discussed in Chapter 1 of the Draft EA. In developing these alternatives, the FAA and NPS recognized that there are gaps in relevant information and scientific uncertainty. The lack of complete and available information concerning noise methodology, metric, and the proper definition of substantial restoration of natural quiet, was documented in our preliminary comments on the NPS Report to Congress. Although both agencies recognize that there are unresolved issues, the FAA and NPS have determined that it is in the public interest to proceed with this rulemaking. Both agencies deem this rulemaking important for substantially restoring the natural quiet in the GCNP, as required under the National Park Overflights Act.

The Draft EA evaluates the environmental effects of the no action alternative and the NPRM, except the curfew, variable flight free period, and temporary cap, in an initial study area, in the near term. See, FAA Order 1050.1D, Policies and Procedures for Considering Environmental Impacts. The Final EA will evaluate the curfew, variable flight free period, and temporary cap. It will also evaluate the impacts of the NPRM over the entire GCNP in 1995 and future years, as well as socio-economic impacts. See, 40 CFR 1502.22.

Based on the final EA to be completed after the close of the Draft EA and associated comment period, the FAA will determine whether a Finding of No Significant Impact may be issued or an Environmental Impact Statement is required before any final rule is issued.

For further information contact: Mr. William J. Marx, Division Manager, ATA–300, Federal Aviation Administration, 800 Independence Avenue, Washington D.C. 20591. Requests for copies of the document should also be sent to the above address.

Issued in Washington D.C. on August 20, 1996.

Jeff Griffith,

Program Director of Air Traffic Airspace Management.

[FR Doc. 96–21350 Filed 8–19–96; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 20 and 25

[REG–208215–91]

RIN 1545–AR52

Disclaimer of Interests and Powers

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the treatment of disclaimers for estate and gift tax purposes. The regulations propose to clarify certain provisions governing the disclaimer of property interests and powers and, in addition, to conform the regulations to court decisions holding the current regulation invalid with respect to the disclaimer of joint property interests. The proposed regulations will affect persons who disclaim interests, powers or interests in jointly owned property after the effective date of these regulations.

DATES: Written comments and requests for a public hearing must be received by November 19, 1996.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–208215–91), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–208215–91), Courier's Desk Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC. Alternately, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option of the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax__ regs/comments.html.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Dale Carlton, (202) 622–3090; concerning submissions, Michael Slaughter, (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document proposes to amend the Estate and Gift Tax Regulations (26 CFR parts 20 and 25) under sections 2041, 2046, 2056, 2511, 2514, and 2518, relating to the disclaimer of interests in property and powers over property.

1. Interests and Powers Subject to the Disclaimer Rules

Under section 2518(a), if a person makes a qualified disclaimer, then for transfer tax purposes, the interest disclaimed is treated as never having passed to the person disclaiming. Under section 2518(b)(2)(A), in order to have a qualified disclaimer, an interest must be disclaimed within 9 months of the date of ''the transfer creating the interest'' in the person disclaiming. A person to whom any interest passes by reason of the exercise or lapse of a general power of appointment must disclaim the interest passing within 9 months after the exercise or lapse.

The current regulations provide that section 2518 applies to the disclaimer of interests or powers created pursuant to ''taxable transfers'' made after December 31, 1976. They further provide that the 9-month period within which the disclaimer must be made is to be determined with reference to the ''taxable transfer'' creating the interest in the disclaimant. The term ''taxable transfer'' was incorporated into the regulation based on a statement in the legislative history underlying the enactment of section 2518. H.R. Conf. Rep. No. 1515, 94th Cong., 2d Sess. 623 (1976).

Because the reference point under the regulation is the ''taxable transfer'' creating the interest, the existing regulation could be viewed as implying that the disclaimer of an interest created in a transfer that is outside the scope of the estate or gift tax need not comply with the requirements of section 2518. For example, if the disclaimed property constitutes an interest in foreign situs property created pursuant to a transfer by a nonresident alien donor or decedent, the transfer by the nonresident alien would not be within the scope of the gift tax or estate tax. However, a disclaimer of such an interest would have to comply with section 2518; otherwise, there could be transfer tax consequences to the disclaimant.

Similarly, the regulations do not specifically address the disclaimer of a property interest passing as a result of the lapse or release of a general power of appointment created on or before October 21, 1942. Under sections 2041(a)(1) and 2514(a), the lapse or release of a pre-1942 power is not subject to transfer tax.

The scope of the term ''taxable transfer'', as used in § 25.2511–1(c)(2), a related provision governing the disclaimer of interests created in taxable transfers made prior to January 1, 1977, was considered in the Eighth Circuit

decision in *United States* v. *Irvine*, 981 F.2d 991 (8th Cir. 1992), *rev'd*, 114 S.Ct 1473 (1994), and in *Ordway* v. *United States*, 908 F.2d 890 (11th Cir. 1991). In these cases, the disclaimant argued that a disclaimer that did not satisfy the requirements of § 25.2511- 1(c)(2) was nonetheless effective for estate and gift tax purposes because the trust interest that was disclaimed was created pursuant to a transfer in trust made prior to the enactment of the federal gift tax. Accordingly, the disclaimant argued that the interest was not created in a ''taxable transfer'' prior to January 1, 1977, the regulation did not apply and the disclaimer had only to be effective under state law to avoid federal tax. The Service argued in both cases that the term ''taxable transfer'' references a generic completed gift under § 25.2511–2 of the regulations. The Eleventh Circuit agreed with the Service in *Ordway*, while the Eighth Circuit disagreed in *Irvine*. The Supreme Court did not resolve this issue in its review of *Irvine*. The Court concluded that even if § 25.2511–2 did not apply, the disclaimer caused the transfer of an interest that had not been timely disclaimed, and the transfer was subject to gift tax. In view of the conflicting Eighth and Eleventh Circuit decisions in *Irvine* and *Ordway*, the Treasury and the IRS believe that it is appropriate to clarify the regulations.

2. Disclaimer of Jointly-Owned Property

The current regulations provide, in general, that in order to be a qualified disclaimer under section 2518, a surviving joint tenant's disclaimer of *both* an interest passing to the joint tenant on the creation of the tenancy, and the survivorship interest in the joint tenancy or tenancy by the entirety, must be made within 9 months after the transfer creating the tenancy. Further, a joint tenant cannot make a qualified disclaimer of any portion of a joint interest attributable to consideration furnished by that tenant. t

Section 25.2518–2(c)(4)(ii) provides a special rule with respect to joint tenancies and tenancies by the entirety in real property created after 1976 but prior to 1982. During that period, section 2515 applied in determining the gift tax consequences of the creation of a joint tenancy with right of survivorship or tenancy by the entirety in real property between husband and wife. Under section 2515, the creation of the tenancy was not treated as a gift subject to gift tax unless the parties elected to treat the creation of the tenancy as a gift. Rather, a transfer subject to gift tax occurs on the termination of the tenancy (other than by reason of the death of one of the tenants) if the proceeds of termination are not divided according to the consideration furnished by each party to the tenancy. Under § 25.2518–2(c)(4)(ii), in general, an interest in a tenancy created between 1976 and 1982 can be disclaimed within 9 months of the date of death of the first joint tenant to die, provided no election was made under section 2515 to treat the creation of the tenancy as a gift. The disclaimant can disclaim up to the portion of the tenancy included in the decedent's gross estate under section 2040.

Section 2515 was enacted in the Internal Revenue Code of 1954, effective for tenancies created after December 31, 1954, and was repealed with respect to tenancies created after December 31, 1981, by the Economic Recovery Tax Act of 1981. The Technical and Miscellaneous Revenue Act of 1988 added section 2523(i)(3) which provides that, where the spouse of a donor is not a citizen of the United States, the principles of section 2515, as such section was in effect before its repeal, shall apply (except for the provisions providing for an election), in determining the gift tax consequences of the creation of a joint tenancy or tenancy by the entirety in real property between husband and wife.

Although section 2515 was effective for tenancies created after 1954 and before 1982, and, in addition, the principles of section 2515 are currently effective for tenancies created on or after July 14, 1988, where the donee spouse is not a citizen, the special rule in the current regulation applies only to tenancies subject to section 2515 created after 1976 and before 1982.

The validity of the current regulations with respect to joint interests that are unilaterally severable has been the subject of repeated litigation. In *Kennedy* v. *Commissioner*, 804 F.2d 1332 (7th Cir. 1986), the court held that the surviving spouse's survivorship interest in the decedent's one-half interest in jointly held real property was created on the decedent's death since, prior to that time, the decedent could have unilaterally severed the interest and defeated the spouse's survivorship right in that interest. Accordingly, the court held that the survivorship interest could be disclaimed within 9 months of the decedent's death. The court concluded that the current regulations are invalid to the extent that they require a survivorship interest in a severable joint tenancy to be disclaimed within 9 months of the creation of the tenancy. In *Estate of Dancy* v. *Commissioner*, 872 F.2d 84 (4th Cir. 1989) (involving personal property), and *McDonald* v. *Commissioner*, 853 F.2d 1494 (8th Cir. 1988) (involving real property), the courts also held the regulations invalid.

In *McDonald*, the Eighth Circuit remanded the case to the Tax Court to determine if the disclaimer was otherwise qualified under section 2518. On remand, the Service argued that since the joint property was attributable entirely to consideration furnished by the disclaiming spouse, the spouse could not disclaim any interest in the property under section 2518. The Tax Court rejected this argument in *McDonald* v. *Commissioner*, T.C.M. 1989–140.

The Service announced in A.O.D. CC–1990–06 (Feb. 7, 1990) that it will follow these decisions.

3. Disclaimer of Joint Bank Accounts

For gift tax purposes, the creation of a joint bank account is treated as an incomplete transfer since, generally, the contributing joint tenant may unilaterally withdraw contributed funds without the consent of the other joint tenant. Accordingly, unless a noncontributing joint tenant has withdrawn the funds, the transfer to a joint bank account does not become complete before the death of the first joint tenant.

Explanation of Provisions

1. Interests and Powers Subject to the Disclaimer Rules

The proposed amendment clarifies that the application of section 2518, or the commencement of the 9-month period, is not dependent on the actual imposition of a transfer tax when the interest to be disclaimed is created. The proposed amendment substitutes the statutory language of section 2518(b)(2)(A), ''transfer creating the interest,'' for ''taxable transfer'' as the reference point for determining the scope of the regulations as well as when the time period for making the disclaimer commences. Under the proposed amendment, the term ''transfer creating the interest'' includes any inter vivos transfer that would be a completed gift under the gift tax regulations, whether or not a gift tax liability arises on the transfer and whether or not the transfer comes within the scope of the gift tax. Similarly, the amendment clarifies that, for testamentary transfers, the transfer creating the interest occurs on the date of the decedent's death, whether or not an estate tax is imposed on the transfer and whether or not the transfer comes within the scope of the estate tax. The amendment also clarifies that, in the

case of a disclaimer of an interest passing pursuant to the exercise, lapse, or release of a general power of appointment, the disclaimer must be made within 9 months of the exercise, lapse, or release of the power, regardless of whether the exercise, lapse, or release is subject to estate or gift tax. The proposed regulations make conforming changes to the estate and gift tax regulations.

2. Disclaimer of Jointly-Owned Property

The proposed amendments would revise the regulations to provide that, in general, if a joint tenancy may be unilaterally severed by either party, then a surviving joint tenant may disclaim the one-half survivorship interest in property held in joint tenancy with right of survivorship within 9 months of the death of the first joint tenant to die, even if the surviving joint tenant provided some or all of the consideration for the creation of the tenancy.

The rationale of the courts in *Dancy, Kennedy,* and *McDonald* does not apply to joint interests that cannot be unilaterally severed under applicable state law, such as interests held in tenancy by the entirety. In tenancies by the entirety, the donee spouse's joint interest in the property that cannot be unilaterally severed is created on the date the tenancy is created. Therefore, the proposed amendment to the regulations would reaffirm that any interest in a nonseverable cotenancy, including the survivorship interest, must be disclaimed within 9 months of the date of the creation of the tenancy. However, the Service requests comments on whether or under what circumstances (e.g., tenancy by the entirety ownership of a personal residence) the rule applicable to unilaterally severable interests should apply to interests that are not unilaterally severable.

The proposed amendments would extend the special rule in § 25.2518–2(c)(4)(ii) to tenancies created after December 31, 1954, and on or before December 31, 1981, the entire period during which section 2515 was in effect. In addition, the special rule would be expanded to include tenancies created on or after July 14, 1988, where the spouse of the donor is not a United States citizen. Under section 2523(i)(3), the creation of such tenancies is also subject to the rules of former section 2515. The special rule reflects the gift tax treatment of the creation of a joint tenancy or tenancy by the entirety that was subject to section 2515. The relief afforded by the special rule will apply to all tenancies that were subject on creation to section 2515. Under the special rule, the amount that the surviving joint tenant can disclaim is dependent on the amount that is includible in the decedent's gross estate.

3. Disclaimer of Joint Bank Accounts

The proposed regulations provide specific rules to address the disclaimer of joint bank accounts. Because the transfer creating the interest in the funds remaining in the bank account at the death of the first joint tenant to die occurs at that tenant's death, the 9-month period for making the qualified disclaimer commences on the death of the first joint tenant.

The proposed regulations also clarify that a surviving joint tenant cannot disclaim any portion of the account attributable to that survivor's contribution to the account. These contributed funds are property owned by the survivor during the cotenancy and the survivor cannot disclaim property the survivor has always owned and never transferred. Further, the proposed regulations clarify that this rule applies even if only one-half of the property is included in the decedent's gross estate under section 2040(b) because the joint tenants are married.

The proposed regulations also clarify the estate tax treatment of a disclaimed interest in a joint bank account. State law generally treats a disclaimant as predeceasing the decedent with respect to the disclaimed interest. The disclaimed interest in a joint bank account (the creation of which is treated as an incomplete gift under the gift tax regulations), would lose its character as joint property and pass through the decedent's probate estate. Accordingly, under such circumstances, the interest disclaimed is subject to inclusion in the decedent's gross estate under section 2033, rather than section 2040(a) (providing for inclusion based on the contribution of each tenant) or section 2040(b) (providing for inclusion of one-half the property in the case of certain joint tenancies between spouses). The balance of the account not subject to the disclaimer retains its character as joint property and is includible in the decedent's gross estate under either section 2040(a) or section 2040(b).

These rules are also made applicable to joint brokerage accounts, since the transfer tax treatment of these accounts generally parallels the treatment of joint bank accounts. See Rev. Rul. 69–148, 1969–1 C.B. 226.

Proposed Effective Dates

The amendments to §§ 25.2518–1(a) and 25.2518–2(c)(3) (substituting the statutory language in section 2518(b)(2)(A) ''transfer creating the interest,'' for ''taxable transfer'') and conforming changes to §§ 20.2041–3(d)(6)(i), 20.2046–1, 20.2056(d)–2(a) and (b), 25.2511–1(c)(1), 25.2514–3(c)(5), are proposed to be effective for transfers creating the interest or power to be disclaimed made after the date of publication as final regulations in the Federal Register. However, Treasury and the IRS do not view these amendments as prescribing any new rules for applying section 2518.

The amendments to § 25.2518–2(c)(4) (relating to the disclaimer of joint property and bank accounts) are proposed to be effective for disclaimers made after the date these regulations are published in the Federal Register as final regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in E.O. 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) does not apply to these regulations and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place of the hearing will be published in the Federal Register.

Drafting Information

The principal author of these regulations is Dale Carlton, Office of the Assistant Chief Counsel (Passthroughs and Special Industries). However, personnel from other offices of the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 20

Estate taxes, Reporting and recordkeeping requirements.

26 CFR Part 25

Gift taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 20 and 25 are proposed to be amended as follows:

PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

Paragraph 1. The authority citation for part 20 continues to read in part:

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

Par. 2. Section 20.2041–3 is amended as follows:

1. Paragraph (d)(6)(i) is amended by revising the first sentence and by adding a new second sentence.

2. Paragraph (d)(6)(iii) is added.

The additions and revisions read as follows:

§ 20.2041–3 Powers of appointment created after October 21, 1942.

* * * * *

(d) * * *

(6)(i) A disclaimer or renunciation of a general power of appointment created in a transfer made after December 31, 1976, is not considered to be the release of the power if the disclaimer or renunciation is a qualified disclaimer as described in section 2518 and the corresponding regulations. For rules relating to when the transfer creating the power occurs, see § 25.2518–2(c)(3). * * *

* * * * *

(iii) The first and second sentences of paragraph (d)(6)(i) of this section are effective for transfers creating the power to be disclaimed made after the date of publication as final regulations in the Federal Register.

* * * * *

Par. 3. Section 20.2046–1 is revised to read as follows:

§ 20.2046–1 Disclaimed property.

(a) This section shall apply to the disclaimer or renunciation of an interest in the person disclaiming by a transfer made after December 31, 1976. For rules relating to when the transfer creating the interest occurs, see § 25.2518–2 (c)(3) and (c)(4) of chapter 12. If a qualified disclaimer is made with respect to such a transfer, the Federal estate tax provisions are to apply with respect to the property interest disclaimed as if the interest had never been transferred to the person making the disclaimer. See section 2518 and the corresponding regulations for rules relating to a qualified disclaimer.

(b) The first and second sentences of this section are effective for transfers creating the interest to be disclaimed made after the date of publication as final regulations in the Federal Register.

Par. 4. Section 20.2056(d)–2 is amended as follows:

1. Paragraph (a) is amended by revising the first sentence and adding a new sentence after the first sentence, and paragraph (b) is revised.

2. A new paragraph (c) is added.

The additions and revisions read as follows:

§ 20.2056(d)–2 Marital deduction; effect of disclaimers of post-December 31, 1976 transfers.

(a) * * * If a surviving spouse disclaims an interest in property passing to such spouse from the decedent created in a transfer made after December 31, 1976, the effectiveness of the disclaimer will be determined by section 2518 and the corresponding regulations. For rules relating to when the transfer creating the interest occurs, see § 25.2518–2 (c)(3) and (c)(4) of chapter 12. * * *

(b) Disclaimer by a person other than a surviving spouse. If an interest in property passes to a person other than the surviving spouse from a decedent, and the interest is created in a transfer made after December 31, 1976, and—

(1) The person other than the surviving spouse makes a qualified disclaimer with respect to such interest, and

(2) The surviving spouse is entitled to such interest in property as a result of such disclaimer, the disclaimed interest is treated as passing directly from the decedent to the surviving spouse. For rules relating to when the transfer creating the interest occurs, see § 25.2518–2 (c)(3) and (c)(4) of chapter 12.

(c) *Effective date.* The first and second sentences of paragraphs (a) and (b) of this section are effective for transfers creating the interest to be disclaimed made after the date of publication as final regulations in the Federal Register.

PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

Par. 5. The authority citation for part 25 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * * Section 25.2518–2 is also issued under 26 U.S.C. 2518(b). * * *

Par. 6. Section 25.2511–1 is amended as follows:

1. In paragraph (c)(1), the fourth sentence is revised.

2. A new paragraph (c)(3) is added.

The additions and revisions read as follows:

§ 25.2511–1 Transfers in general.

* * * * *

(c)(1) * * * However, in the case of a transfer creating an interest in property (within the meaning of § 25.2518–2 (c)(3) and (c)(4)) made after December 31, 1976, this paragraph (c)(1) shall not apply to the donee if, as a result of a qualified disclaimer by the donee the interest passes to a different donee. * * *

* * * * *

(3) The fourth sentence of paragraph (c)(1) of this section is effective for transfers creating an interest to be disclaimed made after the date of publication as final regulations in the Federal Register.

* * * * *

Par. 7. Section 25.2514–3 is amended as follows:

1. Paragraph (c)(5) is amended by revising the first sentence and adding a new second sentence.

2. A new paragraph (c)(7) is added.

The additions and revisions read as follows:

§ 25.2514–3 Powers of appointment created after October 21, 1942.

* * * * *

(c) * * *

(5) * * * A disclaimer or renunciation of a general power of appointment created in a transfer made after December 31, 1976, is not considered a release of the power for gift tax purposes if the disclaimer or renunciation is a qualified disclaimer as described in section 2518 and the corresponding regulations. For rules relating to when a transfer creating the power occurs, see § 25.2518–2(c)(3). * * *

* * * * *

(7) The first and second sentences of paragraph (5) of § 25.2514–3(c) are effective for transfers creating the power to be disclaimed made after the date of publication as final regulations in the Federal Register.

* * * * *

Par. 8. Section 25.2518–1 is amended as follows:

1. Paragraph (a)(1) is revised.

2. In paragraph (a)(2), the third, fourth, and fifth sentences of the *Example* are revised and a new sentence is added after the third sentence.

3. A new paragraph (a)(3) is added.

The additions and revisions read as follows:

§ 25.2518–1 Qualified disclaimers of property; In general.

(a) * * * (1) *In general.* The rules described in §§ 25.2518–1 through 25.2518–3 apply to the qualified disclaimer of an interest in property which is created in the person disclaiming by a transfer made after December 31, 1976. In general, a qualified disclaimer is an irrevocable and unqualified refusal to accept the ownership of an interest in property. For rules relating to the determination of when a transfer creating an interest occurs, see § 25.2518–2(c) (3) and (4).

(2) * * * The transfer creating the remainder interest in the trust occurred in 1968. See § 25.2511–1(c)(2). Therefore, section 2518 does not apply to the disclaimer of the remainder interest because the transfer creating the interest was made prior to January 1, 1977. If, however, W had caused the gift to be incomplete by also retaining the power to designate the person or persons to receive the trust principal at death, and, as a result, no transfer (within the meaning of § 25.2511–1(c)(2)) of the remainder interest was made at the time of the creation of the trust, section 2518 would apply to any disclaimer made after W's death with respect to an interest in the trust property.

(3) Section 25.2518–1(a)(1) is effective for transfers creating the interest to be disclaimed made after the date of publication as final regulations in the Federal Register.

* * * * *

Par. 9. Section 25.2518–2 is amended as follows:

1. Paragraph (c)(3) is redesignated as paragraph (c)(3)(i).

2. Newly designated paragraph (c)(3)(i) is amended as follows:

a. In the first, eighth, and eleventh sentences, the word ''taxable'' is removed in each place it appears.

b. In the third and ninth sentences, the language ''taxable transfer'' is removed and ''transfer creating an interest'' is added in each place it appears.

c. The fourth, fifth, sixth, and seventh sentences are revised.

d. A new sentence is added after the fourth sentence.

3. A new paragraph (c)(3)(ii) is added.

4. Paragraph (c)(4) is revised.

5. In paragraph (c)(5), *Example (7)* is revised.

6. In paragraph (c)(5), *Example (9)* is redesignated as *Example (13)* and newly designated *Example (13)* is revised.

7. In paragraph (c)(5), *Example (8)* is redesignated as *Example (9)* and newly designated *Example (9)* is revised.

8. In paragraph (c)(5), *Example (10)* is redesignated as *Example (12)* and the first sentence of newly designated *Example (12)* is revised.

9. In paragraph (c)(5), new *Examples (8), (10), (11), (14),* and *(15),* are added.

The additions and revisions read as follows:

§ 25.2518–2 Requirements for a qualified disclaimer.

* * * * *

(c) * * *

(3)(i) * * * With respect to transfers made by a decedent at death or transfers that become irrevocable at death, the transfer creating the interest occurs on the date of the decedent's death, even if an estate tax is not imposed on the transfer. For example, a bequest of foreign-situs property by a nonresident alien decedent is regarded as a transfer creating an interest in property even if the transfer would not be subject to estate tax. If there is a transfer creating an interest in property during the transferor's lifetime and such interest is later included in the transferor's gross estate for estate tax purposes (or would have been included if such interest were subject to estate tax), the 9-month period for making the qualified disclaimer is determined with reference to the earlier transfer creating the interest. In the case of a general power of appointment, the holder of the power has a 9-month period after the transfer creating the power in which to disclaim. If a person to whom any interest in property passes by reason of the exercise, release, or lapse of a general power desires to make a qualified disclaimer, the disclaimer must be made within a 9-month period after the exercise, release, or lapse regardless of whether the exercise, release, or lapse is subject to estate or gift tax. * * *

(ii) Sentences 1, 3 through 10, and 12 of paragraph (c)(3)(i) of this section are effective for transfers creating the interest to be disclaimed made after the date of publication as final regulations in the Federal Register.

(4) *Joint property*—(i) *Interests that are unilaterally severable.* Except as provided in paragraph (c)(4)(iv) of this section with respect to joint bank accounts and joint brokerage accounts, in the case of an interest in a joint tenancy with right of survivorship or a tenancy by the entirety that either joint tenant can sever unilaterally under local law, a qualified disclaimer of the interest to which the disclaimant succeeds as donee upon creation of the tenancy must be made no later than 9 months after the creation of the tenancy. A qualified disclaimer of the survivorship interest to which the survivor succeeds by operation of law upon the death of the first joint tenant to die must be made no later than 9 months after the death of the first joint tenant to die. See, however, section 2518(b)(2)(B) for a special rule in the case of disclaimers by persons under age 21. Except as provided in paragraph (c)(4)(iii) of this section (with respect to certain tenancies in real property created after 1954 and before 1982 and certain tenancies created on or after July 14, 1988), the interest that may be disclaimed within 9 months after the death of the first joint tenant to die is the interest to which the disclaimant succeeds by right of survivorship, regardless of the portion of the property attributable to consideration furnished by the disclaimant and regardless of the portion of the property that is included in the decedent's gross estate under section 2040. See § 25.2518–2(c)(5), *Example (7).*

(ii) *Interests that are not unilaterally severable.* Except as provided in paragraph (c)(4)(iii) of this section with respect to interests created after 1954 and before 1982 and certain interests created after July 14, 1988, if an interest in joint property with right of survivorship or an interest held as a tenant by the entirety is not unilaterally severable under local law, a qualified disclaimer of the interest or any portion of the interest must be made no later than 9 months after the transaction creating the tenancy. A tenant by the entirety or other cotenant who cannot unilaterally sever the interest under applicable local law cannot make a qualified disclaimer of any portion of the joint interest to the extent attributable to consideration furnished by that tenant even if the disclaimer is made within 9 months of the creation of the tenancy. See § 25.2518–2(c)(5), *Example (8).*

(iii) *Tenancies in real property between spouses created before 1982 and certain tenancies in real property between spouses created on or after July 14, 1988.* In the case of a joint tenancy between spouses or a tenancy by the entirety in real property created after 1954 and before 1982 where no election was made under section 2515, or a joint tenancy between spouses or a tenancy by the entirety in real property created on or after July 14, 1988, to which section 2523(i)(3) applies (relating to the creation of a tenancy where the spouse of the donor is not a United States citizen), the surviving spouse must make a qualified disclaimer no later than 9 months after the death of the first spouse to die. The surviving spouse may disclaim any portion of the joint interest that is includible in the decedent's gross estate under section 2040. See § 25.2518–2(c)(5), *Examples (9) and (10).*

(iv) *Special rule for joint bank and brokerage accounts established between spouses or between persons other than husband and wife.* In the case of a transfer to a joint bank account or a joint brokerage account, if a transferor may unilaterally withdraw the transferor's own contributions from the account without the consent of the other cotenant, the transfer creating the survivor's interest in a decedent's share of the account occurs on the death of the deceased cotenant. Accordingly, if a surviving joint tenant desires to make a qualified disclaimer with respect to funds contributed by a deceased cotenant, the disclaimer must be made within 9 months of the cotenant's death. The surviving joint tenant may not disclaim any portion of the joint account attributable to consideration furnished by that surviving joint tenant. See § 25.2518–2(c)(5), *Examples 13, 14 and 15,* regarding the treatment of disclaimed interests under sections 2518, 2033 and 2040.

(v) *Effective date.* This paragraph (c)(4) is effective for disclaimers made after the date of publication as final regulations in the Federal Register.

(5) *Examples.* * * *

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Example (7). On February 1, 1990, A purchased real property with A's funds. Title to the property was conveyed to ''A and B, as joint tenants with right of survivorship.'' Under applicable state law, the joint interest is unilaterally severable by either tenant. B dies on May 1, 1997, and is survived by A. On January 1, 1998, A disclaims the one-half survivorship interest in the property to which A succeeds as a result of B's death. Assuming that the other requirements of section 2518(b) are satisfied, A has made a qualified disclaimer of the one-half survivorship interest (but not the interest retained by A upon the creation of the tenancy, which may not be disclaimed by A). The result is the same whether or not A and B are married and regardless of the proportion of consideration furnished by A and B in purchasing the property.

Example (8). On March 1, 1997, A purchases a parcel of real property that is conveyed to A and A's spouse, B, as tenants by the entirety. A provides the consideration for the purchase. Under applicable state law, the tenancy cannot be unilaterally severed by either tenant. In order to be a qualified disclaimer, any disclaimer by B of B's interest in the property must be made within 9 months of the creation of the tenancy (i.e., within 9 months of March 1, 1997). Since A provided the entire consideration for the property and the tenancy is not unilaterally severable, A may not disclaim any interest in the tenancy.

Example (9). On March 1, 1977, H and W purchase a tract of vacant land which is conveyed to them as tenants by the entirety. The entire consideration is paid by H. H does not elect, under section 2515, to have the transaction treated as a transfer for purposes of Chapter 12. H dies on June 1, 1997. W can disclaim one-half of the joint interest because this is the interest includible in H's gross estate under section 2040(b). Assuming that W's disclaimer is received by the executor of H's estate no later than 9 months after June 1, 1997, and the other requirements of section 2518(b) are satisfied, W's disclaimer of one-half of the property would be a qualified disclaimer because the transfer which created W's interest is treated as not occurring until H's death, since no election was made under section 2515. The result would be the same if the property was held in joint tenancy with right of survivorship that was unilaterally severable under local law.

Example (10). Assume the same facts as in example (9) except that the land was purchased on March 1, 1989, and W is not a United States citizen. W has until 9 months after June 1, 1997, to make a qualified disclaimer, and can disclaim the entire joint interest because this is the interest includible in H's gross estate under section 2040(a). The result would be the same if the property was held in joint tenancy with right of survivorship that was unilaterally severable under local law.

Example (11). In 1986, spouses A and B purchased a personal residence taking title as joint tenants with right of survivorship. Under applicable state law, the interest in the tenancy may be unilaterally severed by either party. B dies on July 10, 1997. A wishes to disclaim the one-half undivided interest to which A would succeed by right of survivorship. If A makes the disclaimer, the property interest would pass under B's will to their child C. C, an adult, and A resided in the residence at B's death and will continue to reside there in the future. A continues to own a one-half undivided interest in the property. Assuming that the other requirements of section 2518(b) are satisfied, A may make a qualified disclaimer with respect to the one-half undivided survivorship interest in the residence if A delivers the written disclaimer to the personal representative of B's estate by April 10, 1998, since A is not deemed to have accepted the interest or any of its benefits prior to that time and A's occupancy of the residence after B's death is consistent with A's retained undivided ownership interest.

Example (12). H and W, husband and wife, reside in state X, a community property state. * * *

Example (13). On July 1, 1990, A opens a bank account that is held jointly with B, A's spouse, and transfers $50,000 of A's money to the account. A and B are United States citizens. A can regain the entire account without B's consent. The transfer is not a completed gift under § 25.2511–1(h)(4). A dies on August 15, 1997, and B disclaims the entire amount in the bank account on October 15, 1997. Assuming that the remaining requirements of section 2518(b) are satisfied, B made a qualified disclaimer under section 2518(a) because the disclaimer was made within 9 months after A's death at which time B had succeeded to full dominion and control over the account. Under state law, B is treated as predeceasing A with respect to the disclaimed interest. The disclaimed account balance passes through A's probate estate and is no longer joint property includible in A's gross estate under section 2040. The entire account is, instead, includible in A's gross estate under section 2033. The result would be the same if A and B were not married.

Example (14). The facts are the same as *Example (13),* except that B, rather than A, dies on August 15, 1997. A may not make a qualified disclaimer with respect to any of the funds in the bank account, because A furnished the funds for the entire account and A did not relinquish dominion and control over the funds.

Example (15). The facts are the same as *Example (13),* except that B disclaims 40 percent of the funds in the account. Since, under state law, B is treated as predeceasing A with respect to the disclaimed interest, the 40 percent portion of the account balance that was disclaimed passes as part of A's probate estate, and is no longer characterized as joint property. This 40 percent portion of the account balance is, therefore, includible in A's gross estate under section 2033. The remaining 60 percent of the account balance that was not disclaimed retains its character as joint property and, therefore, is includible in A's gross estate as provided in section 2040(b). Therefore, 30 percent (½ × 60 percent) of the account balance is includible in A's gross estate under section 2040(b), and a total of 70 percent of the aggregate account balance is includible in A's gross estate. If A and B were not married, then the 40 percent portion of the account subject to the disclaimer would be includible in A's gross estate as provided in section 2033 and the 60 percent portion of the account not subject to the disclaimer would be includible in A's gross estate as provided in section 2040(a), because A furnished all of the funds with respect to the account.

Margaret Milner Richardson,

Commissioner of Internal Revenue,

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 009–1009; FRL–5558–1]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve revisions to Missouri's Federally enforceable operating permit (FESOP) program contained in Missouri rule 10 CSR 10–6.065. These revisions are designed to ease the administrative burden on the state and on affected sources without relaxing environmental requirements.