

application process. The employer is expected to continue to pay at least the prevailing wage as promised in the employer's labor certification (ETA Form 9142) for any work performed before November 30, 2011. However, employers who received a supplemental H-2B prevailing wage determination must pay at least that wage to any H-2B worker and any U.S. worker recruited in connection with the labor certification for work performed on or after November 30, 2011.

Signed at Washington, DC, this 27th of September 2011.

**Jane Oates,**

*Assistant Secretary for Employment and Training.*

**Nancy J. Leppink,**

*Deputy Administrator, Wage and Hour Division.*

[FR Doc. 2011-25302 Filed 9-28-11; 11:15 am]

BILLING CODE 4510-FP-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 558

[Docket No. FDA-2011-N-0003]

#### New Animal Drugs for Use in Animal Feeds; Melengestrol; Monensin

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental abbreviated new animal drug application (ANADA) filed by Ivy Laboratories, Division of Ivy Animal Health, Inc. The supplemental ANADA provides for use of increased dose levels of melengestrol acetate and monensin in two-way, combination drug Type C medicated feeds for heifers fed in confinement for slaughter.

**DATES:** This rule is effective September 30, 2011.

**FOR FURTHER INFORMATION CONTACT:** John K. Harshman, Center for Veterinary Medicine (HFV-170), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240-276-8197, e-mail: [john.harshman@fda.hhs.gov](mailto:john.harshman@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:** Ivy Laboratories, Division of Ivy Animal Health, Inc., 8857 Bond St., Overland Park, KS 66214, filed a supplement to ANADA 200-422 for use of HEIFERMAX 500 (melengestrol acetate) and RUMENSIN (monensin, USP) single-ingredient Type A medicated

articles to make two-way, combination drug Type C medicated feeds for heifers fed in confinement for slaughter. The supplemental ANADA provides for use of increased dose levels of melengestrol acetate and monensin. The supplemental application is approved as of July 1, 2011, and the regulations in 21 CFR 558.342 are amended to reflect the approval and minor revisions.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The Agency has determined under 21 CFR 25.33 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 rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801-808.

#### List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

#### PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 1. The authority citation for 21 CFR part 558 continues to read as follows:

**Authority:** 21 U.S.C. 360b, 371.

■ 2. In § 558.342, in the table in paragraph (e)(1), remove and reserve paragraphs (e)(1)(v) and (e)(1)(vi); in paragraph (e)(1)(x), in the "Sponsor" column, add "021641"; and revise paragraph (d)(2) to read as follows:

#### § 558.342 Melengestrol.

\* \* \* \* \*

(d) \* \* \*

(2) A physically stable melengestrol acetate liquid Type B or C feed will not be subject to the requirements for mixing directions prescribed in paragraph (d)(1) of this section provided it has a pH of 4.0 to 8.0 and contains

a suspending agent(s) sufficient to maintain a viscosity of not less than 300 centipoises per second for 3 months.

\* \* \* \* \*

Dated: September 20, 2011.

**Steven D. Vaughn,**

*Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.*

[FR Doc. 2011-25220 Filed 9-29-11; 8:45 am]

BILLING CODE 4160-01-P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Parts 1 and 602

[TD 9551]

RIN 1545-BF94

#### Deduction for Qualified Film and Television Production Costs

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

**ACTION:** Final regulations and removal of temporary regulations.

**SUMMARY:** This document contains final regulations relating to deductions for the costs of producing qualified film and television productions. These final regulations reflect changes to the law made by the American Jobs Creation Act of 2004 and the Gulf Opportunity Zone Act of 2005, and affect persons that produce film and television productions within the United States.

**DATES:** *Effective Date:* These regulations are effective on September 29, 2011.

*Applicability Dates:* For dates of applicability, see § 1.181-6.

**FOR FURTHER INFORMATION CONTACT:** Bernard P. Harvey, (202) 622-4930 (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 of 1995 (44 U.S.C. 3507(d)) under control number 1545-2059. The collection of information in these final regulations is in §§ 1.181-1, 1.181-2, and 1.181-3. This information is required to enable the IRS to verify that a taxpayer is entitled to the deduction.

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

Books and records relating to a collection of information must be

retained as long as their contents might 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

This document contains amendments to 26 CFR part 1 to provide regulations under section 181 of the Internal Revenue Code of 1986 (Code). Section 181 permits the deduction of certain production costs by the producer of a qualified film or television production.

Section 181 was added to the Code by section 244 of the American Jobs Creation Act of 2004, Public Law 108–357 (118 Stat. 1418) (October 22, 2004), and was modified by section 403(e) of the Gulf Opportunity Zone Act of 2005, Public Law 109–135 (119 Stat. 2577) (December 21, 2005).

On February 9, 2007, the IRS and the Treasury Department published in the **Federal Register** (TD 9312, 72 FR 6155) temporary regulations relating to deductions for the costs of producing film and television productions under section 181. On the same date, the IRS published a notice of proposed rulemaking related to this topic in the **Federal Register** (REG–115403–05, 72 FR 6190). No public hearing was requested or held. Several written comments were received. All comments are available at <http://www.regulations.gov> or upon request. After consideration of all the comments received, the proposed regulations are adopted as amended by this Treasury decision, and the corresponding temporary regulations are removed. The revisions to the proposed regulations are discussed in this preamble. Unless otherwise specifically stated, references to the temporary regulations are to TD 9312.

Section 502 of the Tax Extenders and Alternative Minimum Tax Relief Act of 2008, Public Law 110–343 (122 Stat. 3765) (October 3, 2008) further modified section 181 for film and television productions commencing after December 31, 2007, and extended section 181 to film and television productions commencing before January 1, 2010. Section 181 was extended again to film and television productions commencing before January 1, 2012, by section 744 of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Public Law 111–312 (December 17, 2010). The IRS and the Treasury Department intend to publish in the **Federal Register** proposed and temporary regulations pertaining to film

and television productions commencing after December 31, 2007.

### Explanation and Summary of Comments

#### General Overview

Congress enacted section 181 to promote film and television production in the United States. For a qualified film or television production commenced before January 1, 2008 (a “pre-amendment production”), section 181 permits an owner to elect to deduct production costs paid or incurred by that owner in the taxable year the costs are paid or incurred, in lieu of capitalizing the costs and recovering them through depreciation allowances, if the aggregate production costs do not exceed \$15 million (\$20 million if a significant amount of the aggregate production costs are paid or incurred in certain designated areas) for each qualifying production (the “aggregate production costs limit”). A film or television production (a “production”) is a qualified film or television production if 75 percent of the total compensation for the production is compensation for services performed in the United States by actors, directors, producers, and other production personnel.

The final regulations use the term “pre-amendment production” to distinguish productions that are subject to the maximum aggregate production costs limit in section 181 as added by the American Jobs Creation Act of 2004 and modified by the Gulf Opportunity Zone Act of 2005 from productions that are subject to the maximum production costs deduction limit in the Tax Extenders and Alternative Minimum Tax Relief Act of 2008. Several provisions of the final regulations are specific to pre-amendment productions and are designated accordingly.

#### Deduction for Qualified Film and Television Production Costs

In response to a comment, the final regulations use the term “aggregate production costs” as the total production costs paid or incurred by any person without regard to whether that person deducted (or was an owner entitled to deduct) those costs under section 181. As suggested by the same comment, the final regulations clarify that costs paid on behalf of an owner (for example, participations and residuals paid by a distributor) are included in aggregate production costs, notwithstanding that such costs are not deductible production costs for the owner. Thus, the amount of an owner’s deductible costs under section 181 may

be less than the aggregate production costs. Further, costs are not deductible under section 181 for a pre-amendment production with aggregate production costs in excess of the aggregate production costs limit of \$15 million (or, if applicable, \$20 million), even if the owner’s production costs are less than the aggregate production costs limit.

In response to a comment, the final regulations clarify that, for purposes of the aggregate production costs limit, participations and residuals are calculated based on amounts actually paid or incurred rather than upon the amount the owner would include in basis under section 167(g)(7)(A) based on the estimated income from the production. This clarification is consistent with the limitation that the owner may claim as a deduction only participations and residuals actually paid or incurred.

Several commentators suggested that requiring owners to include participations and residuals in aggregate production costs in determining whether the aggregate production costs limit is exceeded creates uncertainty concerning whether the election is available for the production (and whether recapture may ultimately apply), and that this uncertainty will discourage persons interested in the benefits of section 181 from investing in potential qualified productions. This issue is addressed prospectively by section 502 of the Tax Extenders and Alternative Minimum Tax Relief Act of 2008, which replaces the aggregate production costs limit with a deduction limit for productions commencing on or after January 1, 2008. However, absent a specific statutory directive to the contrary, all costs required to be capitalized to cost basis under section 263A, including participations and residuals, must be included in the aggregate production costs of pre-amendment productions for purposes of determining if the aggregate production costs limit is exceeded.

In response to a comment, the final regulations provide that, solely for purposes of determining if the higher aggregate production costs limit for productions in certain areas is available for a production, all compensation costs for actors, directors, producers, and other production personnel, are allocated entirely to first-unit principal photography rather than allocating a portion of these costs to rehearsal and other preproduction activities.

The deduction under section 181 is subject to the passive loss limitations imposed by section 469 and the at-risk rules imposed by section 465. An owner

may claim the section 181 deduction against ordinary income under the rules of section 469 only if that owner materially participates in the production process; otherwise, the deduction is available only against passive income. Furthermore, an owner may only claim the section 181 deduction to the extent that the owner is at-risk within the meaning of section 465. Several commentators suggested that the final regulations exempt the deduction under section 181 from the passive loss and at-risk limitations, or that the final regulations otherwise determine that these limitations do not apply for section 181. Because there is no specific statutory direction specifying that these limitations do not apply, the section 181 deduction continues to be subject to the passive loss and at-risk limitations.

#### *Election*

To ensure that multiple persons do not claim aggregate deductions in excess of the deduction limit, the final regulations retain language from the temporary regulations recognizing that some productions are produced by multiple persons that have not entered into a partnership agreement and do not file as a partnership. However, the IRS is not bound by the reporting position of these persons; whether the activities of these persons rise to the level of a partnership will be determined in accordance with § 301.7701-3 of this chapter.

Commentators asked whether there is a time limit between when a production is set for production and the time expected for commencement of principal photography and whether a minimum budget for production costs is required. Neither section 181 nor the final regulations impose such a time limit or minimum budget requirement.

#### *Qualified Film or Television Production (Definitions)*

Generally, a motion picture film or video tape (including digital video) for which the production costs are subject to capitalization under section 263A, or would be subject to capitalization if section 263A applied to the owner of the production, is a production for purposes of section 181. Thus, in response to a comment, the final regulations provide that a motion picture film or video tape (including digital video) acquired after “initial release or broadcast” is not a production. The final regulations define “initial release or broadcast” as the first commercial exhibition or broadcast to an audience. The object of this provision is to maximize the availability of the election under section 181 to

advance the goal of the statute (to promote film and television production in the United States) while preventing the use of section 181 in cases that do not advance the goal of the statute, such as the purchase of an existing film library. Under the final regulation, the term “initial release or broadcast” does not include certain limited exhibitions primarily for purposes of publicity, marketing to potential purchasers or distributors, determining the need for further production activity, or raising funds for the completion of production. This exception is added to permit producers to exhibit productions at film festivals to interested buyers without compromising the ability of those buyers to use section 181, as well as to permit producers to test audience reaction to the production in order to determine if further production activities are needed. A person acquiring a completed motion picture film or video tape (including digital video) prior to its initial release or broadcast is considered an owner for purposes of section 181 and may treat the acquired asset as a production, even if the acquiring person does not pay or incur costs that are subject to section 263A.

A commentator asked whether video games or computer games are productions for purposes of section 181. They are not because they are not motion picture films or video tapes. However, to the extent that a game producer produces or acquires (prior to initial release or broadcast) a motion picture film or video tape (including digital video) the production costs of which are subject to capitalization under section 263A (or that would be subject to capitalization if section 263A applied to the owner of the production) for inclusion in a game (for example, as a cinematic within the game), then the cost of producing that motion picture film or video tape may be eligible for section 181.

The IRS and the Treasury Department rejected a suggestion that, rather than allocating the cost of production services to the place where the principal photography occurs for purposes of determining whether the production is a qualified production, the final regulations should instead require that the majority of principal photography occur in the United States. The statute defines the term “qualified film or television production” with reference to “qualified compensation,” defined as the amount of compensation for services paid to certain persons. The final regulations use the same definition, and require the owner to allocate compensation for services to those

persons to the place where principal photography occurs in determining the amount of qualified compensation for the production. This approach is consistent with the statute and simplifies the calculation for the owner and prevents uncertainty that would otherwise arise from allocations to rehearsal and other preproduction activities.

#### *Special Rules*

The final regulations clarify that an owner must recapture the entire amount of any section 181 deduction when the owner sells a production prior to the initial release or broadcast in order to preserve the buyer's ability to deduct the acquisition cost of the production under section 181.

#### *Effective/Applicability Date*

These final regulations apply to qualified film and television productions for which principal photography or, for an animated production, in-between animation, commenced on or after September 29, 2011. The owner of a qualified film or television production for which principal photography or, for an animated production, in-between animation, commenced on or after October 22, 2004, and before February 9, 2007, or on or after January 1, 2009, and before September 29, 2011, may apply the proposed regulations published on February 9, 2007, or, in the alternative, may apply these final regulations.

#### *Special Analyses*

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) and (d) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. The final regulations impose a collection of information on small entities in order to demonstrate eligibility for tax benefits under the statute, and this collection of information will require recordkeeping. This collection of information is discussed elsewhere in this preamble. However, the recordkeeping required by this collection of information does not differ significantly from the recordkeeping that a taxpayer must perform in order to determine whether the taxpayer is eligible to claim a deduction under the statute. Consequently, the economic impact on

small entities resulting from the recordkeeping required under this regulation is de minimis. Accordingly, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

#### Drafting Information

The principal author of these regulations is Bernard P. Harvey, Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and the Treasury Department participated in their development.

#### List of Subjects

##### 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

##### 26 CFR Part 602

Reporting and recordkeeping requirements.

#### Adoption of Amendments to the Regulations

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

### PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.181-0 is added to read as follows:

#### § 1.181-0 Table of contents.

This section lists the table of contents for §§ 1.181-1 through 1.181-6.

#### § 1.181-1 Deduction for qualified film and television production costs.

- (a) Deduction.
  - (1) In general.
  - (2) Owner.
  - (3) Production costs.
  - (4) Aggregate production costs.
  - (5) Pre-amendment production.
  - (6) [Reserved].
  - (7) Initial release or broadcast.
  - (8) Special rule.
  - (b) Limit on amount of aggregate production costs and amount of deduction.
    - (1) In general.
    - (i) Pre-amendment production.
    - (ii) [Reserved].
    - (iii) Special rules.
    - (2) Higher limit for productions in certain areas.
      - (i) In general.

- (ii) Significantly paid or incurred for live action productions.
- (iii) Significantly paid or incurred for animated productions.
- (iv) Significantly paid or incurred for productions incorporating both live action and animation.
- (v) Establishing qualification.
- (vi) Allocation.
- (c) Effect on depreciation or amortization of a qualified film or television production.
  - (1) Pre-amendment production.
  - (2) [Reserved].

#### § 1.181-2 Election to deduct production costs.

- (a) Election.
  - (1) In general.
  - (2) Exception.
  - (b) Time of making election.
    - (1) In general.
    - (2) Special rule.
    - (3) Six-month extension.
    - (c) Manner of making election.
      - (1) In general.
      - (2) Information required.
        - (i) Initial election.
        - (ii) Subsequent taxable years.
      - (3) Deductions by more than one person.
        - (d) Revocation of election.
          - (1) In general.
          - (2) Consent granted.

#### § 1.181-3 Qualified film or television production.

- (a) In general.
- (b) Production.
  - (1) In general.
  - (2) Special rules for television productions.
  - (3) Exception for certain sexually explicit productions.
  - (c) Compensation.
  - (d) Qualified compensation.
  - (e) Special rule for acquired productions.
  - (f) Other definitions.
    - (1) Actors.
    - (2) Production personnel.
    - (3) United States.

#### § 1.181-4 Special rules.

- (a) Recapture.
  - (1) Applicability.
    - (i) In general.
    - (ii) Special rule.
  - (2) Principal photography not commencing prior to the date of expiration of section 181.
    - (3) Amount of recapture.
    - (b) Recapture under section 1245.

#### § 1.181-5 Examples.

#### § 1.181-6 Effective/applicability date.

- (a) In general.
- (b) Application of proposed regulations to pre-effective date productions.

(c) Application of §§ 1.181-1 through 1.181-5 to certain pre-effective date productions.

#### § 1.181-0T [Removed]

■ **Par. 3.** Section 1.181-0T is removed.

■ **Par. 4.** Section 1.181-1 is added to read as follows:

#### § 1.181-1 Deduction for qualified film and television production costs.

(a) *Deduction*—(1) *In general.* (i) An owner (as defined in paragraph (a)(2) of this section) of any film or television production (production, as defined in § 1.181-3(b)) that the owner reasonably expects will be, upon completion, a qualified film or television production (as defined in § 1.181-3(a)) may elect to treat production costs paid or incurred by that owner (subject to the limits imposed under paragraph (b) of this section) as an expense that is deductible for the taxable year in which the costs are paid (for an owner who uses the cash receipts and disbursements method of accounting) or incurred (for an owner who uses an accrual method of accounting). The deduction under section 181 is subject to recapture if the owner's expectations are later determined to be inaccurate.

(ii) This section provides rules for determining the owner of a production, the production costs (as defined in paragraph (a)(3) of this section), and the maximum amount of aggregate production costs (as defined in paragraph (a)(4) of this section) that may be paid or incurred for a pre-amendment production (as defined in paragraph (a)(5) of this section) for which the owner makes an election under section 181. Section 1.181-2 provides rules for making the election under section 181. Section 1.181-3 provides definitions and rules concerning qualified film and television productions. Section 1.181-4 provides special rules, including rules for recapture of the deduction. Section 1.181-5 provides examples of the application of §§ 1.181-1 through 1.181-4, while § 1.181-6 provides the effective date of §§ 1.181-1 through 1.181-5.

(2) *Owner.* (i) For purposes of this section and §§ 1.181-2 through 1.181-6, an owner of a production is any person that is required under section 263A to capitalize the costs of producing the production into the cost basis of the production, or that would be required to do so if section 263A applied to that person.

(ii) Further, a person that acquires a finished or partially-finished production is treated as an owner of that production for purposes of this section and

§§ 1.181–2 through 1.181–6, but only if the production is acquired prior to its initial release or broadcast (as defined in paragraph (a)(7) of this section).

Moreover, a person that acquires only a limited license or right to exploit a production, or receives an interest or profit participation in a production, as compensation for services, is not an owner of the production for purposes of this section and §§ 1.181–2 through 1.181–6.

(3) *Production costs.* (i) For purposes of this section and §§ 1.181–2 through 1.181–6, the term *production costs* means all costs that are paid or incurred by an owner in producing a production that are required, absent the provisions of section 181, to be capitalized under section 263A, or that would be required to be capitalized if section 263A applied to the owner, and, if applicable, all costs that are paid or incurred by an owner in acquiring a production prior to its initial release or broadcast. Production costs include, but are not limited to, participations and residuals paid or incurred, compensation paid or incurred for services, compensation paid or incurred for property rights, non-compensation costs, and costs paid or incurred in connection with obtaining financing for the production (for example, premiums paid or incurred to obtain a completion bond for the production).

(ii) Production costs do not include costs paid or incurred to distribute or exploit a production (including advertising and print costs).

(iii) Production costs do not include the costs to prepare a new release or new broadcast of an existing production after the initial release or broadcast of the production (for example, the preparation of a DVD release of a theatrically-released film, or the preparation of an edited version of a theatrically-released film for television broadcast). Costs paid or incurred to prepare a new release or a new broadcast of a production after its initial release or broadcast, therefore, are not taken into account for purposes of paragraph (b)(1) of this section, and may not be deducted under this paragraph (a).

(iv) If a pre-amendment production is acquired from any person prior to its initial release or broadcast, the acquiring person must use as its initial aggregate costs the greater of—

(A) The cost of acquisition; or

(B) The seller's aggregate production costs.

(v) Production costs do not include costs that the owner has deducted or begun to amortize prior to the taxable year the owner makes an election under

§ 1.181–2 for the production (for example, costs described in § 1.181–2(a)(2)). These costs, however, are included in aggregate production costs to the extent they would have been treated as production costs by the owner notwithstanding this paragraph (a)(3)(v).

(4) *Aggregate production costs.* The term *aggregate production costs* means all production costs described in paragraph (a)(3) of this section paid or incurred by any person, whether paid or incurred directly by an owner or indirectly on behalf of an owner.

(5) *Pre-amendment production.* The term *pre-amendment production* means a qualified film or television production commencing after October 22, 2004, and before January 1, 2008.

(6) [Reserved].

(7) *Initial release or broadcast.* Solely for purposes of this section and §§ 1.181–2 through 1.181–6, the term *initial release or broadcast* means the first commercial exhibition or broadcast of a production to an audience. However, the term “initial release or broadcast” does not include limited exhibition prior to commercial exhibition to general audiences if the limited exhibition is primarily for purposes of publicity, marketing to potential purchasers or distributors, determining the need for further production activity, or raising funds for the completion of production. For example, the term initial release or broadcast does not include exhibition to a test audience to determine the need for further production activity, or exhibition at a film festival for promotional purposes, if the exhibition precedes commercial exhibition to general audiences.

(8) *Special rule.* The provisions of this paragraph (a) apply notwithstanding the treatment of participations and residuals permitted under the income forecast method in section 167(g)(7)(D).

(b) *Limit on amount of aggregate production costs and amount of deduction—*(1) *In general—*(i) *Pre-amendment production.* Except as provided under paragraph (b)(2) of this section, no deduction is allowed under section 181 for any pre-amendment production, the aggregate production costs of which exceed \$15,000,000. See also paragraph (a)(3)(iv) of this section. For a pre-amendment production for which the aggregate production costs do not exceed \$15,000,000 (or, if applicable under paragraph (b)(2) of this section, \$20,000,000), an owner may deduct under section 181 all of the production costs paid or incurred by that owner.

(ii) [Reserved].

(iii) *Special rules.* The owner's deduction under section 181 is limited

to the owner's acquisition costs of the production plus any further production costs paid or incurred by the owner. The deduction under section 181 is not available for any portion of the acquisition costs, and any subsequent production costs, of a production with an initial release or broadcast that is prior to the date of acquisition.

(2) *Higher limit for productions in certain areas—*(i) *In general.* This section is applied by substituting \$20,000,000 for \$15,000,000 in paragraph (b)(1) of this section for any production the aggregate production costs of which are significantly paid or incurred in an area eligible for designation as—

(A) A low income community under section 45D; or

(B) A distressed county or isolated area of distress by the Delta Regional Authority established under 7 U.S.C. section 2009aa–1.

(ii) *Significantly paid or incurred for live action productions.* The aggregate production costs of a live action production are significantly paid or incurred within one or more areas specified in paragraph (b)(2)(i) of this section if—

(A) At least 20 percent of the aggregate production costs paid or incurred in connection with first-unit principal photography for the production are paid or incurred in connection with first-unit principal photography that takes place in such areas; or

(B) At least 50 percent of the total number of days of first-unit principal photography for the production consists of days during which first-unit principal photography takes place in such areas.

(iii) *Significantly paid or incurred for animated productions.* For purposes of an animated production, the aggregate production costs of the production are significantly paid or incurred within one or more areas specified in paragraph (b)(2)(i) of this section if—

(A) At least 20 percent of the aggregate production costs paid or incurred in connection with keyframe animation, in-between animation, animation photography, and the recording of voice acting performances for the production are paid or incurred in connection with such activities that take place in such areas; or

(B) At least 50 percent of the total number of days of keyframe animation, in-between animation, animation photography, and the recording of voice acting performances for the production consists of days during which such activities take place in such areas.

(iv) *Significantly paid or incurred for productions incorporating both live*

*action and animation.* For purposes of a production incorporating both live action and animation, the aggregate production costs of the production are significantly paid or incurred within one or more areas specified in paragraph (b)(2)(i) of this section if—

(A) At least 20 percent of the aggregate production costs paid or incurred in connection with first-unit principal photography, keyframe animation, in-between animation, animation photography, and the recording of voice acting performances for the production are paid or incurred in connection with such activities that take place in such areas; or

(B) At least 50 percent of the total number of days of first-unit principal photography, keyframe animation, in-between animation, animation photography, and the recording of voice acting performances for the production consists of days during which such activities take place in such areas.

(v) *Establishing qualification.* An owner intending to utilize the higher aggregate production costs limit under this paragraph (b)(2) must establish qualification under this paragraph (b)(2).

(vi) *Allocation.* Solely for purposes of determining whether a production qualifies for the higher aggregate production costs limit provided under this paragraph (b)(2), compensation (as defined in § 1.181–3(c)) to actors (as defined in § 1.181–3(f)(1)), directors, producers, and other production personnel (as defined in § 1.181–3(f)(2)) is allocated entirely to first-unit principal photography.

(c) *Effect on depreciation or amortization of a qualified film or television production.*—(1) *Pre-amendment production.* Except as provided in §§ 1.181–1(a)(3)(v) and 1.181–2(a)(2), an owner that elects to deduct production costs under section 181 for a pre-amendment production may not deduct production costs for that production under any provision of the Internal Revenue Code other than section 181 unless the recapture requirements of § 1.181–4(a) apply to the production.

(2) [Reserved].

#### **§ 1.181–1T [Removed]**

■ **Par. 5.** Section 1.181–1T is removed.

■ **Par. 6.** Section 1.181–2 is added to read as follows:

#### **§ 1.181–2 Election to deduct production costs.**

(a) *Election.*—(1) *In general.* Except as provided in paragraph (a)(2) of this section, an owner may make an election under section 181 to deduct production

costs of a production only if that owner has not deducted in a previous taxable year any production costs for that production under any provision of the Internal Revenue Code (Code) other than section 181.

(2) *Exception.* An owner may make an election under section 181 despite prior deductions under any other provision of the Code for amortization of the costs of acquiring or developing screenplays, scripts, story outlines, motion picture production rights to books and plays, and other similar properties for purposes of potential future development or production of a production, if such costs were paid or incurred before the first taxable year for which an election may be made under § 1.181–2(b) and are included in aggregate production costs.

(b) *Time of making election.*—(1) *In general.* The election to deduct production costs for a production under section 181 must be made by the due date (including any extension) for filing the owner's Federal income tax return for the first taxable year in which:

(i) Any aggregate production costs have been paid or incurred;

(ii) The owner reasonably expects (based on all of the facts and circumstances) that the production will be set for production and will, upon completion, be a qualified film or television production; and

(iii) For any pre-amendment production, the owner reasonably expects (based on all of the facts and circumstances) that the aggregate production costs paid or incurred for the pre-amendment production will, at no time, exceed the applicable aggregate production costs limit set forth under § 1.181–1(b)(1)(i) or (b)(2).

(2) *Special rule.* If paragraph (b)(1) of this section is not satisfied until a taxable year subsequent to the taxable year in which any aggregate production costs were first paid or incurred, the owner must make the election for the taxable year in which paragraph (b)(1) of this section is first satisfied, and any production costs paid or incurred prior to the taxable year in which the owner makes the election and not deducted in a prior taxable year are treated as production costs (except costs described in § 1.181–2(a)(2)) that are deductible under § 1.181–1(a)(1)(i) for the taxable year paragraph (b)(1) of this section is first satisfied and the election is made.

(3) *Six-month extension.* See § 301.9100–2 for a six-month extension of time to make the election in certain circumstances.

(c) *Manner of making election.*—(1) *In general.* An owner must make the election under section 181 separately for

each production. For a production owned by an entity, the election must be made by the entity. For example, if the production is owned by a partnership or S corporation, the partnership or S corporation must make the election.

(2) *Information required.*—(i) *Initial election.* For each production to which the election applies, the owner must attach a statement to the owner's Federal income tax return for the taxable year of the election stating that the owner is making an election under section 181 and providing—

(A) The name (or other unique identifying designation) of the production;

(B) The date aggregate production costs were first paid or incurred for the production;

(C) The amount of aggregate production costs paid or incurred for the production during the taxable year (including costs described in §§ 1.181–1(a)(3)(v) and 1.181–2(b)(2));

(D) The amount of qualified compensation (as defined in § 1.181–3(d)) paid or incurred for the production during the taxable year (including costs described in § 1.181–2(b)(2));

(E) The amount of compensation (as defined in § 1.181–3(c)) paid or incurred for the production during the taxable year (including costs described in § 1.181–2(b)(2));

(F) If the owner expects that the aggregate production costs of the production will be significantly paid or incurred in (or, if applicable, if a significant portion of the total number of days of first-unit principal photography will occur in) one or more of the areas specified in § 1.181–1(b)(2)(i), the identity of the area or areas, the amount of aggregate production costs paid or incurred (or the number of days of first-unit principal photography engaged in) for the applicable activities described in § 1.181–1(b)(2)(ii), (b)(2)(iii), or (b)(2)(iv), as applicable, that took place within such areas (including costs described in §§ 1.181–1(a)(3)(v) and 1.181–2(b)(2)), and the aggregate production costs paid or incurred (or the total number of days of first-unit principal photography engaged in) for such activities (whether or not they took place in such areas), for the taxable year (including costs described in §§ 1.181–1(a)(3)(v) and 1.181–2(b)(2));

(G) A declaration that the owner reasonably expects (based on all of the facts and circumstances at the time the election is made) both that the production will be set for production (or has been set for production) and will be a qualified film or television production; and

(H) For any pre-amendment production, a declaration that the owner reasonably expects (based on all of the facts and circumstances at the time the election is made) that the aggregate production costs paid or incurred for the pre-amendment production will not, at any time, exceed the applicable aggregate production costs limit set forth under § 1.181-1(b)(1)(i) or (b)(2).

(ii) *Subsequent taxable years.* If the owner pays or incurs additional production costs in any taxable year subsequent to the taxable year for which production costs are first deducted under section 181, the owner must attach a statement to its Federal income tax return for that subsequent taxable year providing—

(A) The name (or other unique identifying designation) of the production that was used in the initial election, and any revised name (or unique identifying designation) subsequently used for the production;

(B) The date the aggregate production costs were first paid or incurred for the production;

(C) The amount of aggregate production costs paid or incurred for the production during the current taxable year;

(D) The amount of qualified compensation paid or incurred for the production during the current taxable year;

(E) The amount of compensation paid or incurred for the production during the current taxable year, and the aggregate amount of compensation paid or incurred for the production in all prior taxable years;

(F) If the owner expects that the aggregate production costs of the production will be significantly paid or incurred in (or, if applicable, if a significant portion of the total number of days of first-unit principal photography will occur in) one or more of the areas specified in § 1.181-1(b)(2)(i), the identity of the area or areas, the amount of aggregate production costs paid or incurred (or the number of days of first-unit principal photography engaged in) for the applicable activities described in § 1.181-1(b)(2)(ii), (b)(2)(iii), or (b)(2)(iv), as applicable, that took place within such areas, and the aggregate production costs paid or incurred (or the number of days of first-unit principal photography engaged in) for such activities (whether or not they took place in such areas), for the current taxable year;

(G) A declaration that the owner continues to reasonably expect (based on all of the facts and circumstances at the end of the current taxable year) both

that the production will be set for production (or has been set for production) and will be a qualified film or television production; and

(H) For any pre-amendment production, a declaration that the owner continues to reasonably expect (based on all of the facts and circumstances at the end of the current taxable year) that the aggregate production costs paid or incurred for the pre-amendment production will not, at any time, exceed the applicable aggregate production costs limit set forth under § 1.181-1(b)(1)(i) or (b)(2).

(3) *Deductions by more than one person.* If more than one person will claim deductions under section 181 with respect to the production for the taxable year, each person claiming the deduction (but not the members of an entity who are issued a Schedule K-1 by the entity with respect to their interest in the production) must provide a list of the names and taxpayer identification numbers of all such persons, the dollar amount that each such person will deduct under section 181, and the information required by paragraph (c)(2) of this section for all such persons. Notwithstanding the preceding sentence, whether or not multiple persons form a partnership with respect to the production will be determined in accordance with § 301.7701-3 of this chapter.

(d) *Revocation of election.*—(1) *In general.* An owner may revoke an election made under this section only with the consent of the Commissioner. Except as provided in paragraph (d)(2) of this section, an owner seeking consent to revoke an election made under this section must submit a letter ruling request, other than a Form 3115, “Application for Change in Accounting Method,” under the appropriate revenue procedure. See, for example, Rev. Proc. 2011-1, 2011-1 CB 1 (updated annually) (see § 601.601(d)(2)(ii)(b) of this chapter).

(2) *Consent granted.* The Commissioner grants consent to an owner to revoke an election under this section for a particular production if the owner—

(i) Complies with the recapture provisions of § 1.181-4(a)(3) on a timely filed (including any extension) original Federal income tax return for the taxable year of the revocation; and

(ii) Attaches a statement to that Federal income tax return that includes the name of the production that was in the owner's original election statement, and any revised name (or other unique identifying designation) of the production, and a statement that the owner revokes the election under

section 181 for that production, pursuant to § 1.181-2(d)(2).

#### § 1.181-2T [Removed]

■ **Par. 7.** Section 1.181-2T is removed.

■ **Par. 8.** Section 1.181-3 is added to read as follows:

#### § 1.181-3 Qualified film or television production.

(a) *In general.* The term *qualified film or television production* means any production (as defined in paragraph (b) of this section) for which not less than 75 percent of the aggregate amount of compensation (as defined in paragraph (c) of this section) paid or incurred for the production is qualified compensation (as defined in paragraph (d) of this section).

(b) *Production.*—(1) *In general.* Except as provided in paragraph (b)(3) of this section, for purposes of this section and §§ 1.181-1, 1.181-2, 1.181-4, 1.181-5, and 1.181-6, the term *production* means any motion picture film or video tape (including digital video) production the production costs of which are subject to capitalization under section 263A, or that would be subject to capitalization if section 263A applied to the owner of the production. If, prior to its initial release or broadcast, a person acquires a completed motion picture film or video tape (including digital video) that the seller was entitled to treat as a production under this paragraph (b)(1), then the new owner may treat the acquired asset as a production within the meaning of this paragraph (b)(1).

(2) *Special rules for television productions.* Each episode of a television series is a separate production to which the rules, limits, and election requirements of this section and §§ 1.181-1, 1.181-2, 1.181-4, 1.181-5, and 1.181-6 apply. An owner may elect to deduct production costs under section 181 only for the first 44 episodes of a television series (including pilot episodes). A television series may include more than one season of programming.

(3) *Exception for certain sexually explicit productions.* A production does not include property for which records are required to be maintained under 18 U.S.C. 2257.

(c) *Compensation.* The term *compensation* means, for purposes of this section and § 1.181-2(c)(2), all amounts paid or incurred either directly by the owner or indirectly on the owner's behalf for services performed by actors (as defined in paragraph (f)(1) of this section), directors, producers, and other production personnel (as defined in paragraph (f)(2) of this section) for the production. Examples of indirect



payments paid or incurred on the owner's behalf are payments by a partner on behalf of an owner that is a partnership, payments by a shareholder on behalf of an owner that is a corporation, and payments by a contract producer on behalf of the owner. Payments for services are all elements of compensation as provided for in §§ 1.263A-1(e)(2)(i)(B) and (e)(3)(ii)(D). Compensation is not limited to wages reported on Form W-2, "Wage and Tax Statement," and includes compensation paid or incurred to independent contractors. However, solely for purposes of paragraph (a) of this section, the term "compensation" does not include participations and residuals (as defined in section 167(g)(7)(B)). See § 1.181-1(a)(3) for additional rules concerning participations and residuals.

(d) *Qualified compensation.* The term *qualified compensation* means, for purposes of this section and § 1.181-2(c)(2), all compensation (as defined in paragraph (c) of this section) paid or incurred for services performed in the United States (as defined in paragraph (f)(3) of this section) by actors, directors, producers, and other production personnel for the production. A service is performed in the United States for purposes of this paragraph (d) if the principal photography to which the compensated service relates occurs within the United States and the person performing the service is physically present in the United States. For purposes of an animated film or animated television production, the location where production activities such as keyframe animation, in-between animation, animation photography, and the recording of voice acting performances are performed is considered in lieu of the location of principal photography. For purposes of a production incorporating both live action and animation, the location where production activities such as keyframe animation, in-between animation, animation photography, and the recording of voice acting performances for the production is considered in addition to the location of principal photography.

(e) *Special rule for acquired productions.* A person who acquires a production from a prior owner must take into account all compensation paid or incurred by or on behalf of the seller and any previous owners in determining if the production is a qualified film or television production as defined in paragraph (a) of this section. Any owner that elects to deduct as production costs the costs of acquiring a production and any subsequent production costs must obtain from the seller detailed records

concerning the compensation paid or incurred for the production and, for a pre-amendment production, concerning aggregate production costs, in order to demonstrate the eligibility of the production under section 181.

(f) *Other definitions.* The following definitions apply for purposes of this section and §§ 1.181-1, 1.181-2, 1.181-4, 1.181-5, and 1.181-6:

(1) *Actors.* The term *actors* means players, newscasters, or any other persons who are compensated for their performance or appearance in a production.

(2) *Production personnel.* The term *production personnel* means persons who are compensated for providing services directly related to the production, such as writers, choreographers, composers, casting agents, camera operators, set designers, lighting technicians, and make-up artists.

(3) *United States.* The term *United States* means the 50 states, the District of Columbia, the territorial waters of the continental United States, the airspace or space over the continental United States and its territorial waters, and the seabed and subsoil of those submarine areas that are adjacent to the territorial waters of the continental United States and over which the United States has exclusive rights, in accordance with international law, for the exploration and exploitation of natural resources. The term "United States" does not include possessions and territories of the United States (or the airspace or space over these areas).

#### § 1.181-3T [Removed]

■ **Par. 9.** Section 1.181-3T is removed.

■ **Par. 10.** Section 1.181-4 is added to read as follows:

#### § 1.181-4 Special rules.

(a) *Recapture*—(1) *Applicability*—(i) *In general.* The requirements of this paragraph (a) apply notwithstanding whether an owner has satisfied the revocation requirements of § 1.181-2(d). An owner that claimed a deduction under section 181 for a production in any taxable year in an amount in excess of the amount that would be allowable as a deduction for that year in the absence of section 181 must recapture the excess amount as provided for in paragraph (a)(3) of this section for the production in the first taxable year for which—

(A) For any pre-amendment production, the aggregate production costs of the production exceed the applicable aggregate production costs limit under § 1.181-1(b)(1)(i) or (b)(2);

(B) For any pre-amendment production, the owner no longer reasonably expects (based on all of the facts and circumstances at the end of the current taxable year) that the aggregate production costs of the production will not, at any time, exceed the applicable aggregate production costs limit set forth under § 1.181-1(b)(1)(i) or (b)(2);

(C) The owner no longer reasonably expects (based on all of the facts and circumstances at the end of the current taxable year) either that the production will be set for production or that the production will be a qualified film or television production; or

(D) The owner revokes the election pursuant to § 1.181-2(d).

(ii) *Special rule.* An owner that claimed a deduction under section 181 and disposes of the production prior to its initial release or broadcast must recapture the entire amount specified under paragraph (a)(3) of this section in the year the owner disposes of the production before computing gain or loss from the disposition.

(2) *Principal photography not commencing prior to the date of expiration of section 181.* If an owner claims a deduction under section 181 for a production for which principal photography does not commence prior to the date of expiration of section 181, the owner must recapture deductions as provided for in paragraph (a)(3) of this section in the owner's taxable year that includes the date of expiration of section 181.

(3) *Amount of recapture.* An owner subject to the recapture requirements under this section must, for the taxable year in which recapture is required, include in the owner's gross income as ordinary income and add to the owner's adjusted basis in the property—

(i) For a production that is placed in service in a taxable year prior to the taxable year for which recapture is required, the difference between the aggregate amount the owner claimed as a deduction under section 181 for the production for all such prior taxable years and the aggregate depreciation deductions that would have been allowable for the production for such prior taxable years (or that the owner could have elected to deduct in the taxable year that the production was placed in service) for the production under the owner's method of accounting; or

(ii) For a production that has not been placed in service, the aggregate amount claimed as a deduction under section 181 for the production for all such prior taxable years.

(b) *Recapture under section 1245.* For purposes of recapture under section



1245, any deduction allowed under section 181 is treated as a deduction allowable for amortization.

#### § 1.181-4T [Removed]

■ **Par. 11.** Section 1.181-4T is removed.  
 ■ **Par. 12.** Section 1.181-5 is added to read as follows:

##### § 1.181-5 Examples.

The following examples illustrate the application of §§ 1.181-1 through 1.181-4:

*Example 1.* X, a corporation that uses an accrual method of accounting and files Federal income tax returns on a calendar-year basis, is a producer of films. X is the owner (within the meaning of § 1.181-1(a)(2)) of film ABC. X incurs production costs in year 1, but does not commence principal photography for film ABC until year 2. In year 1, X reasonably expects, based on all of the facts and circumstances, that film ABC will be set for production and will be a qualified film or television production. Provided that X satisfies all other requirements of §§ 1.181-1 through 1.181-4 and § 1.181-6, X may deduct in year 1 the production costs for film ABC that X incurred in year 1.

*Example 2.* The facts are the same as in *Example 1*. In year 2, X begins, but does not complete, principal photography for film ABC. Most of the scenes that X films in year 2 are shot outside the United States and, as of December 31, year 2, less than 75 percent of the total compensation paid for film ABC is qualified compensation. Nevertheless, X still reasonably expects, based on all of the facts and circumstances, that film ABC will be a qualified film or television production. Provided that X satisfies all other requirements of §§ 1.181-1 through 1.181-4 and § 1.181-6, X may deduct in year 2 the production costs for film ABC that X incurred in year 2.

*Example 3.* The facts are the same as in *Example 2*. In year 3, X continues, but does not complete, production of film ABC. Due to changes in the expected production costs of film ABC, X no longer expects film ABC to qualify under section 181. X files a statement with its return for year 3 identifying the film and stating that X revokes its election under section 181. X includes in income in year 3 the deductions claimed in year 1 and in year 2 as provided for in § 1.181-4(a)(3). X has successfully revoked its election pursuant to § 1.181-2(d).

#### § 1.181-5T [Removed]

■ **Par. 13.** Section 1.181-5T is removed.  
 ■ **Par. 14.** Section 1.181-6 is added to read as follows:

#### § 1.181-6 Effective/applicability date.

(a) *In general.* Sections 1.181-1 through 1.181-5 apply to productions, the first day of principal photography for which occurs on or after September 29, 2011. For an animated production, this paragraph (a) applies by substituting “in-between animation” in place of “principal photography”.

Productions involving both animation and live-action photography may use either standard.

(b) *Application of proposed regulations to pre-effective date productions.* Except as provided in paragraph (c) of this section, an owner may apply 26 CFR 1.181.1T through 1.181-5T (as contained in 26 CFR part 1 revised April 1, 2008) to productions, the first day of principal photography (or in-between animation) for which occurs on or after October 22, 2004, and before February 9, 2007, or on or after January 1, 2009, and before September 29, 2011, provided that the owner applies all provisions of the proposed regulations to the productions.

(c) *Application of §§ 1.181-1 through 1.181-5 to certain pre-effective date productions.* An owner may apply §§ 1.181-1 through 1.181-5 to productions, the first day of principal photography (or in-between animation) for which occurs on or after February 9, 2007, and before September 29, 2011, provided that the owner applies all provisions of §§ 1.181-1 through 1.181-5 to the productions.

#### § 1.181-6T [Removed]

■ **Par. 15.** Section 1.181-6T is removed.

### PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 16.** The authority citation for part 602 continues to read as follows:

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

■ **Par. 17.** In § 602.101, paragraph (b) is amended as follows:

1. The following entries to the table are removed:

#### § 602.101 OMB Control numbers.

CFR part or section where identified and described	Current OMB control No.
1.181-1T and 1.181-2T .....	1545-2059

2. The following entries are added in numerical order to table:

#### § 602.101 OMB Control numbers.

CFR part or section where identified and described	Current OMB control No.
1.181-1 .....	1545-2059

CFR part or section where identified and described	Current OMB control No.
1.181-2 .....	1545-2059
1.181-3 .....	1545-2059
* * *	* * *

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

Approved: September 19, 2011.

Emily S. McMahon,

Acting Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2011-24930 Filed 9-29-11; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 100

[Docket No. USCG-2011-0885]

RIN 1625-AA08

### Special Local Regulations for Marine Events, Wrightsville Channel; Wrightsville Beach, NC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

**SUMMARY:** The Coast Guard is establishing temporary special local regulations for the swim portions of “Beach 2 Battleship Full and Half Iron Distance Triathlon”, to be held on the waters adjacent to Wrightsville Beach, North Carolina. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic on Banks, Motts, and Wrightsville Channels during the swimming portion of this event.

**DATES:** This rule is effective from 7 a.m. until 11 a.m. on October 29, 2011.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG-2011-0885 and are available online by going to <http://www.regulations.gov>, inserting USCG-2011-0885 in the “Keyword” box, and then clicking “Search.” They are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary