Federal Registers of October 19, 1984 (49 FR 41019), December 24, 1996 (61 FR 67710), December 27, 1996 (61 FR 68145), and December 23, 1998 (63 FR 71015)). Use of a uniform compliance date provides for an orderly and economical industry adjustment to new labeling requirements by allowing sufficient lead time to plan for the use of existing label inventories and the development of new labeling materials. This policy serves consumers' interests as well because the cost of multiple short-term label revisions that would otherwise occur would likely be passed on to consumers in the form of higher prices.

The agency has determined under 21 CFR 25.30(k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 is not required.

FDA has examined the economic implications of this final rule as required by Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, safety, distributive, and equity effects). Executive Order 12866 classifies a rule as ''economically significant'' if it meets any one of a number of specified conditions including having an annual effect on the economy of $100 million, adversely affecting some sector of the economy in a material way, or adversely affecting jobs or competition. A regulation is considered a ''significant'' regulatory action under Executive Order 12866 if it raises novel legal or policy issues. FDA finds that this final rule is neither an economically significant rule nor a significant regulatory action as defined by Executive Order 12866. In addition, in accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the administration of OMB has determined that this final rule is not a major rule for purposes of congressional review. The establishment of a uniform compliance date does not impose either costs or benefits. For future labeling requirements, FDA will assess the costs and benefits of the uniform compliance date as well as the option of setting other dates.

Because FDA has issued this final rule without first publishing a general notice of proposed rulemaking, a final regulatory analysis is not required by the Regulatory Flexibility Act (5 U.S.C. 601–612). Nonetheless, the uniform compliance date does not impose any burden on small entities. The agency will assess the costs and benefits of setting alternative dates as part of the regulatory flexibility analyses of future labeling regulations.

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the order and, consequently, a federalism summary impact statement is not required.

This action is not intended to change existing requirements for compliance dates contained in final rules published before January 1, 2001. Therefore, all final FDA regulations published in the **Federal Register** before January 1, 2001, will still go into effect on the date stated in the respective final rule.

The agency generally encourages industry to comply with new labeling regulations as quickly as feasible, however. Thus, when industry members voluntarily change their labels, it is appropriate that they incorporate any new requirements that have been published as final regulations up to that time.

In rulemaking that began with publication of a proposal on April 15, 1996 (61 FR 16422), and ended with a final rule on December 24, 1996 (61 FR 67710), FDA provided notice and an opportunity for comment on the practice of establishing uniform compliance dates by issuance of a final rule announcing the date. Receiving no comments objecting to this practice, FDA finds any further rulemaking unnecessary for establishment of the uniform compliance date. Nonetheless, under 21 CFR 10.40(e)(1), FDA is providing an opportunity for comment on whether this uniform compliance date should be modified or revoked.

Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this final rule by February 5, 2001. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. After its review of any comments received to this final rule, FDA will either publish a document providing its conclusions concerning the comments or will initiate notice and comment rulemaking to modify or revoke the uniform compliance date established by this final rule.

The new uniform compliance date will apply only to final FDA food labeling regulations that require changes in the labeling of food products and that publish after January 1, 2001, and before December 31, 2002. Those regulations will specifically identify January 1, 2004, as their compliance date. All food products subject to the January 1, 2004, compliance date must comply with the appropriate regulations when initially introduced into interstate commerce on or after January 1, 2004. If any food labeling regulation involves special circumstances that justify a compliance date other than January 1, 2004, the agency will determine for that regulation an appropriate compliance date, which will be specified when the final regulation is published.

Dated: November 8, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8907]

RIN 1545–AX73

Application of the Anti-Churning Rules for Amortization of Intangibles in Partnerships

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the amortization of certain intangible property under section 197. Specifically, the regulations apply the anti-churning rules under section 197(f)(9) to partnership distributions resulting in basis adjustments under sections 732(b) and 734(b). This document also amends certain parts of the previously issued

final regulations (TD 8865), including those parts that relate to the amount of a basis adjustment under sections 732(d) and 743(b) that is subject to the anti-churning rules under section 197(f)(9). The final regulations interpret the provisions of section 197(f)(9), reflecting changes to the law made by the Omnibus Budget Reconciliation Act of 1993 (OBRA '93), and affect taxpayers who acquired intangible property after August 10, 1993, or made a retroactive election to apply OBRA '93 to intangibles acquired after July 25, 1991.

DATES: *Effective Date:* These regulations are effective November 20, 2000.

Applicability Date: These regulations apply to distributions or transfers occurring on or after November 20, 2000. However, a taxpayer may choose, on a transaction-by-transaction basis, to apply these regulations to property acquired (or partnership transactions occurring) after August 10, 1993 (or July 25, 1991, if a valid retroactive election has been made under § 1.197–1T) and before November 20, 2000.

FOR FURTHER INFORMATION CONTACT: David J. Sotos or Robert G. Honigman at (202) 622–3050 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document amends § 1.197–2 of the Income Tax Regulations (26 CFR Part 1) to provide additional rules regarding the application of section 197(f)(9) to partnership transactions under sections 732(b) and 734(b). This document also amends certain provisions of the final regulations under section 197 issued on January 25, 2000 (TD 8865, 65 FR 3820).

On January 16, 1997, the IRS published proposed regulations (REG–209709–94) in the **Federal Register** (62 FR 2336) under sections 167(f) and 197, including the anti-churning rules in section 197(f)(9). In commenting on the proposed regulations, some practitioners noted that additional guidance was needed regarding how the special anti-churning rule of section 197(f)(9)(E) should apply to increases in the basis of partnership property under sections 732, 734, and 743. In response to these comments, the IRS published proposed regulations (REG–100163–00) in the **Federal Register** (65 FR 3903) on January 25, 2000, providing rules for determining the portion of a basis adjustment under sections 732(b) and 734(b) that will be subject to the anti-churning rules. Final regulations (TD 8865, 65 FR 3820) (referred to herein as the ''existing regulations'') were issued at the same time as the proposed regulations. The existing regulations provide guidance regarding the application of the anti-churning rules to basis adjustments under sections 732(d) and 743(b) and to remedial allocations of deductions for amortization of section 197(f)(9) intangibles (i.e., goodwill and going concern value that was held or used at any time during the period beginning on July 25, 1991, and ending on August 10, 1993 (unless an election was made under § 1.197–1T) and any other section 197 intangible that was held or used during such period and was not depreciable or amortizable under prior law).

The IRS received no requests to speak at a public hearing that was scheduled for May 24, 2000, and consequently the IRS canceled the hearing. Written comments were received in response to the notice of proposed rulemaking. The comments received and revisions made are discussed below.

Explanation of Provisions and Summary of Comments

A. In General

Section 197(f)(9)(E) provides that, in applying the anti-churning rules for basis adjustments under sections 732, 734, and 743, determinations are made at the partner level, and each partner is treated as having owned and used such partner's proportionate share of the partnership's assets. With respect to basis adjustments under sections 732(b) and 734(b), this rule requires taxpayers and the IRS to analyze transactions that actually involve a distribution of property from the partnership to a partner as deemed transactions involving transfers of property directly among the partners. In applying the anti-churning rules to basis adjustments under section 732(b), the distributee partner is deemed to acquire the distributed intangible directly from the continuing partners of the distributing partnership. Similarly, in applying the anti-churning rules to basis adjustments under section 734(b), the continuing partners are deemed to acquire interests in the intangible that remains in the partnership from the partner who received a distribution (giving rise to the section 734(b) basis adjustment) of property other than the intangible.

Consistent with this view of the transactions, § 1.197–2(g)(3) of the existing regulations provides that the increase in the basis of a distributed section 197(f)(9) intangible under section 732(b) or the increase in the partnership's basis of an undistributed section 197(f)(9) intangible under section 734(b) is treated as a new intangible acquired as a result of the distribution. The rules for determining whether such basis adjustments are subject to the anti-churning rules under section 197(f)(9) operate by reference to the facts surrounding each partner's acquisition of its interest in the partnership, the relation of the distributee partner and the continuing partners, and the portion of the intangible that is allocable to such partners. Although the specific rules are not phrased in terms of analyzing a deemed transfer of a portion of an intangible between the distributee partner and the continuing partners, the effect of the rules is to analyze such a deemed transfer.

Under the proposed regulations, it first is necessary to determine whether the portion of an intangible that a partner is deemed to acquire as a result of the distribution was subject to the anti-churning rules immediately prior to the deemed transfer. Even if the intangible is a section 197(f)(9) intangible with respect to the partnership, for purposes of analyzing a deemed transfer, the partner's share of the intangible is treated as not being subject to the anti-churning rules if the intangible was held by the partnership at the time that the partner (or predecessor partner) acquired the partnership interest, and the partner (or predecessor partner) would have been able to amortize the intangible had the partner (or predecessor partner) directly acquired the intangible under the same circumstances that the partner (or predecessor partner) acquired the partnership interest. If a partner's share of the intangible is treated as not being subject to the anti-churning rules for this purpose, then the anti-churning rules would not apply to the portion of the basis adjustment that is attributable to the deemed transfer.

If the partner's share of the intangible was treated as being subject to the anti-churning rules immediately prior to the deemed transfer, it is necessary, as a further step, to determine whether the deemed transferor and transferee are related. If the partners are not related, the anti-churning rules would not apply to the basis adjustment that gives rise to the deemed transfer.

The proposed regulations also contain rules for measuring the portion of the intangible that is deemed to be transferred by the relevant partners in the deemed transactions together with certain additional rules designed to prevent circumvention of the anti-churning rules through the use of partnerships.

B. Continuing Partner's Share of Basis Adjustment Under Section 734(b)

The proposed regulations provide that, for purposes of analyzing basis adjustments under section 734(b), a continuing partner's share of a basis increase is equal to (1) the total basis increase allocable to the intangible; multiplied by (2) a fraction equal to (A) the unrealized appreciation from the intangible that would have been allocated to the continuing partner if the partnership had sold the intangible immediately before the distribution for its fair market value in a fully taxable transaction; over (B) the total unrealized appreciation from the intangible that would have been realized by the partnership if the partnership had sold the intangible immediately before the distribution for its fair market value in a fully taxable transaction.

One commentator stated that, under the proposed regulations, the fraction for determining a continuing partner's share of the basis adjustment under section 734(b) could lead to inappropriate results in some circumstances. For example, if a partner contributes to a partnership a section 197(f)(9) intangible which has a fair market value that exceeds its tax basis at the time of the contribution, and, at some later date, in an unrelated transaction, the contributing partner is redeemed from the partnership resulting in a section 734(b) adjustment to the intangible, the proposed regulations could determine that the entire adjustment under section 734(b) is allocable to the contributing partner (assuming that the basis adjustment does not exceed the section 704(c) gain attributable to the property), even though the contributing partner is no longer a partner in the partnership.

Treasury and the IRS agree that the fraction used in the proposed regulations can lead to inappropriate results. Furthermore, as discussed below, particularly in situations involving intangibles with built-in gain that are contributed to a partnership, an approach relying on a partner's share of appreciation in an intangible (whether measured before or after a distribution) to determine the partner's share of a basis increase under section 734(b) appears to be inconsistent with the purpose of section 197(f)(9)(E).

Positive basis adjustments under section 734(b) can be analyzed from two different perspectives: gain eliminated or deductions created. Under § 1.755–1(c)(2)(i), positive section 734(b) basis adjustments are allocated first to appreciated properties within a class so as to eliminate the built-in gain (and hence section 704(c) gain) with respect to such properties. In analyzing gain on disposition of the asset, the basis adjustment inures first to the benefit of the contributing partner since it will reduce the section 704(c) gain recognized by the partner upon the disposition of the asset by the partnership. However, in analyzing depreciation or amortization deductions attributable to the asset, the basis will inure first to the non-contributing partners to the extent that they were being denied such deductions as a result of the ceiling rule. In determining the portion of an intangible that a partner is deemed to receive from the distributee partner for purposes of applying the anti-churning rules, it seems that a rule focused on who would receive a deduction as a result of a section 734(b) basis adjustment, rather than who would avoid gain, is more appropriate.

A partner's proportionate share of partnership capital generally serves as a good proxy for estimating a partner's share of deductions. Accordingly, for purposes of determining a continuing partner's share of a section 734(b) basis adjustment, the fraction utilized in the final regulations compares a continuing partner's post-distribution capital account as determined under section 704(b) and § 1.704–1(b)(2)(iv) to the aggregate of all of the continuing partners' post-distribution capital accounts (or if the partnership does not maintain capital accounts in accordance with § 1.704–1(b)(2)(iv), the fraction is determined by reference to the partner's overall interest in the partnership under § 1.704–1(b)(3)). Treasury and the IRS believe this change best reflects how deductions are likely to flow from the intangible asset in a typical partnership arrangement.

C. Amortization of Section 197(f)(9) Intangible Where Some But Not All of the Basis Adjustment Under Section 734(b) Is Amortizable

The proposed regulations provide that taxpayers may use any reasonable method to determine amortization of a section 734(b) adjustment with respect to an intangible for book purposes, provided that the method does not permit any portion of the tax deduction for amortization attributable to the adjustment to be allocated to a partner who is subject to the anti-churning rules. Several commentators requested guidance as to what methods would be considered reasonable in situations where part, but not all, of a section 734(b) basis adjustment is attributable to an intangible that is subject to the anti-churning rules.

In response to the comments, the final regulations contain an example illustrating one method for determining book amortization that will be considered reasonable under the regulations.

D. Adjustments Under Sections 743(b) and 732(d) Where the Transferor of the Partnership Interest Is Related to the Transferee

The existing regulations provide that the anti-churning rules apply with respect to positive basis adjustments under section 743(b) only if the person acquiring the partnership interest is related to the person transferring the partnership interest. One commentator pointed out that, even if the transferor partner is related to the transferee partner, there still may be situations where the section 743(b) adjustment should be amortizable by the transferee.

To illustrate the commentator's point, consider the following example: A partnership (PRS) with two partners, A and B, held an intangible subject to the anti-churning rules on August 10, 1993. The partnership has made a section 754 election. On June 1, 1995, A transfers his entire interest in PRS to C, an unrelated person. C has a positive section 743(b) basis adjustment with respect to the intangible that is not subject to the anti-churning rules. On April 30, 2000, C transfers his entire interest in PRS to D, a person related to C. C's section 743(b) basis adjustment disappears as a result of the transfer, and D obtains a new section 743(b) basis adjustment with respect to the intangible. According to the commentator, the ownership of the interest in PRS by C (a party unrelated to A) should permanently purge any taint with respect to a section 743(b) basis adjustment attributable to C's interest. The fact that D is related to C should not prevent D from amortizing the basis adjustment.

The commentator's suggestion is consistent with the aggregate approach in the regulations for adjustments under sections 732(b) and 734(b). Under § 1.197–2(h)(12)(ii) and (iv) of these final regulations, if a partner acquires an interest in a partnership from an unrelated partner after August 10, 1993, and after the partnership has acquired the section 197(f)(9) intangible, the partner will be treated as holding a portion of the intangible that is not subject to the anti-churning rules for purposes of analyzing subsequent deemed transfers relating to basis adjustments under sections 732(b) and 734(b). The existing regulations are amended to include similar provisions for purposes of analyzing the

application of the anti-churning rules with respect to basis adjustments under section 743(b).

The existing regulations pertaining to section 732(d) adjustments also are amended to coordinate those provisions with the change discussed above for section 743(b) adjustments. The amendment provides that the anti-churning rules do not apply to an increase in the basis of a section 197(f)(9) intangible under section 732(d) if, had an election been in effect under section 754 at the time of the transfer of the partnership interest, the distributee partner would have been able to amortize the basis adjustment made pursuant to section 743(b).

E. Modification of Rule Where a Partner Is or Becomes a User of a Partnership Intangible

Section 1.197–2(h)(12)(vi) of the proposed regulations provides a rule to prevent avoidance of the anti-churning rules where a partner subject to the anti-churning rules becomes or remains a user of the intangible after the basis of the intangible is adjusted with respect to another partner under section 732, 734, or 743. One commentator noted that § 1.197–2(h)(12)(vi) could apply if the partnership itself continues to use the intangible, at least where the deemed transferor of the intangible continues to own more than a 20 percent interest in the partnership, because the partner would be treated under the attribution rules as continuing to use the intangible by virtue of the partnership's use of the intangible. The commentator stated that such a result appears inconsistent with the policies underlying section 197(f)(9)(E), which ignore the existence of the partnership for purposes of anti-churning determinations with respect to basis adjustments under sections 732, 734, and 743. The commentator requested that the final regulations make clear that a partnership's continued use of an intangible would not invoke the rule of § 1.197–2(h)(12)(vi).

Consistent with this comment, § 1.197–2(h)(12)(vi) of these final regulations makes clear that the proscribed use must be by an anti-churning partner or related person other than the partnership. Attributed use of the intangible from the partnership to a partner will not cause this rule to apply.

F. Clarification With Respect to Remedial Allocations

Section 1.197–2(g)(4)(ii) of the existing regulations provides that ''if a partner contributes a section 197 intangible to a partnership and the partnership adopts the remedial allocation method for making section 704(c) allocations of amortization deductions, the partnership generally may make remedial allocations of amortization deductions with respect to the contributed section 197 intangible in accordance with § 1.704–3(d).'' Comments have been received expressing concern that, because no similar affirmative rule is contained in the anti-churning section of the regulations, if a contributing partner owns a greater than 20 percent interest in the partnership (and thus is considered related to the partnership), the rule allowing remedial allocations will not be available. While Treasury and the IRS believe that it was clear under the existing regulations that remedial allocations of amortization deductions could be made where the contributing partner is related to the partnership (as opposed to the non-contributing partners), an affirmative rule has been added to the anti-churning rules at § 1.197–2(h)(12)(vii)(B) in order to eliminate any doubt with respect to this issue.

In addition, the rule regarding the disallowance of remedials where a non-contributing partner is related to the contributing partner is amended in these final regulations to also cover situations where, as part of a series of related transactions that includes the contribution of the section 197(f)(9) intangible to the partnership, the contributing partner (or a related person) becomes or remains a direct user of the contributed intangible. Consistent with the analysis of remedials as being akin to a section 743(b) basis adjustment for the non-contributing partners, Treasury and the IRS believe that it is inappropriate for a non-contributing partner to obtain amortization deductions with respect to a portion of a contributed section 197(f)(9) intangible where the prior owner of the intangible becomes or remains a direct user of the intangible in connection with the contribution. See also section 197(f)(9)(A)(iii) and § 1.197–2(h)(12)(vi).

G. Rules for Determining When a Partnership Interest Is Treated as Being Acquired From a Related Person for Purposes of Analyzing Basis Adjustments Under Sections 732(b) and 734(b)

For purposes of analyzing deemed transfers resulting from basis adjustments under sections 732(b) and 734(b) in applying the anti-churning rules, the proposed regulations provide that if a partner contributed the distributed section 197(f)(9) intangible to the partnership, the partnership interest acquired by such partner is treated as not being described in § 1.197–2(h)(12)(ii)(A)(2) and (3) (for section 732(b) adjustments) or 1.197–2(h)(12)(iv)(A)(2) and (3) (for section 734(b) adjustments) (*i.e.*, the rules that allow a prior purchase of a partnership interest from an unrelated person to purge the partner's anti-churning taint in analyzing subsequent deemed transfers relating to basis adjustments). Accordingly, in order for a basis adjustment to a section 197(f)(9) intangible under section 732(b) or 734(b) to be amortizable, the deemed transfer (as a result of the basis adjustment) from the contributing partner must be to an unrelated partner.

Commentators indicated that this rule is unnecessary. According to the commentators, §§ 1.197–2(h)(12)(ii)(A)(2) and (3) and 1.197–2(h)(12)(iv)(A)(2) and (3), by their terms, cannot apply where the deemed transferor contributed the section 197(f)(9) intangible to the partnership. Treasury and the IRS agree with this comment. Accordingly, the final regulations omit the rule regarding a partner who contributes the distributed section 197(f)(9) intangible.

Special Analyses

It has been determined that the final regulations are not a significant regulatory action as defined in Executive Order 12866. It also has been determined that section 533(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the final regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are David J. Sotos and Robert G. Honigman of Associate Chief Counsel (Passthroughs & Special Industries). However, other personnel from the Treasury Department and IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.197–2 is amended by:

1. Revising paragraphs (h)(12)(ii), (h)(12)(iii), (h)(12)(iv), (h)(12)(v), and paragraph (h)(12)(vi)(A).

2. Removing ''; and'' at the end of paragraph (h)(12)(vi)(B)(*2*)(*ii*) and adding a period in its place.

3. Removing paragraph (h)(12)(vi)(B)(*3*).

4. Removing the first sentence of paragraph (h)(12)(vii)(B) and adding two new sentences in its place.

5. Removing the last two sentences of paragraph (iii) of *Example 27* in paragraph (k) and adding three sentences in their place.

6. Adding *Examples 28, 29, 30,* and *31* to paragraph (k).

7. Revising paragraphs (l)(1) and (l)(2).

The additions and revisions read as follows:

§ 1.197–2 Amortization of goodwill and certain other intangibles.

* * * * *

(h) * * *

(12) * * *

(ii) *Section 732(b) adjustments*—(A) *In general.* The anti-churning rules of this paragraph (h) apply to any increase in the adjusted basis of a section 197(f)(9) intangible under section 732(b) to the extent that the basis increase exceeds the total unrealized appreciation from the intangible allocable to—

(*1*) Partners other than the distributee partner or persons related to the distributee partner;

(*2*) The distributee partner and persons related to the distributee partner if the distributed intangible is a section 197(f)(9) intangible acquired by the partnership on or before August 10, 1993, to the extent that—

(*i*) The distributee partner and related persons acquired an interest or interests in the partnership after August 10, 1993;

(*ii*) Such interest or interests were held after August 10, 1993, by a person or persons other than either the distributee partner or persons who were related to the distributee partner; and

(*iii*) The acquisition of such interest or interests by such person or persons was not part of a transaction or series of related transactions in which the distributee partner (or persons related to the distributee partner) subsequently acquired such interest or interests; and

(*3*) The distributee partner and persons related to the distributee partner if the distributed intangible is a section 197(f)(9) intangible acquired by the partnership after August 10, 1993, that is not amortizable with respect to the partnership, to the extent that—

(*i*) The distributee partner and persons related to the distributee partner acquired an interest or interests in the partnership after the partnership acquired the distributed intangible;

(*ii*) Such interest or interests were held after the partnership acquired the distributed intangible, by a person or persons other than either the distributee partner or persons who were related to the distributee partner; and

(*iii*) The acquisition of such interest or interests by such person or persons was not part of a transaction or series of related transactions in which the distributee partner (or persons related to the distributee partner) subsequently acquired such interest or interests.

(B) *Effect of retroactive elections.* For purposes of paragraph (h)(12)(ii)(A) of this section, references to August 10, 1993, are treated as references to July 25, 1991, if the relevant party made a valid retroactive election under § 1.197–1T.

(C) *Intangible still subject to anti-churning rules.* Notwithstanding paragraph (h)(12)(ii) of this section, in applying the provisions of this paragraph (h) with respect to subsequent transfers, the distributed intangible remains subject to the provisions of this paragraph (h) in proportion to a fraction (determined at the time of the distribution), as follows—

(*1*) The numerator of which is equal to the sum of—

(*i*) The amount of the distributed intangible's basis that is nonamortizable under paragraph (g)(2)(ii)(B) of this section; and

(*ii*) The total unrealized appreciation inherent in the intangible reduced by the amount of the increase in the adjusted basis of the distributed intangible under section 732(b) to which the anti-churning rules do not apply; and

(*2*) The denominator of which is the fair market value of such intangible.

(D) *Partner's allocable share of unrealized appreciation from the intangible.* The amount of unrealized appreciation from an intangible that is allocable to a partner is the amount of taxable gain that would have been allocated to that partner if the partnership had sold the intangible immediately before the distribution for its fair market value in a fully taxable transaction.

(E) *Acquisition of partnership interest by contribution.* Solely for purposes of paragraphs (h)(12)(ii)(A)(*2*) and (*3*) of this section, a partner who acquires an interest in a partnership in exchange for a contribution of property to the partnership is deemed to acquire a pro rata portion of that interest in the partnership from each person who is a partner in the partnership at the time of the contribution based on each partner's respective proportionate interest in the partnership.

(iii) *Section 732(d) adjustments.* The anti-churning rules of this paragraph (h) do not apply to an increase in the basis of a section 197(f)(9) intangible under section 732(d) if, had an election been in effect under section 754 at the time of the transfer of the partnership interest, the distributee partner would have been able to amortize the basis adjustment made pursuant to section 743(b).

(iv) *Section 734(b) adjustments*—(A) *In general.* The anti-churning rules of this paragraph (h) do not apply to a continuing partner's share of an increase in the basis of a section 197(f)(9) intangible held by a partnership under section 734(b) to the extent that the continuing partner is an eligible partner.

(B) *Eligible partner.* For purposes of this paragraph (h)(12)(iv), eligible partner means—

(*1*) A continuing partner that is not the distributee partner or a person related to the distributee partner;

(*2*) A continuing partner that is the distributee partner or a person related to the distributee partner, with respect to any section 197(f)(9) intangible acquired by the partnership on or before August 10, 1993, to the extent that—

(*i*) The distributee partner's interest in the partnership was acquired after August 10, 1993;

(*ii*) Such interest was held after August 10, 1993 by a person or persons who were not related to the distributee partner; and

(*iii*) The acquisition of such interest by such person or persons was not part of a transaction or series of related transactions in which the distributee partner or persons related to the distributee partner subsequently acquired such interest; or

(*3*) A continuing partner that is the distributee partner or a person related to the distributee partner, with respect to any section 197(f)(9) intangible acquired by the partnership after August 10, 1993, that is not amortizable with respect to the partnership, to the extent that—

(*i*) The distributee partner's interest in the partnership was acquired after the partnership acquired the relevant intangible;

(*ii*) Such interest was held after the partnership acquired the relevant intangible by a person or persons who were not related to the distributee partner; and

(*iii*) The acquisition of such interest by such person or persons was not part of a transaction or series of related transactions in which the distributee partner or persons related to the distributee partner subsequently acquired such interest.

(C) *Effect of retroactive elections.* For purposes of paragraph (h)(12)(iv)(A) of this section, references to August 10, 1993, are treated as references to July 25, 1991, if the distributee partner made a valid retroactive election under § 1.197–1T.

(D) *Partner's share of basis increase*—(*1*) In general. Except as provided in paragraph (h)(12)(iv)(D)(*2*) of this section, for purposes of this paragraph (h)(12)(iv), a continuing partner's share of a basis increase under section 734(b) is equal to—

(*i*) The total basis increase allocable to the intangible; multiplied by

(*ii*) A fraction the numerator of which is the amount of the continuing partner's post-distribution capital account (determined immediately after the distribution in accordance with the capital accounting rules of § 1.704–1(b)(2)(iv)), and the denominator of which is the total amount of the post-distribution capital accounts (determined immediately after the distribution in accordance with the capital accounting rules of § 1.704–1(b)(2)(iv)) of all continuing partners.

(*2*) *Exception where partnership does not maintain capital accounts.* If a partnership does not maintain capital accounts in accordance with § 1.704–1(b)(2)(iv), then for purposes of this paragraph (h)(12)(iv), a continuing partner's share of a basis increase is equal to—

(*i*) The total basis increase allocable to the intangible; multiplied by

(*ii*) The partner's overall interest in the partnership as determined under § 1.704–1(b)(3) immediately after the distribution.

(E) *Interests acquired by contribution*—(*1*) *Application of paragraphs (h)(12)(iv)(B) (2) and (3) of this section.* Solely for purposes of paragraphs (h)(12)(iv)(B)(*2*) and (*3*) of this section, a partner who acquires an interest in a partnership in exchange for a contribution of property to the partnership is deemed to acquire a pro rata portion of that interest in the partnership from each person who is a partner in the partnership at the time of the contribution based on each such partner's proportionate interest in the partnership.

(*2*) *Special rule with respect to paragraph (h)(12)(iv)(B)*(*1*) of this section. Solely for purposes of paragraph (h)(12)(iv)(B)(*1*) of this section, if a distribution that gives rise to an increase in the basis under section 734(b) of a section 197(f)(9) intangible held by the partnership is undertaken as part of a series of related transactions that include a contribution of the intangible to the partnership by a continuing partner, the continuing partner is treated as related to the distributee partner in analyzing the basis adjustment with respect to the contributed section 197(f)(9) intangible.

(F) *Effect of section 734(b) adjustments on partners' capital accounts.* If one or more partners are subject to the anti-churning rules under this paragraph (h) with respect to a section 734(b) adjustment allocable to an intangible asset, taxpayers may use any reasonable method to determine amortization of the asset for book purposes, provided that the method used does not contravene the purposes of the anti-churning rules under section 197 and this paragraph (h). A method will be considered to contravene the purposes of the anti-churning rules if the effect of the book adjustments resulting from the method is such that any portion of the tax deduction for amortization attributable to the section 734 adjustment is allocated, directly or indirectly, to a partner who is subject to the anti-churning rules with respect to such adjustment.

(v) *Section 743(b) adjustments*—(A) *General rule.* The anti-churning rules of this paragraph (h) do not apply to an increase in the basis of a section 197 intangible under section 743(b) if the person acquiring the partnership interest is not related to the person transferring the partnership interest. In addition, the anti-churning rules of this paragraph (h) do not apply to an increase in the basis of a section 197 intangible under section 743(b) to the extent that—

(*1*) The partnership interest being transferred was acquired after August 10, 1993, provided—

(*i*) The section 197(f)(9) intangible was acquired by the partnership on or before August 10, 1993;

(*ii*) The partnership interest being transferred was held after August 10, 1993, by a person or persons (the post-1993 person or persons) other than the person transferring the partnership interest or persons who were related to the person transferring the partnership interest; and

(*iii*) The acquisition of such interest by the post-1993 person or persons was not part of a transaction or series of related transactions in which the person transferring the partnership interest or persons related to the person transferring the partnership interest acquired such interest; or

(*2*) The partnership interest being transferred was acquired after the partnership acquired the section 197(f)(9) intangible, provided—

(*i*) The section 197(f)(9) intangible was acquired by the partnership after August 10, 1993, and is not amortizable with respect to the partnership;

(*ii*) The partnership interest being transferred was held after the partnership acquired the section 197(f)(9) intangible by a person or persons (the post-contribution person or persons) other than the person transferring the partnership interest or persons who were related to the person transferring the partnership interest; and

(*iii*) The acquisition of such interest by the post-contribution person or persons was not part of a transaction or series of related transactions in which the person transferring the partnership interest or persons related to the person transferring the partnership interest acquired such interest.

(B) *Acquisition of partnership interest by contribution.* Solely for purposes of paragraph (h)(12)(v)(A) (*1*) and (*2*) of this section, a partner who acquires an interest in a partnership in exchange for a contribution of property to the partnership is deemed to acquire a pro rata portion of that interest in the partnership from each person who is a partner in the partnership at the time of the contribution based on each such partner's proportionate interest in the partnership.

(C) *Effect of retroactive elections.* For purposes of paragraph (h)(12)(v)(A) of this section, references to August 10, 1993, are treated as references to July 25, 1991, if the transferee partner made a valid retroactive election under § 1.197–1T.

(vi) *Partner is or becomes a user of partnership intangible*—(A) *General rule.* If, as part of a series of related transactions that includes a transaction described in paragraph (h)(12)(ii), (iii), (iv), or (v) of this section, an anti-churning partner or related person (other than the partnership) becomes (or remains) a direct user of an intangible that is treated as transferred in the transaction (as a result of the partners being treated as having owned their proportionate share of partnership assets), the anti-churning rules of this paragraph (h) apply to the proportionate share of such intangible that is treated

as transferred by such anti-churning partner, notwithstanding the application of paragraph (h)(12)(ii), (iii), (iv), or (v) of this section.

* * * * *

(vii) * * *

(B) *Allocations where the intangible is not amortizable by the contributor.* If a section 197(f)(9) intangible was not an amortizable section 197 intangible in the hands of the contributing partner, a non-contributing partner generally may receive remedial allocations of amortization under section 704(c) that are deductible for Federal income tax purposes. However, such a partner may not receive remedial allocations of amortization under section 704(c) if that partner is related to the partner that contributed the intangible or if, as part of a series of related transactions that includes the contribution of the section 197(f)(9) intangible to the partnership, the contributing partner or related person (other than the partnership) becomes (or remains) a direct user of the contributed intangible. * * *

* * * * *

(k) * * *

Example 27. * * *

(iii) * * * However, A is an anti-churning partner under paragraph (h)(12)(vi)(B)(*2*)(*i*) of this section. As a result of the license agreement, A remains a direct user of the section 197(f)(9) intangible after the transfer to C. Accordingly, paragraph (h)(12)(vi)(A) of this section will cause the anti-churning rules to apply to the entire basis adjustment under section 743(b).

Example 28. Distribution of section 197(f)(9) intangible to partner who acquired partnership interest prior to the effective date. (i) In 1990, A, B, and C each contribute $150 cash to form general partnership ABC for the purpose of engaging in a consulting business and a software manufacturing business. The partners agree to share partnership profits and losses equally. In 2000, the partnership distributes the consulting business to A in liquidation of A's entire interest in ABC. The only asset of the consulting business is a nonamortizable intangible, which has a fair market value of $180 and a basis of $0. At the time of the distribution, the adjusted basis of A's interest in ABC is $150. A is not related to B or C. ABC does not have a section 754 election in effect.

(ii) Under section 732(b), A's adjusted basis in the intangible distributed by ABC is $150, a $150 increase over the basis of the intangible in ABC's hands. In determining whether the anti-churning rules apply to any portion of the basis increase, A is treated as having owned and used A's proportionate share of partnership property. Thus, A is treated as holding an interest in the intangible during the transition period. Because the intangible was not amortizable prior to the enactment of section 197, the section 732(b) increase in the basis of the intangible may be subject to the anti-churning provisions. Paragraph (h)(12)(ii) of this section provides that the anti-churning provisions apply to the extent that the section 732(b) adjustment exceeds the total unrealized appreciation from the intangible allocable to partners other than A or persons related to A, as well as certain other partners whose purchase of their interests meet certain criteria. Because B and C are not related to A, and A's acquisition of its partnership interest does not satisfy the necessary criteria, the section 732(b) basis increase is subject to the anti-churning provisions to the extent that it exceeds B and C's proportionate share of the unrealized appreciation from the intangible. B and C's proportionate share of the unrealized appreciation from the intangible is $120 (2/3 of $180). This is the amount of gain that would be allocated to B and C if the partnership sold the intangible immediately before the distribution for its fair market value of $180. Therefore, $120 of the section 732(b) basis increase is not subject to the anti-churning rules. The remaining $30 of the section 732(b) basis increase is subject to the anti-churning rules. Accordingly, A is treated as having two intangibles, an amortizable section 197 intangible with an adjusted basis of $120 and a new amortization period of 15 years and a nonamortizable intangible with an adjusted basis of $30.

(iii) In applying the anti-churning rules to future transfers of the distributed intangible, under paragraph (h)(12)(ii)(C) of this section, one-third of the intangible will continue to be subject to the anti-churning rules, determined as follows: The sum of the amount of the distributed intangible's basis that is nonamortizable under paragraph (g)(2)(ii)(B) of this section ($0) and the total unrealized appreciation inherent in the intangible reduced by the amount of the increase in the adjusted basis of the distributed intangible under section 732(b) to which the anti-churning rules do not apply ($180 − $120 = $60), over the fair market value of the distributed intangible ($180).

Example 29. Distribution of section 197(f)(9) intangible to partner who acquired partnership interest after the effective date. (i) The facts are the same as in *Example 28*, except that B and C form ABC in 1990. A does not acquire an interest in ABC until 1995. In 1995, A contributes $150 to ABC in exchange for a one-third interest in ABC. At the time of the distribution, the adjusted basis of A's interest in ABC is $150.

(ii) As in *Example 28*, the anti-churning rules do not apply to the increase in the basis of the intangible distributed to A under section 732(b) to the extent that it does not exceed the unrealized appreciation from the intangible allocable to B and C. Under paragraph (h)(12)(ii) of this section, the anti-churning provisions also do not apply to the section 732(b) basis increase to the extent of A's allocable share of the unrealized appreciation from the intangible because A acquired the ABC interest from an unrelated person after August 10, 1993, and the intangible was acquired by the partnership before A acquired the ABC interest. Under paragraph (h)(12)(ii)(E) of this section, A is deemed to acquire the ABC partnership interest from an unrelated person because A acquired the ABC partnership interest in exchange for a contribution to the partnership of property other than the distributed intangible and, at the time of the contribution, no partner in the partnership was related to A. Consequently, the increase in the basis of the intangible under section 732(b) is not subject to the anti-churning rules to the extent of the total unrealized appreciation from the intangible allocable to A, B, and C. The total unrealized appreciation from the intangible allocable to A, B, and C is $180 (the gain the partnership would have recognized if it had sold the intangible for its fair market value immediately before the distribution). Because this amount exceeds the section 732(b) basis increase of $150, the entire section 732(b) basis increase is amortizable.

(iii) In applying the anti-churning rules to future transfers of the distributed intangible, under paragraph (h)(12)(ii)(C) of this section, one-sixth of the intangible will continue to be subject to the anti-churning rules, determined as follows: The sum of the amount of the distributed intangible's basis that is nonamortizable under paragraph (g)(2)(ii)(B) of this section ($0) and the total unrealized appreciation inherent in the intangible reduced by the amount of the increase in the adjusted basis of the distributed intangible under section 732(b) to which the anti-churning rules do not apply ($180 − $150 = $30), over the fair market value of the distributed intangible ($180).

Example 30. Distribution of section 197(f)(9) intangible contributed to the partnership by a partner.

(i) The facts are the same as in *Example 29*, except that C purchased the intangible used in the consulting business in 1988 for $60 and contributed the intangible to ABC in 1990. At that time, the intangible had a fair market value of $150 and an adjusted tax basis of $60. When ABC distributes the intangible to A in 2000, the intangible has a fair market value of $180 and a basis of $60.

(ii) As in *Examples 28* and *29,* the adjusted basis of the intangible in A's hands is $150 under section 732(b). However, the increase in the adjusted basis of the intangible under section 732(b) is only $90 ($150 adjusted basis after the distribution compared to $60 basis before the distribution). Pursuant to paragraph (g)(2)(ii)(B) of this section, A steps into the shoes of ABC with respect to the $60 of A's adjusted basis in the intangible that corresponds to ABC's basis in the intangible and this portion of the basis is nonamortizable. B and C are not related to A, A acquired the ABC interest from an unrelated person after August 10, 1993, and the intangible was acquired by ABC before A acquired the ABC interest. Therefore, under paragraph (h)(12)(ii) of this section, the section 732(b) basis increase is amortizable to the extent of A, B, and C's allocable share of the unrealized appreciation from the intangible. The total unrealized appreciation from the intangible that is allocable to A, B, and C is $120. If ABC had sold the intangible immediately before the distribution to A for its fair market value of $180, it would have recognized gain of $120, which would have been allocated $10 to A, $10 to B, and $100 to C under section 704(c). Because A, B, and

C's allocable share of the unrealized appreciation from the intangible exceeds the section 732(b) basis increase in the intangible, the entire $90 of basis increase is amortizable by A. Accordingly, after the distribution, A will be treated as having two intangibles, an amortizable section 197 intangible with an adjusted basis of $90 and a new amortization period of 15 years and a nonamortizable intangible with an adjusted basis of $60.

(iii) In applying the anti-churning rules to future transfers of the distributed intangible, under paragraph (h)(12)(ii)(C) of this section, one-half of the intangible will continue to be subject to the anti-churning rules, determined as follows: The sum of the amount of the distributed intangible's basis that is nonamortizable under paragraph (g)(2)(ii)(B) of this section ($60) and the total unrealized appreciation inherent in the intangible reduced by the amount of the increase in the adjusted basis of the distributed intangible under section 732(b) to which the anti-churning rules do not apply ($120 − $90 = $30), over the fair market value of the distributed intangible ($180).

Example 31. Partnership distribution causing section 734(b) basis adjustment to section 197(f)(9) intangible.

(i) On January 1, 2001, A, B, and C form a partnership (ABC) in which each partner shares equally in capital and income, gain, loss, and deductions. On that date, A contributes a section 197(f)(9) intangible with a zero basis and a value of $150, and B and C each contribute $150 cash. A and B are related, but neither A nor B is related to C. ABC does not adopt the remedial allocation method for making section 704(c) allocations of amortization expenses with respect to the intangible. On December 1, 2004, when the value of the intangible has increased to $600, ABC distributes $300 to B in complete redemption of B's interest in the partnership. ABC has an election under section 754 in effect for the taxable year that includes December 1, 2004. (Assume that, at the time of the distribution, the basis of A's partnership interest remains zero, and the basis of each of B's and C's partnership interest remains $150.)

(ii) Immediately prior to the distribution, the assets of the partnership are revalued pursuant to § 1.704–1(b)(2)(iv)(*f*), so that the section 197(f)(9) intangible is reflected on the books of the partnership at a value of $600. B recognizes $150 of gain under section 731(a)(1) upon the distribution of $300 in redemption of B's partnership interest. As a result, the adjusted basis of the intangible held by ABC increases by $150 under section 734(b). A does not satisfy any of the tests set forth under paragraph (h)(12)(iv)(B) and thus is not an eligible partner. C is not related to B and thus is an eligible partner under paragraph (h)(12)(iv)(B)(*1*) of this section. The capital accounts of A and C are equal immediately after the distribution, so, pursuant to paragraph (h)(12)(iv)(D)(*1*) of this section, each partner's share of the basis increase is equal to $75. Because A is not an eligible partner, the anti-churning rules apply to A's share of the basis increase. The anti-churning rules do not apply to C's share of the basis increase.

(iii) For book purposes, ABC determines the amortization of the asset as follows: First, the intangible that is subject to adjustment under section 734(b) will be divided into three assets: the first, with a basis and value of $75 will be amortizable for both book and tax purposes; the second, with a basis and value of $75 will be amortizable for book, but not tax purposes; and a third asset with a basis of zero and a value of $450 will not be amortizable for book or tax purposes. Any subsequent revaluation of the intangible pursuant to § 1.704–1(b)(2)(iv)(*f*) will be made solely with respect to the third asset (which is not amortizable for book purposes). The book and tax attributes from the first asset (*i.e.,* book and tax amortization) will be specially allocated to C. The book and tax attributes from the second asset (*i.e.,* book amortization and non-amortizable tax basis) will be specially allocated to A. Upon disposition of the intangible, each partner's share of gain or loss will be determined first by allocating among the partners an amount realized equal to the book value of the intangible attributable to such partner, with any remaining amount realized being allocated in accordance with the partnership agreement. Each partner then will compare its share of the amount realized with its remaining basis in the intangible to arrive at the gain or loss to be allocated to such partner. This is a reasonable method for amortizing the intangible for book purposes, and the results in allocating the income, gain, loss, and deductions attributable to the intangible do not contravene the purposes of the anti-churning rules under section 197 or paragraph (h) of this section.

(l) * * * (1) *In general.* This section applies to property acquired after January 25, 2000, except that paragraph (c)(13) of this section (exception from section 197 for separately acquired rights of fixed duration or amount) applies to property acquired after August 10, 1993 (or July 25, 1991, if a valid retroactive election has been made under § 1.197–1T), and paragraphs (h)(12)(ii), (iii), (iv), (v), (vi)(A), and (vii)(B) of this section (anti-churning rules applicable to partnerships) apply to partnership transactions occurring on or after November 20, 2000.

(2) *Application to pre-effective date acquisitions.* A taxpayer may choose, on a transaction-by-transaction basis, to apply the provisions of this section and § 1.167(a)–14 to property acquired (or partnership transactions occurring) after August 10, 1993 (or July 25, 1991, if a valid retroactive election has been made under § 1.197–1T) and—

(i) On or before January 25, 2000; or

(ii) With respect to paragraphs (h)(12)(ii), (iii), (iv), (v), (vi)(A), and (vii)(B) of this section, before November 20, 2000.

* * * * *

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: November 9, 2000.

Jonathan Talisman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 00–29524 Filed 11–17–00; 8:45 am]

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DEPARTMENT OF LABOR

Office of the Secretary

Employment Standards Administration

Wage and Hour Division

29 CFR Parts 1 and 5

RIN 1215–AA94

Procedures for Predetermination of Wage Rates; Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction and to Certain Nonconstruction Contracts

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule an amendment to the regulations that govern the employment of ''helpers'' on federally-financed and assisted construction contracts subject to the prevailing wage standards of the Davis-Bacon and Related Acts (DBRA). Specifically, this document amends the regulations to incorporate the Wage and Hour Division's longstanding policy of recognizing helper classifications and wage rates only where their duties are clearly defined and distinct from those of journeyworker and laborer classifications in the area; the use of such helpers is an established prevailing practice in the area; and the term ''helper'' is not synonymous with ''trainee'' in an informal training program.

EFFECTIVE DATE: January 19, 2001.

FOR FURTHER INFORMATION CONTACT: William W. Gross, Director, Office of Wage Determinations, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3028, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 693–0569. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: