $50 as a result of the loss. T's assets decline in value from $50 to $40. P then sells all the stock of T for $40 and recognizes a $10 loss.

(ii) P's basis in the T stock reflects both T's unrecognized gain and unrecognized loss with respect to its assets. The gain T recognizes on the disposition of asset 2 is built-in gain with respect to both the P and the P1 groups for purposes of paragraph (c)(2) of this section. In addition, the loss T recognizes on the disposition of asset 2 is built-in loss with respect to the P and P1 groups for purposes of paragraph (c)(2) of this section. T's recognition of the built-in loss while a member of the P1 group offsets the effect on T's stock basis of T's recognition of the built-in gain while a member of the P group. Thus, P's $10 loss on the sale of the T stock is not attributable to the recognition of built-in gain, and the loss is therefore not disallowed under paragraph (c)(2) of this section.

(iii) The result would be the same if, instead of having a $50 built-in loss in asset 2 when it becomes a member of the P group, T has a $50 net operating loss carryover and the carryover is used by the P group.

(d) *Successors.* For purposes of this section, the rules and examples of § 1.1502–20(d) apply, with appropriate adjustments to reflect differences between the approach of this section and that of § 1.1502–20.

(e) *Anti-avoidance rules.* For purposes of this section, the rules and examples of § 1.1502–20(e) apply, with appropriate adjustments to reflect differences between the approach of this section and that of § 1.1502–20.

(f) *Investment adjustments.* For purposes of this section, the rules and examples of § 1.1502–20(f) apply, with appropriate adjustments to reflect differences between the approach of this section and that of § 1.1502–20.

(g) *Effective dates.* This section applies with respect to dispositions and deconsolidations on or after March 7, 2002, unless the disposition or deconsolidation was effected pursuant to a binding written contract entered into before March 7, 2002, that was in continuous effect until the disposition or deconsolidation. In addition, this section applies to dispositions and deconsolidations for which an election is made under § 1.1502-20T(i)(2) to determine allowable loss under this section. If loss is recognized because stock of a subsidiary became worthless, the disposition with respect to the stock is treated as occurring on the date the stock became worthless. For dispositions and deconsolidations prior to March 7, 2002, see §§ 1.337(d)–1 and 1.337(d)–2 as contained in the 26 CFR part 1 edition revised as of April 1, 2001.

Par. 4. In § 1.1502–20, paragraph (i) is added to read as follows:

§ 1.1502–20 Disposition or deconsolidation of subsidiary stock.

* * * * *

(i) [Reserved]. For further guidance, see § 1.1502–20T(i).

Par. 5. Section 1.1502–20T is added to read as follows:

§ 1.1502–20T Disposition or deconsolidation of subsidiary stock (temporary).

(a) through (h) [Reserved]. For further guidance, see § 1.1502–20(a) through (h).

(i) Limitations on the applicability of § 1.1502–20—(1) Dispositions and deconsolidations on or after March 7, 2002. Except to the extent specifically incorporated in § 1.337(d)-2T, § 1.1502–20 does not apply to a disposition or deconsolidation of stock of a subsidiary on or after March 7, 2002, unless the disposition or deconsolidation was effected pursuant to a binding written contract entered into before March 7, 2002, that was in continuous effect until the disposition or deconsolidation.

(2) *Dispositions and deconsolidations prior to March 7, 2002.*

In the case of a disposition or deconsolidation of stock of a subsidiary by a member before March 7, 2002, or a disposition or deconsolidation on or after March 7, 2002, that was effected pursuant to a binding written contract entered into before March 7, 2002, that was in continuous effect until the disposition or deconsolidation, a consolidated group may determine the amount of the member's allowable loss or basis reduction by applying § 1.1502–20 in its entirety, or, in lieu thereof, subject to the conditions set forth in this paragraph (i), by making an irrevocable

election to apply the provisions of either—

(i) Section 1.1502–20, except that in applying § 1.1502–20(c)(1), the amount of loss disallowed under § 1.1502–20(a)(1) and the amount of basis reduction under § 1.1502–20(b)(1) with respect to a share of stock will not exceed the sum of the amounts described in § 1.1502–20(c)(1)(i) and (ii); or

(ii) Section 1.337(d)–2T.

(3) *Operating rules*—(i) *Reattribution of losses in the case of an election to determine allowable loss by applying the provisions described in paragraph (i)(2)(i) of this section.* If a consolidated group elects to determine allowable loss by applying the provisions described in paragraph (i)(2)(i) of this section, an election described in § 1.1502–20(g) to reattribute losses will be respected only if the requirements of § 1.1502–20(g), including the requirement that the election be filed with the group's income tax return for the year of the disposition, have been or are satisfied. For example, if a consolidated group did not file a valid election described in § 1.1502–20(g) with its return for the year of the disposition, this section does not authorize the group that disposed of the stock to make such an election with its return for the year in which it elects to determine its allowable stock loss under the provisions described in paragraph (i)(2)(i) of this section. If a consolidated group that made a valid election described in § 1.1502–20(g) with respect to the disposition of stock elects to determine allowable loss by applying the provisions described in paragraph (i)(2)(i) of this section, the election described in § 1.1502–20(g) may not be revoked, and the amount of loss treated as reattributed as of the time of the disposition pursuant to the election described in § 1.1502–20(g) is the amount of loss originally reattributed, reduced to the extent that it exceeds the greater of—

(A) The amount of stock loss disallowed after applying the provisions described in paragraph (i)(2)(i) of this section; and

(B) The amount of reattributed losses that the group that disposed of the stock absorbed in years for which the assessment of a deficiency is prevented by any law or rule of law as of the date the election to apply the provisions described in paragraph (i)(2)(i) of this section is filed and at all times thereafter.

(ii) *Reattribution of losses in the case of an election to determine allowable loss by applying the provisions described in paragraph (i)(2)(ii) of this section.* If a consolidated group elects to determine allowable loss by applying the provisions described in paragraph (i)(2)(ii) of this section, the consolidated group may not make an election described in § 1.1502–20(g) to reattribute any losses. If the consolidated group made an election described in § 1.1502–20(g) with respect to the disposition of subsidiary stock, the amount of loss treated as reattributed pursuant to such election will be the greater of—

(A) Zero; and

(B) The amount of reattributed losses that the group that disposed of the stock absorbed in years for which the assessment of a deficiency is prevented by any law or rule of law as of the date the election to apply the provisions described in paragraph (i)(2)(ii) of this section is filed and at all times thereafter.

(iii) *Apportionment of section 382 limitation in the case of a reduction of reattributed losses*—(A) *Losses subject to a separate section 382 limitation.* If, as a result of the application of paragraph (i)(3)(i) or (ii) and paragraph (i)(3)(vii) of this section, pre-change separate attributes that were subject to a separate section 382 limitation are treated as losses of a subsidiary and the common parent previously elected to apportion all or a part of such limitation to itself under § 1.1502–96(d), the common parent may reduce the amount of such limitation apportioned to itself.

(B) *Losses subject to a subgroup section 382 limitation.* If, as a result of the application of paragraph (i)(3)(i) or (ii) and paragraph (i)(3)(vii) of this section, pre-change subgroup attributes that were subject to a subgroup section 382 limitation are treated as losses of a subsidiary and the common parent previously elected to apportion all or a part of such limitation to itself under § 1.1502–96(d), the common parent may reduce the amount of such limitation apportioned to itself. In addition, if such subsidiary has ceased to be a member of the loss subgroup to which the pre-change subgroup attributes relate, the common parent may increase the total amount of such limitation apportioned to such subsidiary (or loss subgroup that includes such subsidiary) under § 1.1502–95(c) by an amount not in excess of the amount by which such limitation that is apportioned to the common parent is reduced pursuant to the previous sentence.

(C) *Losses subject to a consolidated section 382 limitation.* If, as a result of the application of paragraph (i)(3)(i) or (ii) and paragraph (i)(3)(vii) of this section, pre-change consolidated attributes (or pre-change subgroup attributes) that were subject to a consolidated section 382 limitation (or subgroup section 382 limitation where the common parent was a member of the loss subgroup) are treated as losses of a subsidiary, and the subsidiary has ceased to be a member of the loss group (or loss subgroup), the common parent may increase the amount of such limitation that is apportioned to such subsidiary (or loss subgroup that includes such subsidiary) under § 1.1502–95(c). The amount of each element of such limitation that can be apportioned to a subsidiary (or loss subgroup that includes such subsidiary) pursuant to this paragraph (i)(3)(iii)(C), however, cannot exceed the product of (x) the element and (y) a fraction the numerator of which is the amount of pre-change consolidated attributes (or subgroup attributes) subject to that limitation that are treated as losses of the subsidiary (or loss subgroup) as a result of the application of paragraph (i)(3)(i) or (ii) and paragraph (i)(3)(vii) of this section and the denominator of which is the total amount of pre-change attributes subject to that limitation determined as of the close of the taxable year in which the subsidiary ceases to be a member of the group (or loss subgroup).

(D) *Operating rules*—(i) *Limitations on apportionment.* In making any adjustment to an apportionment of a subgroup section 382 limitation or a consolidated section 382 limitation pursuant to paragraph (i)(3)(iii)(B) or (C) of this section, the common parent must take into account the extent, if any, to which such limitation has previously been apportioned to another subsidiary or loss subgroup prior to the date the election to apply the provisions described in paragraph (i)(2)(i) or (ii) of this section is filed.

(ii) *Manner and effect of adjustment to previous apportionment of limitation to common parent.* Any reduction in a previous apportionment of a separate section 382 limitation or a subgroup section 382 limitation to the common parent made pursuant to paragraph (i)(3)(iii)(A) or (B) of this section is treated as effective when the previous apportionment was effective. Any such adjustment must be made in a manner consistent with the principles of § 1.1502–95(c). For example, to the extent the apportionment of a separate section 382 limitation or a subgroup section 382 limitation to a common parent is reduced pursuant to paragraph (i)(3)(iii)(A) or (B) of this section, the amount of such limitation available to the subsidiary or loss subgroup, as applicable, is increased.

(iii) *Manner and effect of adjustment to apportionment of limitation to*

departing subsidiary or loss subgroup. Any increase in an amount of a subgroup section 382 limitation or a consolidated section 382 limitation apportioned to a departing subsidiary (or loss subgroup that includes such subsidiary) made pursuant to paragraph (i)(3)(iii)(B) or (C) of this section is treated as effective for taxable years ending after the date the subsidiary ceases to be a member of the group or loss subgroup. Any such adjustment may be made regardless of whether the common parent previously elected to apportion all or a part of such limitation to such subsidiary (or loss subgroup that includes such subsidiary) under § 1.1502–95(c) or 1.1502–95A(c), but must be made in a manner consistent with the principles of § 1.1502–95(c). For example, to the extent the apportionment of an element of a subgroup section 382 limitation or a consolidated section 382 limitation to a departing subsidiary is increased pursuant to paragraph (i)(3)(iii)(B) or (C) of this section, the amount of such element of such limitation that is available to the loss subgroup or loss group is reduced consistent with § 1.1502–95(c)(3).

(iv) *Prohibition against other adjustments.* This paragraph (i)(3)(iii) does not authorize the common parent to adjust the apportionment of any separate section 382 limitation, subgroup section 382 limitation, or consolidated section 382 limitation that it previously apportioned to a subsidiary, to a loss subgroup, or to itself under § 1.1502–95(c), 1.1502–95A(c), or 1.1502–96(d), other than as provided in paragraphs (i)(3)(iii)(A), (B), and (C) of this section.

(E) *Time and manner of making apportionment adjustment.* An adjustment to the apportionment of any separate section 382 limitation, subgroup section 382 limitation, or consolidated section 382 limitation pursuant to paragraph (i)(3)(iii)(A), (B), or (C) of this section must be made as part of the group's election to apply the provisions of paragraph (i)(2)(i) or (ii) of this section, as described in paragraph (i)(4) of this section.

(iv) *Notification of reduction of reattributed losses and adjustment of apportionment of section 382 limitation.* If the application of paragraph (i)(3)(i) or (ii) of this section results in a reduction of the losses treated as reattributed pursuant to an election described in § 1.1502–20(g), then, prior to the date that the group files its income tax return for the taxable year that includes March 7, 2002, the common parent must send the notification required by this paragraph to the subsidiary, at the subsidiary's last known address. In addition, if the acquirer of the subsidiary stock was a member of a consolidated group at the time of the disposition, the common parent must send a copy of such notification to the person that was the common parent of the acquirer's group at the time of the acquisition, at its last known address. The notification is to be in the form of a statement entitled ''Recomputation of Losses Reattributed Pursuant to the Election Described in § 1.1502–20(g),'' that is signed by the common parent and that includes the following information—

(A) The name and employer identification number (E.I.N.) of the subsidiary;

(B) The original and the recomputed amount of losses treated as reattributed pursuant to the election described in § 1.1502–20(g); and

(C) If the apportionment of a separate section 382 limitation, a subgroup section 382 limitation, or a consolidated section 382 limitation is adjusted pursuant to paragraph (i)(3)(iii)(A), (B), or (C) of this section, the original and the adjusted apportionment of such limitation.

(v) *Items taken into account in closed years.* An election under paragraph (i)(2) of this section affects a taxpayer's items of income, gain, deduction, or loss only to the extent that the election gives rise, directly or indirectly, to items or amounts that would properly be taken into account in a year for which an assessment of deficiency or a refund of overpayment, as the case may be, is not prevented by any law or rule of law.

(vi) *Conforming amendments for items previously taken into account in open years.* To the extent that, on any Federal income tax return, the common parent absorbed losses that were reattributed pursuant to an election described in § 1.1502–20(g) and the amount of losses so absorbed is in excess of the amount of losses that are treated as reattributed after application of paragraph (i)(3)(i) or (ii) of this section, or that may be taken into account after any adjustment to an apportionment of a separate section 382 limitation, a subgroup section 382 limitation, or a consolidated section 382 limitation pursuant to paragraph (i)(3)(iii) of this section, such returns must be amended to the greatest extent possible to reflect the reduction in the amount of losses treated as reattributed and any adjustment to the apportionment of such limitation.

(vii) *Availability of losses to subsidiary.* To the extent that any losses of a subsidiary are reattributed to the common parent pursuant to an election described in § 1.1502–20(g), such reattribution is binding on the subsidiary and any group of which the subsidiary is or becomes a member. Therefore, if the subsidiary ceases to be a member of the group, any reattributed losses are not thereafter available to the subsidiary and may not be utilized by the subsidiary or any other group of which such subsidiary is or becomes a member. To the extent that the application of paragraph (i)(3)(i) or (ii) of this section results in a reduction in the amount of losses treated as reattributed to the common parent pursuant to an election described in § 1.1502–20(g), however, losses in the amount of such reduction are available to the subsidiary and may be utilized by the subsidiary or any group of which such subsidiary is a member, subject to applicable limitations (e.g., section 382).

(4) *Time and manner of making the election.* An election to determine allowable loss or basis reduction by applying the provisions described in paragraph (i)(2)(i) or (ii) of this section is made by including the statement required by this paragraph with or as part of the original return for the taxable year that includes the later of March 7, 2002, and the date of the disposition or deconsolidation of the stock of the subsidiary, or with or as part of an amended return filed before the date the original return for the taxable year that includes March 7, 2002, is due. The statement shall be entitled ''Allowed Loss under Section [Specify Section under Which Allowed Loss Is Determined] Pursuant to Section 1.1502–20T(i)'' and must include the following information—

(i) The name and employer identification number (E.I.N.) of the subsidiary and of the member(s) that disposed of the subsidiary stock;

(ii) In the case of an election to determine allowable loss or basis reduction by applying the provisions described in paragraph (i)(2)(i) of this section, a statement that the taxpayer elects to determine allowable loss or basis reduction by applying such provisions;

(iii) In the case of an election to determine allowable loss or basis reduction by applying the provisions described in paragraph (i)(2)(ii) of this section, a statement that the taxpayer elects to determine allowable loss or basis reduction by applying such provisions;

(iv) If an election described in § 1.1502–20(g) was made with respect to the disposition of the stock of the subsidiary, the amount of losses originally treated as reattributed pursuant to such election and the

amount of losses treated as reattributed pursuant to paragraph (i)(3)(i) or (ii) of this section;

(v) If an apportionment of a separate section 382 limitation, a subgroup section 382 limitation, or a consolidated section 382 limitation is adjusted pursuant to paragraph (i)(3)(iii)(A), (B), or (C) of this section, the original and redetermined apportionment of such limitation; and

(vi) If the application of paragraph (i)(3)(i) or (ii) of this section results in a reduction of the amount of losses treated as reattributed pursuant to an election described in § 1.1502–20(g), a statement that the notification described in paragraph (i)(3)(iv) of this section was sent to the subsidiary and, if the acquirer was a member of a consolidated group at the time of the stock sale, to the person that was the common parent of such group at such time, as required by paragraph (i)(3)(iv) of this section.

(5) *Cross references.* See § 1.1502–32(b)(4)(v) for a special rule for filing a waiver of loss carryovers.

Par. 6. Section 1.1502–32 is amended by adding paragraph (b)(4)(v) to read as follows:

§ 1.1502–32 Investment adjustments.

* * * * *

(b) * * *

(4) * * *

(v) [Reserved]. For further guidance, see § 1.1502–32T(b)(4)(v).

Par. 7. Section 1.1502–32T is added to read as follows:

§ 1.1502–32T Investment adjustments (temporary).

(a) through (b)(4)(iv) [Reserved]. For further guidance, see § 1.1502–32(a) through (b)(4)(iv).

(v) *Special rule for loss carryovers of a subsidiary acquired in a transaction for which an election under § 1.1502–20T(i)(2) is made*—(A) *Expired losses.* Notwithstanding § 1.1502–32(b)(4)(iv), to the extent that S's loss carryovers are increased by reason of an election under § 1.1502–20T(i)(2) and such loss carryovers expire or would have been properly used to offset income in a taxable year for which the refund of an overpayment is prevented by any law or rule of law as of the date the group files its original return for the taxable year in which S receives the notification described in § 1.1502–20T(i)(3)(iv) and at all times thereafter, the group will be deemed to have made an election under § 1.1502–32(b)(4) to treat all of such expired loss carryovers as expiring for all Federal income tax purposes immediately before S became a member of the consolidated group.

(B) *Available losses.* Notwithstanding § 1.1502–32(b)(4)(iv), to the extent that S's loss carryovers are increased by reason of an election under § 1.1502–20T(i)(2) and such loss carryovers have not expired and would not have been properly used to offset income in a taxable year for which the refund of an overpayment is prevented by any law or rule of law as of the date the group files its original return for the taxable year in which S receives the notification described in § 1.1502–20T(i)(3)(iv) and at all times thereafter, the group may make an election under § 1.1502–32(b)(4) to treat all or a portion of such loss carryovers as expiring for all Federal income tax purposes immediately before S became a member of the consolidated group. Such election must be filed with the group's original return for the taxable year in which S receives the notification described in § 1.1502–20T(i)(3)(iv).

(C) *Effective date.* This paragraph (b)(4)(v) is applicable on and after March 7, 2002.

(c) through (h)(5)(ii) [Reserved]. For further guidance, see § 1.1502–32(c) through (h)(5)(ii).

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 8. The authority citation for part 602 continues to read as follows:

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

Par. 9. In § 602.101, paragraph (b) is amended by adding entries to the table in numerical order to read in part as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.337(d)–2T	1545–1774
* * * * *	
1.1502–20T	1545–1774
* * * * *	
1.1502–32T	1545–1774
* * * * *	

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: February 27, 2002.

Mark Weinberger,

Assistant Secretary of the Treasury.

[FR Doc. 02–5850 Filed 3–7–02; 3:17 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–02–004]

Drawbridge Operating Regulation; Three Mile Creek, AL

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation in 33 CFR part 117 governing the operation of the CSX Transportation railroad swing span drawbridge across Three Mile Creek, mile 0.3, at Mobile, Alabama. This deviation allows the draw of the railroad swing span bridge to remain closed to navigation from 10 a.m. until 3 p.m. on March 18 and 19, 2002. This temporary deviation will allow for conversion of the operating mechanism from mechanical to hydraulic.

DATES: This deviation is effective from 10 a.m. on Monday, March 18, 2002 until 3 p.m. on Tuesday, March 19, 2002.

ADDRESSES: Unless otherwise indicated, documents referred to in this notice are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Commander (obc), 501 Magazine Street, New Orleans, Louisiana, 70130–3396. The Bridge Administration Branch maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Phil Johnson, Bridge Administration Branch, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: The CSX Transportation railroad swing span drawbridge across Three Mile Creek, Baldwin County, Alabama has a vertical clearance in the closed-to-navigation position of 10 feet above mean high water and 12 feet above mean low water. The bridge provides unlimited vertical clearance in the open-to-navigation position. Navigation on the waterway consists of tugs with tows and fishing vessels. Presently, the draw opens on signal.

CSX Transportation requested a temporary deviation for the operation of the drawbridge to accommodate maintenance work. The work involves replacement of the deficient mechanical operating system with a new hydraulic system. This work is essential for continued operation of the draw span of the bridge and is expected to eliminate