

Federal Regulations are amended as follows:

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

**Subpart D—[Amended]**

1. The authority citation for subpart D of part 416 continues to read as follows:

**Authority:** Secs. 702(a)(5), 1611(a), (b), (c), and (e), 1612, 1617, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1382(a), (b), (c), and (e), 1382a, 1382f, and 1383).

2. Section 416.420 is amended by revising paragraph (a) to read as follows:

**§ 416.420 Determination of benefits; general.**

\* \* \* \* \*

(a) *General rule.* We generally use the amount of your countable income in the second month prior to the current month to determine how much your benefit amount will be for the current month. We will use the benefit rate (see §§ 416.410 through 416.414), as increased by a cost-of-living adjustment, in determining the value of the one-third reduction or the presumed maximum value, to compute your SSI benefit amount for the first 2 months in which the cost-of-living adjustment is in effect. If you have been receiving an SSI benefit and a Social Security insurance benefit and the latter is increased on the basis of the cost-of-living adjustment or because your benefit is recomputed, we will compute the amount of your SSI benefit for January, the month of an SSI benefit increase, by including in your income the amount by which your Social Security benefit in January exceeds the amount of your Social Security benefit in November. Similarly, we will compute the amount of your SSI benefit for February by including in your income the amount by which your Social Security benefit in February exceeds the amount of your Social Security benefit in December.

*Example 1.* Mrs. X's benefit amount is being determined for September (the current month). Mrs. X's countable income in July is used to determine the benefit amount for September.

*Example 2.* Mr. Z's SSI benefit amount is being determined for January (the current month). There has been a cost-of-living increase in SSI benefits effective January. Mr. Z's countable income in November is used to determine the benefit amount for January. In November, Mr. Z had in-kind support and maintenance valued at the presumed maximum value as described in § 416.1140(a). We will use the January benefit rate, as increased by the COLA, to determine the value of the in-kind support and maintenance Mr. Z received in November

when we determine Mr. Z's SSI benefit amount for January.

*Example 3.* Mr. Y's SSI benefit amount is being determined for January (the current month). Mr. Y has Social Security income of \$100 in November, \$100 in December, and \$105 in January. We find the amount by which his Social Security income in January exceeds his Social Security income in November (\$5) and add that to his income in November to determine the SSI benefit amount for January.

\* \* \* \* \*

**Subpart K—[Amended]**

3. 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).

4. Section 416.1130 is amended by revising paragraph (a) to read as follows:

**§ 416.1130 Introduction**

(a) *General.* Both earned income and unearned income include items received in kind (§ 416.1102). Generally, we value in-kind items at their current market value and we apply the various exclusions for both earned and unearned income. However, we have special rules for valuing food, clothing, or shelter that is received as unearned income (in-kind support and maintenance). This section and the ones that follow discuss these rules. In these sections (§§ 416.1130 through 416.1148) we use the in-kind support and maintenance you receive in the month as described in § 416.420 to determine your SSI benefit. We value the in-kind support and maintenance using the Federal benefit rate for the month in which you receive it. *Exception:* For the first 2 months for which a cost-of-living adjustment applies, we value in-kind support and maintenance you receive using the VTR or PMV based on the Federal benefit rate as increased by the cost-of-living adjustment.

*Example:* Mr. Jones receives an SSI benefit which is computed by subtracting one-third from the Federal benefit rate. This one-third represents the value of the income he receives because he lives in the household of a son who provides both food and shelter (in-kind support and maintenance). In January, we increase his SSI benefit because of a cost-of-living adjustment. We base his SSI payment for that month on the food and shelter he received from his son two months earlier in November. In determining the value of that food and shelter he received in

November, we use the Federal benefit rate for January.

\* \* \* \* \*

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**DEPARTMENT OF TRANSPORTATION**

**Federal Highway Administration**

**23 CFR Part 655**

[FHWA Docket 96-9; FHWA-97-2281]

RIN 2125-AD89

**National Standards for Traffic Control Devices; Revision of the Manual on Uniform Traffic Control Devices; Pedestrian, Bicycle, and School Warning Signs**

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

**ACTION:** Final amendment to the Manual on Uniform Traffic Control Devices (MUTCD).

**SUMMARY:** This document contains an amendment to the MUTCD which has been adopted by the FHWA for inclusion therein. The amendment revises sections of the MUTCD to permit the optional use of fluorescent yellow green (FYG) warning signs related to pedestrian, bicycle, and school applications. The MUTCD is incorporated by reference in FHWA's regulations on traffic control devices on Federal-aid and other streets and highways, and recognized as the national standard for traffic control devices on all public roads. This amendment is intended to expedite traffic, improve safety and provide a more uniform application of highway signs, signals, and markings.

**DATES:** The final rule is effective on June 19, 1998. Incorporation by reference of the publication listed in the regulations is approved by the Director of the Federal Register as of June 19, 1998.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ernest Huckaby, Office of Highway Safety (202) 366-9064; or Mr. Ray Cuprill, Office of Chief Counsel, (202) 366-1377, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

Internet users can access all comments received by the U.S. DOT Dockets, Room PL-401, by using the universal resource locator (URL): <http://>

/dms.dot.gov. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

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

The text for Parts I, II, VII, and IX of the MUTCD is available from the FHWA Office of Highway Safety (HHS-10) or from the FHWA Home Page at the URL: <http://www.ohs.fhwa.dot.gov/devices/mutcd.html>

### Background

The 1988 MUTCD is available for inspection and copying as prescribed in 49 CFR Part 7. It may be purchased for \$44 (Domestic) or \$55 (Foreign) from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7954, Stock No. 650-001-00001-0. The purchase of the MUTCD includes the 1993 revision of Part VI, Standards and Guides for Traffic Controls for Street and Highway Construction, Maintenance, Utility and Incident Management Operation, dated September 1993.

The FHWA both receives and initiates requests for amendments to the MUTCD. Each request is assigned an identification number which indicates by Roman numeral, the organizational part of the MUTCD affected and, by Arabic numeral, the order in which the request was received. This amendment contains the disposition of a proposed change which was published on June 7, 1996, at 61 FR 29234. Text changes required as a result of amendments contained herein will be distributed to everyone currently appearing on the FHWA, Office of Highway Safety, **Federal Register** mailing list and will be published in the next edition of the MUTCD. Those wishing to be added to this **Federal Register** mailing list should write to the Federal Highway Administration, Office of Highway Safety, HHS-10, 400 Seventh Street, SW., Washington, DC 20590.

### Summary of Comments

The FHWA has reviewed the comments received in response to the proposed amendment and other information related to the MUTCD. The FHWA is acting on the following

request for change to the 1988 edition of the MUTCD.

This amendment to the MUTCD allows the use of fluorescent yellow green (FYG) as an optional color for Advance Pedestrian Crossing Sign (W11-2), Pedestrian Crossing Sign (W11A-2), Bicycle Crossing Sign (W11-1), School Advance Sign (S1-1), School Crossing Sign (S2-1), and School Bus Stop Ahead Sign (S3-1).

The FHWA received 141 comments in response to the proposed amendment, of which 110 agreed with the FHWA's position; 21 opposed; and 10 were either undecided or suggested recommendations not addressed in the NPRM. The FHWA received 12 comments suggesting this color be adopted for use in incident management. The FHWA is currently conducting research with the States of New Jersey, Maryland and Virginia on the appropriate color for incident management. Included in this research is FYG. Upon conclusion of the research rulemaking action will be considered.

The notice of proposed amendment published on June 7, 1996, included a vague and incomplete reference to the Pedestrian Crossing Sign and the Advance Pedestrian Crossing Sign. Both signs were intended to be embraced by the amendment permitting optional FYG use. Inadvertently, however, the former was referenced by name only; the latter was referenced by sign number only, although dual (name and sign number) references were included for each of the other signs involved in the amendment.

The FHWA believes, however, that it is appropriate to include both the Pedestrian and Advance Pedestrian Crossing Signs in the amendment adopted here. Although comment was not specifically invited concerning the Advance Pedestrian Crossing Sign by name, we note that the sign is equivalent in context to the School Advance Sign which received no opposing comments. Moreover, because the amendment provides for optional installation of FYG signs, inclusion of both the Pedestrian and Advance Pedestrian Crossing Signs should not impose any hardship or result in any detriment. Conversely, failure to include both signs within the scope of the amendment adopted at this time could unduly burden those municipalities that choose to install FYG signs, but would then have to do so under different installation schedules for the Pedestrian Crossing and Advance Pedestrian Crossing Signs. Sequential installation of the signs would contradict the FHWA's recommendation that a systematic approach be used to install

the signs, potentially resulting in negative safety implications. Indeed, several commenters questioned the advisability of not including both the Pedestrian Crossing and Advance Pedestrian Crossing Signs. Further, several commenters indicated that a mixing of FYG and standard yellow signs, resulting from failure to include both in this notice, could lead to motorists' confusion and should not be permitted.

Pedestrian-motor vehicle crashes are a serious problem in the United States. A total of 5,412 pedestrians were reported killed and another 82,000 were injured in motor vehicle crashes in 1996. An estimated 59,000 bicyclists were injured and 761 were killed in motor vehicle collisions in 1996. Of the 41,907 people who lost their lives in motor vehicle crashes in 1996, 13 percent were pedestrians and 2 percent were bicyclists (Traffic Safety Facts 1996 (NHTSA)). Although a drop in pedestrian fatalities has occurred in recent years, a serious problem continues to exist in the United States relative to pedestrian and bicyclist deaths and injuries.

The DOT Secretarial Initiative for Pedestrian and Bicycle Safety is a new effort to promote walking and bicycling as a safe, healthy, and efficient way to travel. By the year 2000, the Secretarial Initiative will have attempted to decrease by 10 percent the number of injuries and fatalities occurring to bicyclists and pedestrians, and to double the national percentage of transportation trips made by walking or bicycling.

As reported in the NPRM, the FHWA conducted a nationwide study during 1993-1995. North Carolina State University, Civil Engineering Department, took part in this study and performed an in-depth research study in the use of FYG warning signs. The study involved eight sites in multiple pedestrian environments in multiple cities. The overall results of the study indicate that FYG warning signs produced only marginal improvement in perceived safety at the crossing sites. At three of the crossing sites studied, the evaluation indicated a significant reduction in the number of pedestrian/vehicle conflicts, as well as a significant increase in the percentage of vehicles slowing or stopping. Public opinion surveys reflected a strong indication that the FYG warnings do "stand out" and were associated with the need for caution. (Source: "Field Evaluation of Fluorescent Strong Yellow Green Pedestrian Warning Signs," M.S. Thesis, K.L. Clark, North Carolina State University, 1994.)

Over the last 26 months, the FHWA has approved 28 jurisdictions to experiment with FYG warning signs. Several of the jurisdictions that have taken part in the experimentation have indicated that the use of the FYG warning signs meets pedestrian safety needs and have requested permission to install additional signs. Many other jurisdictions have expressed an interest in their use and are awaiting the FHWA final rule.

Of the 141 comments received in response to the NPRM, 23 represented jurisdictions that either participated in the original two-year experimentation, or that are currently experimenting with FYG, submitted comments. Of those jurisdictions, 22 were in agreement with the proposed optional use, and 1 opposed the proposal.

The City of Chicago has recently implemented a "Safe Route to School Program" for the Chicago Board of Education. This program is a direct result of crashes involving motorists and children in school zones. The City of Chicago has requested and been granted approval to experiment with FYG signs at 10 school crossings that have been identified as "problem locations." Installation of the first FYG sign received media attention and its use has been well received by elected officials, the Board of Education, and the public. In many instances, jurisdictions have publicized the installation of the FYG signs and have received positive responses from educators, parents, students, and motorists.

The NPRM received favorable comments and overwhelming support from local governments, including police departments and public school systems, in addition to special interest groups and the general public. National organizations with safety interests, such as the National Safety Council, Institute of Transportation Engineers, and the American Automobile Association (AAA-Florida, Louisiana, Mississippi), have all responded very positively to the use of FYG warning signs.

Many of the public comments received in response to the NPRM voiced common concerns that will be addressed individually. The NPRM addressed the cost increase of fluorescent sheeting material as one and a half times as much as the high intensity sign material. The FHWA estimated the cost of the fluorescent sheeting material to be \$7.45 per sq.ft. versus the high intensity sign material at \$5.32 per sq.ft. These costs considered sign blank, sheeting material, and labor costs for a 30" x 30" sign. Several docket comments stated that FYG sheeting material (\$4.90 per sq. ft.) actually costs

only 30 percent more than high intensity sign material (\$3.75 per sq.ft.) When comparing total installed sign costs (fabrication, hardware, installation, and labor costs), the actual cost difference would only be 7 percent (\$17.74 per sq. ft. versus \$18.90 per sq. ft.) for a 30" School Crossing Sign. The FHWA agrees with this cost statement as these costs follow along with the cost evaluation method using the Bellomo-McGee calculation. (Source: 1987 study conducted by Bellomo-McGee for the FHWA, "Retroreflectivity of Roadway Signs for Adequate Visibility: A Guide," (FHWA/DF-88/001).) The FHWA is also concerned with the cost burden on State and local transportation agencies and believes the "optional" use as opposed to an unfunded mandate will relieve the agencies of an undue cost burden. The overall installation cost for the sign is not much different because the sheeting cost is only a small amount of the total cost of a sign installation.

There is concern that the NPRM gave conflicting guidance in proposing a "systematic approach" at locations selected for use of the FYG warning signs, and the "gradual phase-in" as part of "routine maintenance." Historically, when signs are installed at the same time, they generally deteriorate beyond usefulness at the same time and need to be replaced at the same time. Signs that are taken down to comply with the "systematic approach" and that are in a usable condition may be used again at other locations. Additionally, signs can be taken down and refurbished with new sheeting material and used again at new locations.

Several commenters believe the use of FYG warning signs should be implemented as a mandatory (shall) condition in the MUTCD, rather than an optional condition as proposed in the NPRM. Designation of FYG signs as an option fits in with the present character of the MUTCD which allows the State and local transportation agencies to make a determination on use of traffic control devices that may be beneficial to some locations. An example is the use of channelizing devices in work zones with the optional use of tubular markers, cones, and drums. This is a positive step in allowing State and local agencies to address their safety needs and avoids an undue burden on their budgets.

Concern has been expressed over the "novelty effect" of the FYG signs. While there is always the possibility of a "novelty" effect which could decrease the benefits over time, the experimentation procedures took into consideration the possibility of the novelty effect on drivers by instructing

the implementing agency to allow at least 30 days between the time the experimental signs were installed and the time the study proceeded.

The American Society for Testing and Materials (ASTM) publishes standard test methods, specifications, practices, guides, classifications, and terminology. These standards are developed voluntarily and used voluntarily. They become legally binding only when a government body makes them so, or when they are cited in a contract. Specifically, ASTM E991 describes procedures for measuring the color of fluorescent specimens as they would be perceived when illuminated by daylight, and for calculating tristimulus values and chromaticity coordinates for these conditions. ASTM E1247 provides spectrophotometric methods for identifying the presence of fluorescence in object-color specimens.

There is some concern regarding the use of ASTM E991 and E1247 for determining compliance with specifications listed in the NPRM. It was mentioned that most State and local agencies would not have the instrumentation necessary to accurately measure fluorescence specifications. This is not deemed a critical concern as the testing for FYG would be no different than what is done in field offices now. Most States currently have the capability to do initial testing of retroreflectivity. When a State purchases sign material, the manufacturer certifies the specifications; however, some States reserve the option to do their own lab work.

The Commission Internationale de l'Eclairage (CIE) (English: International Commission on Illumination) chromaticity coordinates (x,y), defining the corner of the Fluorescent Yellow Green daytime color region, are stated in the table below. Several docket comments received mentioned that the Y values were omitted from the NPRM; therefore, the Y values have been inserted in the table below:

x	y	Y	Y <sub>F</sub>
0.387	0.610	50	20
0.368	0.539	.....	.....
0.421	0.486	.....	.....
0.460	0.540	.....	.....

Fluorescent materials differ from non-fluorescent materials in that the total luminance is the sum of the luminances due to reflection and fluorescence. The luminance factor Y of such materials is the sum of the luminance due to reflection (Y<sub>R</sub>) and the luminance due to fluorescence (Y<sub>F</sub>). Therefore,  $Y = Y_R + Y_F$ . If the value of Y<sub>F</sub> is greater than zero,

the material is fluorescent; if  $Y_F$  equals zero, then the luminance factor  $Y$  is equal to  $Y_R$ .

These four pairs of chromaticity coordinates determine the acceptable color in terms of the CIE 1931 Standard Colorimetric System (2 degree standard observer) measured with CIE Standard Illuminant D65 in accordance with ASTM E991. In addition, the color shall be fluorescent, as determined by ASTM E1247.

#### Rulemaking Analyses and Notices

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

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking would be minimal. The change in this notice provides additional guidance, clarification, and optional application for traffic control devices. The FHWA expects that application uniformity will improve at little additional expense to public agencies or the motoring public. Therefore, a full regulatory evaluation is not required.

##### *Regulatory Flexibility Act*

In compliance with the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601-612), the FHWA has evaluated the effects of this action on small entities. This final amendment allows the optional use of alternative traffic control devices and the changes adopted here merely provide expanded guidance and clarification on the selection of appropriate traffic control devices. Based on this evaluation, the FHWA hereby certifies that this action would not have a significant economic impact on a substantial number of small entities.

##### *Unfunded Mandates Reform Act*

This rule does not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, March 22, 1995, 109 Stat. 48). This rulemaking relates to the Federal-aid Highway Program which is a financial assistance program in which State, local, or tribal governments have authority to adjust their program in accordance with changes made in the program by the Federal government, and thus is excluded from the definition of Federal mandate under the Unfunded Mandates Reform Act of 1995.

##### *Executive Order 12612 (Federalism Assessment)*

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action would not have sufficient federalism implications to warrant the preparation of a federalism assessment. The MUTCD is incorporated by reference in 23 CFR part 655, subpart F, which requires that changes to the national standards issued by the FHWA shall be adopted by the States or other Federal agencies within two years of issuance. These amendments are in keeping with the Secretary of Transportation's authority under 23 U.S.C. 109(d), 315, and 402(a) to promulgate uniform guidelines to promote the safe and efficient use of the highway. To the extent that these amendments override any existing State requirements regarding traffic control devices, they do so in the interests of national uniformity.

##### *Executive Order 12372 (Intergovernmental Review)*

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

##### *Paperwork Reduction Act*

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

##### *National Environmental Policy Act*

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

##### *Regulation Identification Number*

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

##### **List of Subjects in 23 CFR Part 655**

Design standards, Grant programs—transportation, Highways and roads,

Incorporation by reference, Reporting and recordkeeping requirements, Signs, Traffic regulations.

The FHWA hereby amends chapter I of title 23, Code of Federal Regulations, part 655 as set forth below:

#### **PART 655—TRAFFIC OPERATIONS**

1. The authority citation for part 655 continues to read as follows:

**Authority:** 23 U.S.C. 101(a), 104, 105, 109(d), 114(a), 135, 217, 307, 315, and 402(a); 23 CFR 1.32; and 49 CFR 1.48(b).

##### **Subpart F—Traffic Control Devices on Federal-Aid and Other Streets and Highways**

2. In section 655.601, paragraph (a) is revised to read as follows:

##### **§ 655.601 Purpose.**

\* \* \* \* \*

(a) Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD), FHWA, 1988, including Revision No. 1 dated January 17, 1990, Revision No. 2 dated March 17, 1992, Revision No. 3 dated September 3, 1993, "Errata No. 1 to the 1988 MUTCD, Revision 3 dated November 1, 1994," Revision No. 4 dated November 1, 1994, Revision No. 4a (modified) dated February 19, 1998, Revision No. 5 dated December 24, 1996, and Revision No. 6, dated June 19, 1998. This publication is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 and is on file at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. The 1988 MUTCD, including Revision No. 3 dated September 3, 1993, may be purchased from the Superintendent of Documents, U.S. Government Printing Office (GPO), P.O. Box 371954, Pittsburgh, PA 15250-7954, Stock No. 650-001-00001-0. The amendments to the MUTCD, titled "1988 MUTCD Revision No. 1," dated January 17, 1990, "1988 MUTCD Revision No. 2," dated March 17, 1992, "1988 MUTCD Revision No. 3," dated September 3, 1993, "1988 MUTCD Errata No. 1 to Revision No. 3," dated November 1, 1994, "1988 MUTCD Revision No. 4," dated November 1, 1994, "Revision No. 4a(modified)," dated February 19, 1998, and "1988 MUTCD Revision No. 5," dated December 24, 1996, and Revision No. 6 dated June 19, 1998 are available from the Federal Highway Administration, Office of Highway Safety, HHS-10, 400 Seventh Street, SW., Washington, DC 20590. These documents are available for inspection and copying as prescribed in 49 CFR part 7.

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Issued: June 9, 1998.

**Kenneth R. Wykle,**

*Federal Highway Administrator.*

[FR Doc. 98-15882 Filed 6-18-98; 8:45 am]

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Parts 1, 7, and 602

[TD 8770]

RIN Nos. 1545-AP81 and 1545-AI32

#### Certain Transfers of Stock or Securities by U.S. Persons to Foreign Corporations and Related Reporting Requirements

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

**ACTION:** Final and temporary regulations.

**SUMMARY:** This document contains regulations relating to certain transfers of stock or securities by U.S. persons to foreign corporations pursuant to the corporate organization and reorganization provisions of the Internal Revenue Code, and the reporting requirements related to such transfers. The regulations provide the public with guidance necessary to comply with the Tax Reform Act of 1984.

**DATES:** These regulations are effective July 20, 1998.

**FOR FURTHER INFORMATION CONTACT:** Philip L. Tretiak at (202) 622-3860 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1271. Responses to these collections of information are required in order for certain U.S. shareholders that transfer stock or securities in section 367(a) exchanges to qualify for an exception to the general rule of taxation under section 367(a)(1).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The estimated burden per respondent varies from .5 to 8 hours, depending upon individual circumstances, with an estimated average of 4 hours.

Comments concerning the accuracy of this burden estimate and suggestions for

reducing this burden should be sent to the Internal Revenue Service, *Attn:* IRS Reports Clearance Officer, T:FS:FP, Washington, DC 20224, and to the Office of Management and Budget, *Attn:* Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

#### Background

On May 16, 1986, temporary and proposed regulations under sections 367(a) and (d), and 6038B were published in the **Federal Register** (51 FR 17936). These regulations, which addressed transfers of stock or securities and other assets, as well as related reporting requirements, were published to provide the public with guidance necessary to comply with changes made to the Internal Revenue Code by the Tax Reform Act of 1984. The IRS and the Treasury Department later issued Notice 87-85 (1987-2 C.B. 395), which set forth substantial changes to the 1986 regulations, effective with respect to transfers of domestic or foreign stock or securities occurring after December 16, 1987. A further notice of proposed rulemaking containing rules under section 367(a) with respect to transfers of domestic or foreign stock or securities, as well as section 367(b), was published in the **Federal Register** on August 26, 1991 (56 FR 41993). The section 367(a) portion of the 1991 proposed regulations was generally based upon the positions announced in Notice 87-85, but the regulations proposed certain modifications to Notice 87-85, particularly with respect to transfers of stock or securities of foreign corporations.

Subsequently, the IRS and the Treasury Department have issued guidance focusing on the transfers of stock or securities of domestic corporations. Notice 94-46 (1994-1 C.B. 356) announced modifications to the positions set forth in Notice 87-85 (and the 1991 proposed regulations) with respect to transfers of stock or securities of domestic corporations occurring after April 17, 1994. Temporary and proposed regulations (referred to as the inversion regulations) implementing Notice 94-46 (with certain modifications) were published in the **Federal Register** on December 26, 1995 (60 FR 66739 and 66771). Final

inversion regulations, published in the **Federal Register** on December 27, 1996 (61 FR 61849), generally followed the rules contained in the temporary regulations, with modifications.

The final regulations herein address transfers of foreign stock or securities, and other matters addressed in the 1991 proposed regulations under section 367(a) that were not addressed in the 1996 final inversion regulations.

In addition, these final regulations address those portions of the 1991 proposed section 367(b) regulations that relate to transactions that are subject to both sections 367(a) and (b). The remainder of the 1991 proposed section 367(b) regulations will be finalized at a later date.

This document also contains final regulations under section 6038B with respect to reporting requirements applicable to transfers of stock or securities described under section 367(a). Rules regarding outbound transfers to corporations of assets other than stock (including intangibles), and outbound transfers to foreign partnerships will be addressed in separate guidance.

Finally, these final regulations contain a clarification with respect to the scope of certain outbound transfers of intangibles that are subject to section 367(d).

#### Explanation of Provisions

##### Sections 367(a) and (b): Introduction

Section 367(a)(1) generally treats a transfer of property (including stock or securities) by a U.S. person to a foreign corporation (an outbound transfer) in an exchange described in section 332, 351, 354, 356 or 361 as a taxable exchange unless the transfer qualifies for an exception to this general rule.

Section 367(a)(2) provides that, except as provided by regulations, section 367(a)(1) shall not apply to the transfer of stock or securities of a foreign corporation which is a party to the exchange or a party to the reorganization. Section 367(a)(3) contains an exception to section 367(a)(1) for certain outbound transfers of tangible assets other than stock or securities. Section 367(a)(5) contains limitations on any exceptions to section 367(a)(1) in certain instances.

Section 367(b) provides that, with respect to certain nonrecognition transfers in connection with which there is no transfer of property described in section 367(a)(1), a foreign corporation will retain its status as a corporation unless regulations provide otherwise.

These final regulations address transactions described in both sections