

(7) Comment No. LET36, Docket No. 80N-0042, Dockets Management Branch.

IV. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601-612). 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 and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

Under the Regulatory Flexibility Act, if a rule has a significant impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of a rule on small entities. This final rule stays the effective date of testing requirements that became effective on October 7, 1996, but which will not be required now until October 7, 1997. Thus, this final rule will not impose a significant economic burden on affected entities. Therefore, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commissioner of Food and Drugs certifies that this final rule will not have a significant economic impact on a substantial number of small entities. No further analysis is required.

V. Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) 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.

List of Subjects in 21 CFR Part 355

Labeling, Over-the-counter drugs.
Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 355 is amended as follows:

PART 355—ANTICARIES DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR part 355 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

§ 355.70 [Partial stay]

2. In § 355.70 *Testing procedures for fluoride dentifrice drug products*, paragraph (a) is stayed until October 7, 1997.

Dated: December 5, 1996.
William K. Hubbard,
Associate Commissioner for Policy
Coordination.
[FR Doc. 96-31575 Filed 12-13-96; 8:45 am]
BILLING CODE 4160-01-F

AGENCY FOR INTERNATIONAL DEVELOPMENT

22 CFR Part 210

Donation of Dairy Products To Assist Needy Persons Overseas (Section 416 Foreign Donation Program)

AGENCY: Agency for International Development, IDCA.

ACTION: Final rule.

SUMMARY: The authority for donations of dairy products to assist the needy overseas has been removed from the Agency for International Development, thereby making these regulations obsolete. These donation regulations are being removed.

EFFECTIVE DATE: December 16, 1996.

FOR FURTHER INFORMATION CONTACT: James Dempsey, Director, Office of Planning and Program Evaluation (AID/BHR/PPE), Bureau for Humanitarian Response, USAID, (703) 351-0102.

SUPPLEMENTARY INFORMATION: 22 CFR part 210 is obsolete. New regulations are being issued by the U.S. Department of Agriculture. The 22 CFR, part 210 rule is not a major rule for purposes of Executive Order 12291 of February 17, 1991. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small business entities.

List of Subjects in 22 CFR Part 210

Agricultural commodities, Foreign assistance.

PART 210—[REMOVED]

For the reasons set forth above, 22 CFR part 210 is removed.

Authority: 22 U.S.C. 2381(a).
Dated: November 22, 1996.
James Dempsey,
Director, AID/BHR/PPE.
[FR Doc. 96-30990 Filed 12-13-96; 8:45 am]
BILLING CODE 6116-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8690]

RIN-1545-AS94

Deductibility, Substantiation, and Disclosure of Certain Charitable Contributions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that provide guidance regarding the allowance of certain charitable contribution deductions, the substantiation requirements for charitable contributions of \$250 or more, and the disclosure requirements for quid pro quo contributions in excess of \$75. The regulations will affect organizations described in section 170(c) and individuals and entities that make payments to these organizations.

EFFECTIVE DATE: These regulations are effective December 16, 1996.

FOR FURTHER INFORMATION CONTACT: Jefferson K. Fox of the Office of Assistant Chief Counsel (Income Tax and Accounting) at 202-622-4930 (not a toll-free call).

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 requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1464. Responses to this collection of information are required for charitable contribution deductions under section 170.

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

The estimated annual burden per recordkeeper varies from three minutes to one hour, depending on individual circumstances, with an estimated average of six minutes.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and

Regulatory Affairs, Washington, DC 20503.

Books or records relating to this collection of information must be retained as long as their contents may be 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 the Income Tax Regulations (26 CFR part 1) that provide guidance relating to (1) the substantiation rules for charitable contributions under section 170(f)(8) of the Internal Revenue Code of 1986 (Code), and (2) the disclosure requirements for quid pro quo contributions under section 6115. Sections 170(f)(8) and 6115 were added to the Code by sections 13172 and 13173 of the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103-66, 107 Stat. 455, 1993-3 C.B. 43.

Temporary regulations (TD 8544) and a notice of proposed rulemaking cross-referencing the temporary regulations were published in the Federal Register for May 27, 1994 (59 FR 27458, 27515). Those regulations primarily addressed substantiation of charitable contributions made by payroll deduction and substantiation of payments to a charitable organization in exchange for goods or services of insubstantial value. The notice of proposed rulemaking indicated that comments would be considered both on the issues addressed in the temporary regulations, and on other issues arising under section 170(f)(8).

A notice of proposed rulemaking (IA-44-94) addressing substantiation issues under section 170(f)(8) other than contributions made by payroll deduction was published in the Federal Register for August 4, 1995 (60 FR 39896). Included in these proposed regulations were the provisions that had originally appeared in the temporary regulations published on May 27, 1994, relating to the substantiation of payments to charitable organizations in exchange for goods or services of insubstantial value. In drafting these proposed regulations, the IRS had the benefit of the comments received in response to the notice of proposed rulemaking published in the Federal Register for May 27, 1994. Many of the suggestions offered in the comments were incorporated into the proposed regulations.

Final regulations (TD 8623) relating to the substantiation of charitable contributions made by payroll deduction were published in the

Federal Register for October 12, 1995 (60 FR 53126). These final regulations did not include the provisions relating to the substantiation of payments to charitable organizations in exchange for goods or services with insubstantial value that had appeared in the temporary regulations published on May 27, 1994 and were also included in the proposed regulations published on August 4, 1995. The temporary regulations published in the Federal Register for May 27, 1994, were removed. For the convenience of taxpayers, the final regulations relating to the substantiation of charitable contributions made by payroll deduction (§ 1.170A-13(f)(11) and (12)) that were published in the Federal Register for May 27, 1994, have been reprinted with the final regulations adopted by this Treasury Decision.

Comments were received in response to the notice of proposed rulemaking published on August 4, 1995, and a public hearing was held on November 1, 1995. After consideration of those comments, together with the relevant comments received in response to the notice of proposed rulemaking published on May 27, 1994, the proposed regulations under sections 170(f)(8) and 6115 are adopted as revised by this Treasury Decision.

Public Comments

Intent To Make a Charitable Contribution

Section 1.170A-1(h) of the final regulations incorporates the two-part test adopted by the Supreme Court in *United States v. American Bar Endowment*, 477 U.S. 105 (1986), for determining deductibility under section 170(a) of a payment that is partly in consideration for goods or services. A deduction is not allowed for a payment to charity in consideration for goods or services except to the extent the amount of the payment exceeds the fair market value of the goods or services. In addition, a deduction is not allowed unless the taxpayer intends to make a payment in excess of the fair market value of the goods or services.

Section 1.170A-13(f)(6) provides that a charitable organization provides goods or services "in consideration for" a taxpayer's payment if, at the time of payment, the taxpayer receives or "expects to receive" goods or services in exchange. One commenter stated that a charitable organization has no way of knowing what a taxpayer expects to receive, and that the regulation requires the charity to determine its donors' states of mind. The commenter suggested that a payment be treated as

made in consideration for goods or services "if the donee organization expects to provide and does provide services of which the donor has been informed." Another commenter questioned whether donor appreciation events, such as banquets honoring contributors, are held "in consideration for" charitable contributions. The commenter also asked whether invitations to occasional events not disclosed to prospective donors until after they make their contributions are "in exchange for" the contributions.

The regulations follow *American Bar Endowment* by incorporating a standard that is based on the facts and circumstances of each charitable contribution. When a donor's contribution is made in response to an express promise of a benefit, the donor generally will have an expectation of a quid pro quo. A donor may also have an expectation of a quid pro quo when the donor makes a contribution with knowledge that the charitable donee has conferred a benefit on other donors making comparable contributions. For example, if a charity has a history of sponsoring a dinner-dance for donors making substantial contributions, a donor making a substantial contribution may have an expectation of receiving an invitation to such an event. The expectation of a quid pro quo may exist even though the donor is not aware of the exact nature of the quid pro quo (e.g., a donation to a charity that sponsors a donor appreciation event of a different type every year). This standard for determining a donor's expectation of a quid pro quo disallows deductions in situations where facts and circumstances indicate that the donor expected, at the time of his or her payment to charity, that there would be a quid pro quo, even though there was no explicit promise of one.

A commenter requested guidance on the proper treatment of a payment in consideration for a quid pro quo received in a year after the year of payment. Under section 1.170A-13(f)(6), goods or services provided by donee organizations in consideration for a donor's payment include goods or services provided in a year other than the year of payment. Accordingly, if a donor makes a payment to a charitable organization in exchange for goods or services, the donor's deductible charitable contribution for the year of payment is limited to the amount, if any, by which the payment exceeds the value of those goods or services, even if they are not available to the donor until a subsequent year.

Refusal of Benefits

Commenters asked for guidance on the proper manner of substantiating a contribution by a donor who refuses benefits offered by a charitable organization. One commenter suggested that the regulations indicate that when a taxpayer receives a right to quid pro quo benefits but does not use them, the taxpayer is not necessarily allowed a charitable contribution deduction in the full amount of the quid pro quo payment. Another suggested that a taxpayer wishing to deduct the full amount of a quid pro quo payment could check a box on a document to be sent to the charity at the time of contribution to show refusal of the benefit.

These comments are consistent with IRS views. Rev. Rul. 67-246, 1967-2 C.B. 104, provides guidance relating to the refusal of benefits offered by a charitable organization. The revenue ruling holds that a taxpayer choosing not to use tickets that were made available to him is not entitled to a greater contribution than would otherwise be allowed; i.e., the deduction is limited to the amount paid in excess of the value of the tickets received in exchange. 1967-2 C.B. 106. A deduction in the full amount of a taxpayer's payment may be allowed, however, if the taxpayer properly rejects the right to the tickets. Rev. Rul. 67-246 contains two examples (Examples 3 and 7) illustrating ways that donors can effectively reject benefits offered by charitable organizations. Example 7 illustrates that a check-off box on a form provided by the charity can be used to reject a ticket at the time of contribution. A taxpayer who has properly rejected a benefit offered by a charitable organization may claim a deduction in the full amount of the payment to the charitable organization, and the contemporaneous written acknowledgment need not reflect the value of the rejected benefit.

Certain Goods or Services Disregarded

Goods or Services With Insubstantial Value

Under guidelines set forth in Rev. Proc. 90-12, 1990-1 C.B. 471, and Rev. Proc. 92-49, 1992-1 C.B. 987, certain goods or services received in exchange for a payment to a charity are treated as having insubstantial value and can therefore be disregarded for the purpose of determining the amount of a taxpayer's payment that is deductible as a charitable contribution. Under these guidelines, if a taxpayer makes a payment to a charitable organization in the context of a fundraising campaign,

and receives benefits with a fair market value of not more than two percent of the amount of the payment (up to a maximum of \$67, for 1996), the benefits received are considered to have insubstantial value for purposes of determining the amount of the taxpayer's contribution. (The \$67 benefit limitation is adjusted annually for inflation.)

Further, if a taxpayer makes a payment of \$33.50 or more to a charity and receives only token items in return, the items are considered to have insubstantial value if they (1) bear the charity's name or logo, and (2) have an aggregate cost to the charity of \$6.70 or less. (The \$33.50 and \$6.70 amounts apply to payments made in 1996; these amounts are adjusted annually for inflation.) In addition, newsletters not of commercial quality and low-cost items provided for free without an advance order are considered to have insubstantial value.

Under section 1.170A-13(f)(8)(i)(A) of the regulations, the same types of goods and services disregarded under the guidelines of Rev. Procs. 90-12 and 92-49 can be disregarded for purposes of substantiation under section 170(f)(8). One commenter asked whether the contemporaneous written acknowledgment provided to a donor receiving goods or services of insubstantial value should indicate that no goods or services were received. When a donee organization provides a donor only with goods or services having insubstantial value under Rev. Procs. 90-12 and 92-49, the contemporaneous written acknowledgment may indicate that no goods or services were provided in exchange for the donor's payment. See Example 2, § 1.170A-13(f)(8)(ii).

Another commenter stated that the rules in Rev. Procs. 90-12 and 92-49 for goods or services of insubstantial value are unduly restrictive and prevent charitable organizations from recognizing longstanding, generous contributors with suitable gifts of appreciation. Another argued that the costs of token items received by a taxpayer during the year from a charity should not be aggregated. Sections 1.170A-13(f)(8)(B) and 1.170A-13(f)(9)(i) provide that certain membership benefits provided in exchange for a payment of \$75 or less may be disregarded for purposes of determining whether any quids pro quo were provided to the donor. For purposes of sections 170(f)(8) and 6115, these provisions supplement the categories of goods or services treated as having insubstantial value under the guidelines of Rev. Procs. 90-12 and 92-

49. The IRS and Treasury believe that application of the guidelines of Rev. Procs. 90-12 and 92-49, together with the membership benefit provisions in the final regulations, strikes an appropriate balance between administrative and compliance concerns under sections 170(f)(8) and 6115. Accordingly, the guidelines of Rev. Procs. 90-12 and 92-49 have not been modified.

Membership Benefits

The regulations provide limited relief with respect to certain types of benefits customarily provided to donors in exchange for membership payments. Two types of membership benefits offered in exchange for a payment of \$75 or less may be disregarded: (1) Free admission to members-only events with a per-person cost to the charity that is no higher than the standard for low-cost articles under section 513(h)(2)(C) (\$6.70 for 1996); and (2) rights or privileges that can be exercised frequently during the membership period (other than rights or privileges described in section 170(l), governing rights to purchase tickets for college athletic events).

Some commenters said that the term *frequently*, when read in conjunction with the examples, provided sufficient clarity and appropriate flexibility. Other commenters expressed concern about use of the term *frequently*, stating that it was vague and imprecise. For smaller organizations, they argued, in determining whether a right of free admission to a series of events can be frequently exercised, consideration should be given to the number of events held by the organization each year. The IRS and Treasury believe that a charity can make a determination that a right or privilege is frequently exercisable by reference to the examples that were in the proposed regulations and are adopted in the final regulations.

A commenter suggested that the \$75 payment amount in the special rules for membership benefits should be indexed for inflation. The IRS and Treasury believe that it is important for the membership payment amount to be a number that can be easily remembered by charities and donors. For this reason, annual inflation adjustments are not advisable. However, the IRS and Treasury will consider increases to this \$75 figure in the future.

A commenter asked whether the rule that allows taxpayers to disregard certain membership benefits applies to discounts offered by a donee organization for purchases from retailers working with the charity to provide discounts to members. These discounts

are to be treated like any other rights or privileges and, therefore, may be disregarded for purposes of section 170(f)(8) if they can be exercised frequently during the membership period.

Goods or Services Provided to a Donor's Employees

Prior to publication of the proposed regulations, several commenters asked for guidance on the proper method of valuation of goods or services provided by charitable organizations to employees of donors. The final regulations follow the proposed regulations and provide that goods or services provided to a donor's employees can be disregarded if they consist of the types of benefits that could be disregarded when provided directly to a donor (i.e., goods or services with insubstantial value and certain annual membership benefits). For any other types of goods or services provided to employees of a donor making a contribution of \$250 or more, the contemporaneous written acknowledgment must describe the goods or services, but need not include the donee organization's good faith estimate of their fair market value.

A commenter stated that the special rule for goods or services provided to employees of a donor should also be available for partners in a partnership. In the final regulations, the exception for goods or services provided to a donor's employees has been modified to include partners in a donor-partnership.

A commenter was concerned about charities that receive funds from a private foundation established by a business entity. The commenter suggested that such charities should be permitted to provide benefits to employees of the business entity without any tax consequences. Because this suggestion raises issues beyond the scope of this regulation (including issues relating to the self-dealing rules under section 4941), this suggestion was not adopted.

A commenter stated that when employees receive benefits as a result of an employer's charitable contribution, it would be easier for the charity (rather than the employer) to estimate the fair market value of the benefits. Another commenter stated that when employees receive benefits that cannot be disregarded under section 170, the employer/donor is likely to deduct the value of those benefits as a business expense under section 162. Because employers may claim the full amount of their payments to charity—including the value of the benefits—as a deduction, the commenter suggested

that employers should be relieved of the burden of valuing such benefits, and that the full amount of such payments should be deductible under section 170.

The IRS and Treasury recognize that in cases where employee benefits cannot be disregarded for purposes of section 170, employers may nevertheless seek to deduct their costs pursuant to section 162. For deductions under section 170, however, *United States v. American Bar Endowment*, supra, limits the allowable deduction to the amount of the employer's payment in excess of the value of employee benefits. Accordingly, if the employee benefits cannot be disregarded, their value must be subtracted from the amount of the employer's payment to determine the correct amount of the charitable contribution deduction. Although valuation may be difficult, the IRS and Treasury continue to believe that the employer is in a better position than the charity to be responsible for valuation of benefits provided to employees.

Payments for the Right To Purchase Tickets to College Athletic Events

A commenter asked for clarification regarding the applicability of the substantiation requirements to payments for the right to purchase tickets to college athletic events. Section 170(l) provides that payments to colleges or universities for the right to purchase tickets to athletic events are partially (eighty percent) deductible as charitable contributions. The final regulations have been modified to clarify how sections 170(f)(8) and 6115 apply to payments described in section 170(l).

For purposes of section 170(f)(8), twenty percent of the amount paid for the right to purchase tickets for seating at college or university athletic events is treated as the fair market value of such right. When the total payment for the right to purchase tickets to college athletic events is \$312.50 or more, the portion of the payment treated as a charitable contribution will be \$250 or more, and substantiation will be required under section 170(f)(8). For purposes of section 6115, twenty percent of the amount paid for the right to purchase tickets for seating at college or university athletic events is treated as a good faith estimate of the fair market value of this right.

Rules Applicable to Corporations

Several commenters suggested that subchapter C corporations (C corporations) should be relieved of the substantiation requirements. Some indicated that C corporations should be

exempt; others argued for a de minimis exception for C corporations making substantial contributions. Under a de minimis exception, deductions for all of a C corporation's charitable contributions would be allowed if the corporation had contemporaneous written acknowledgments substantiating most, or substantially all, of its contributions. These commenters stated that the substantiation requirements were enacted to deter individuals—not businesses—that had claimed charitable contribution deductions for the full amounts of their payments to charitable organizations, even though they had received quids pro quo in exchange. They suggested that the IRS exercise the authority provided in section 170(f)(8)(E) and make the substantiation requirements inapplicable to C corporations. The final regulations do not adopt these suggestions. The IRS and Treasury believe that exempting C corporations from the substantiation requirements could, in fact, encourage abuses and would therefore conflict with the purpose of section 170(f)(8).

Meaning of Contemporaneous

A commenter asked whether a taxpayer may file an amended income tax return to claim a charitable contribution deduction if the taxpayer obtained the contemporaneous written acknowledgment for the contribution after timely filing the original return. Section 170(f)(8)(C) provides that a written acknowledgment is contemporaneous if obtained on or before the earlier of (1) the date that the taxpayer files the return for the year in which the contribution was made, or (2) the due date (including extensions) for filing the return for that taxable year. A written acknowledgment obtained after a taxpayer files the original return for the year of the contribution is not *contemporaneous* within the meaning of the statute.

Substantiation of Multiple Contributions

Several commenters asked whether the substantiation requirements apply to multiple contributions totaling \$250 or more made to a single charity during a single year, when each contribution is less than \$250. The conference report accompanying the Omnibus Budget Reconciliation Act of 1993 indicates that separate payments will be treated as separate contributions and will not be aggregated for purposes of applying the \$250 threshold. H.R. Conf. Rep. No. 213, 103d Cong., 1st Sess. 565, n. 29 (1993). If there is no separate payment of \$250 or more, substantiation under section 170(f)(8) is not required, even if the sum of the separate payments is \$250 or

more. Section 1.170A-13(f)(1) has been modified to clarify this. A commenter asked whether there must be a separate contemporaneous written acknowledgment for each contribution of \$250 or more. Section 1.170A-13(f)(1) has been modified to clarify that for multiple contributions of \$250 or more to one charity, one acknowledgment that reflects the total amount of the taxpayer's contributions to the charity for the year is sufficient.

Form of Substantiation

Commenters asked whether a contemporaneous written acknowledgment must be in any particular format. As long as it is in writing and contains the information required by law, a contemporaneous written acknowledgment may be in any format. One commenter suggested that the regulations should allow charities to report charitable contributions directly to the IRS on Form 990 or 990-PF. Section 170(f)(8) authorizes the Secretary to prescribe regulations allowing donee organizations to satisfy the requirements of section 170(f)(8) by filing a return that includes the information described in section 170(f)(8)(B). The IRS and Treasury have decided not to implement this suggestion at this time. However, in an effort to reduce paperwork and taxpayer burdens, the IRS will examine whether any existing IRS forms can be modified to assist in their use in substantiating charitable contributions.

A commenter asked for guidance on the proper method of substantiating payments by corporations that agree to match employee contributions to charity. When an employee makes a charitable contribution that is eligible for a corporate matching payment, some charities routinely send the participating corporation a letter, notifying the corporation of the employee's gift and thanking it in advance for the matching payment the charity expects to receive. Commenters suggested that this letter be treated as meeting the corporation's requirements under section 170(f)(8). This suggestion has not been adopted, because letters sent in advance of a contribution do not substantiate the contribution. The acknowledgment under section 170(f)(8) must include information about what has been "contributed." The acknowledgment cannot be completed until after the charitable contribution has been made. (See section 1.170A-1(b), which states that ordinarily a contribution is made at the time delivery is effected.)

Out-of-Pocket Expenses

The proposed regulations allowed volunteers who incurred unreimbursed out-of-pocket expenses while performing services for a charity to substantiate their contributions with a statement that described the services and the date they were performed. The acknowledgment was not required to list the amount of the unreimbursed expense. Several commenters suggested an exemption from the substantiation requirements for unreimbursed out-of-pocket expenses incurred incident to the rendition of services to a donee organization. Exemption is appropriate, they argued, because the requirements are burdensome, particularly since a donee organization is often unaware of the amount and nature of expenses incurred by volunteers performing services on behalf of the charity, or the exact dates on which the volunteer services were performed. The final regulations eliminate the requirement that the contemporaneous written acknowledgment include the date on which services were performed for the charity. However, to carry out the purposes of the statute, volunteers claiming a charitable contribution deduction for an unreimbursed expense of \$250 or more are still required to obtain substantiation confirming the type of services they performed for the charity.

Good Faith Estimate

Section 170(f)(8) requires a written acknowledgment furnished by a charity to a donor to include a good faith estimate of the value of any goods or services provided to the donor. Section 6115(a)(2) similarly requires a written disclosure statement provided to a donor making a quid pro quo contribution of more than \$75 to include a good faith estimate of the value of goods or services provided to the donor. The regulations define a good faith estimate as an estimate of the fair market value of the goods or services. A taxpayer can generally rely on the good faith estimate provided by a charity.

A commenter stated that the regulations should contain an example illustrating how charities can compute the fair market value of goods or services. We have not adopted this suggestion. There is no single correct way to determine fair market value; a charitable organization may use any reasonable methodology (e.g., comparison with comparable retail prices, markup from wholesale cost) to determine the fair market value. Examples 1 and 2 of section 1.6115-1(a)(3) illustrate this rule.

A commenter recommended that the regulations state that a donor does not have to use the good faith estimate provided by a charitable organization if the donor believes another estimate is more accurate. The regulations do not mandate that a donor use the estimate provided by a donee organization in calculating the deductible amount. Indeed, when a taxpayer knows or has reason to know that an estimate is inaccurate, the taxpayer may not treat the donee organization's estimate as the fair market value.

A commenter suggested that the regulations indicate that recognition items, such as plaques or trophies with an honoree's name inscribed, should be considered to have little, if any, fair market value. This suggestion has not been adopted. Inscribed plaques and trophies may have some value, even though the value may be less than cost. In addition, see § 1.170A-13(f)(8)(i)(A) regarding goods or services with insubstantial value.

Another commenter asked whether the listing of a donor's name in a program at a charity-sponsored event has a substantial value. An acknowledgment in such a program, which identifies—rather than promotes—a donor, is an inconsequential benefit with no significant value. See Rev. Rul. 68-432, 1968-2 C.B. 104, 105, holding that "[s]uch privileges as being associated with or being known as a benefactor of the [charitable] organization are not significant return benefits that have monetary value."

Contributions to a Split-Interest Trust

Section 1.170A-13(f)(13) of the proposed regulations provides that section 170(f)(8) does not apply to a transfer of property to a charitable remainder unitrust (as defined in section 664(d)(2)). A commenter observed that there are two other types of unitrusts in addition to the type described in section 664(d)(2), and that these unitrusts should be treated similarly. The final regulations have been modified to provide that the substantiation requirements of section 170(f)(8) do not apply to transfers to unitrusts described in section 664(d)(3) or section 1.664-3(a)(1)(i)(b), as well as to unitrusts described in section 664(d)(2).

Section 1.170A-13(f)(13) of the proposed regulations provides that section 170(f)(8) applies to a transfer to a pooled income fund. Commenters requested further guidance on the proper way to substantiate contributions to pooled income funds. The final regulations have been modified to

require, in the case of a transfer of cash or other property to a pooled income fund, that the written acknowledgment of the charitable organization maintaining the fund include a statement that the cash or other property was transferred to the organization's pooled income fund and state whether any goods or services, in addition to the income interest in the fund, were provided to the transferor. The contemporaneous written acknowledgment need not include an estimate of the value of the income interest in the pooled income fund. The final regulations also provide guidance on the proper method of substantiating a deduction claimed by a taxpayer who has purchased an annuity from a charitable organization.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a costbenefit analysis is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the notice of proposed rulemaking preceding the regulations was issued prior to March 29, 1996, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. See 5 U.S.C. section 601, Pub. L. 104-121 section 245. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact of the proposed regulations on small businesses.

Drafting Information

The principal author of these regulations is Jefferson K. Fox, Office of the Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service. 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 is amended by adding a new entry in numerical order for Section 1.170A-1 and revising the entry for Section 1.170A-13 to read as follows:

Authority: 26 U.S.C. 7805.

Section 1.170A-1 also issued under 26 U.S.C. 170(a).

Section 1.170A-13 also issued under 26 U.S.C. 170(f)(8). * * *

Par. 2. Section 1.170A-1 is amended as follows:

1. Paragraph (h) is redesignated as paragraph (j).
 2. Paragraph (i) is redesignated as paragraph (k) and is revised.
 3. Paragraph (h) is added.
 4. Paragraph (i) is added and reserved.
- The additions and revisions read as follows:

§ 1.170A-1 Charitable, etc., contributions and gifts; allowance of deduction.

* * * * *

(h) *Payment in exchange for consideration—*(1) *Burden on taxpayer to show that all or part of payment is a charitable contribution or gift.* No part of a payment that a taxpayer makes to or for the use of an organization described in section 170(c) that is in consideration for (as defined in § 1.170A-13(f)(6)) goods or services (as defined in § 1.170A-13(f)(5)) is a contribution or gift within the meaning of section 170(c) unless the taxpayer—

- (i) Intends to make a payment in an amount that exceeds the fair market value of the goods or services; and
- (ii) Makes a payment in an amount that exceeds the fair market value of the goods or services.

(2) *Limitation on amount deductible—*

- (i) *In general.* The charitable contribution deduction under section 170(a) for a payment a taxpayer makes partly in consideration for goods or services may not exceed the excess of—

(A) The amount of any cash paid and the fair market value of any property (other than cash) transferred by the taxpayer to an organization described in section 170(c); over

(B) The fair market value of the goods or services the organization provides in return.

- (ii) *Special rules.* For special limits on the deduction for charitable contributions of ordinary income and capital gain property, see section 170(e) and §§ 1.170A-4 and 1.170A-4A.

(3) *Certain goods or services disregarded.* For purposes of section 170(a) and paragraphs (h)(1) and (h)(2) of this section, goods or services described in § 1.170A-13(f)(8)(i) or § 1.170A-13(f)(9)(i) are disregarded.

(4) *Donee estimates of the value of goods or services may be treated as fair market value—*(i) *In general.* For purposes of section 170(a), a taxpayer may rely on either a contemporaneous written acknowledgment provided under section 170(f)(8) and § 1.170A-13(f) or a written disclosure statement provided under section 6115 for the fair market value of any goods or services provided to the taxpayer by the donee organization.

(ii) *Exception.* A taxpayer may not treat an estimate of the value of goods or services as their fair market value if the taxpayer knows, or has reason to know, that such treatment is unreasonable. For example, if a taxpayer knows, or has reason to know, that there is an error in an estimate provided by an organization described in section 170(c) pertaining to goods or services that have a readily ascertainable value, it is unreasonable for the taxpayer to treat the estimate as the fair market value of the goods or services. Similarly, if a taxpayer is a dealer in the type of goods or services provided in consideration for the taxpayer's payment and knows, or has reason to know, that the estimate is in error, it is unreasonable for the taxpayer to treat the estimate as the fair market value of the goods or services.

(5) *Examples.* The following examples illustrate the rules of this paragraph (h).

Example 1. Certain goods or services disregarded. Taxpayer makes a \$50 payment to Charity B, an organization described in section 170(c), in exchange for a family membership. The family membership entitles Taxpayer and members of Taxpayer's family to certain benefits. These benefits include free admission to weekly poetry readings, discounts on merchandise sold by B in its gift shop or by mail order, and invitations to special events for members only, such as lectures or informal receptions. When B first offers its membership package for the year, B reasonably projects that each special event for members will have a cost to B, excluding any allocable overhead, of \$5 or less per person attending the event. Because the family membership benefits are disregarded pursuant to § 1.170A-13(f)(8)(i), Taxpayer may treat the \$50 payment as a contribution or gift within the meaning of section 170(c), regardless of Taxpayer's intent and whether or not the payment exceeds the fair market value of the goods or services. Furthermore, any charitable contribution deduction available to Taxpayer may be calculated without regard to the membership benefits.

Example 2. Treatment of good faith estimate at auction as the fair market value. Taxpayer attends an auction held by Charity C, an organization described in section 170(c). Prior to the auction, C publishes a catalog that meets the requirements for a written disclosure statement under section 6115(a) (including C's good faith estimate of the value of items that will be available for

bidding). A representative of *C* gives a copy of the catalog to each individual (including Taxpayer) who attends the auction. Taxpayer notes that in the catalog *C*'s estimate of the value of a vase is \$100. Taxpayer has no reason to doubt the accuracy of this estimate. Taxpayer successfully bids and pays \$500 for the vase. Because Taxpayer knew, prior to making her payment, that the estimate in the catalog was less than the amount of her payment, Taxpayer satisfies the requirement of paragraph (h)(1)(i) of this section. Because Taxpayer makes a payment in an amount that exceeds that estimate, Taxpayer satisfies the requirements of paragraph (h)(1)(ii) of this section. Taxpayer may treat *C*'s estimate of the value of the vase as its fair market value in determining the amount of her charitable contribution deduction.

Example 3. Good faith estimate not in error. Taxpayer makes a \$200 payment to Charity *D*, an organization described in section 170(c). In return for Taxpayer's payment, *D* gives Taxpayer a book that Taxpayer could buy at retail prices typically ranging from \$18 to \$25. *D* provides Taxpayer with a good faith estimate, in a written disclosure statement under section 6115(a), of \$20 for the value of the book. Because the estimate is within the range of typical retail prices for the book, the estimate contained in the written disclosure statement is not in error. Although Taxpayer knows that the book is sold for as much as \$25, Taxpayer may treat the estimate of \$20 as the fair market value of the book in determining the amount of his charitable contribution deduction.

(i) [Reserved]

* * * * *

(k) **Effective date.** In general this section applies to contributions made in taxable years beginning after December 31, 1969. Paragraph (j)(11) of this section, however, applies only to out-of-pocket expenditures made in taxable years beginning after December 31, 1976. In addition, paragraph (h) of this section applies only to payments made on or after December 16, 1996. However, taxpayers may rely on the rules of paragraph (h) of this section for payments made on or after January 1, 1994.

Par. 3. Section 1.170A-13 is amended by revising paragraph (f) to read as follows:

§ 1.170A-13 Recordkeeping and return requirements for deductions for charitable contributions.

* * * * *

(f) **Substantiation of charitable contributions of \$250 or more—(1) In general.** No deduction is allowed under section 170(a) for all or part of any contribution of \$250 or more unless the taxpayer substantiates the contribution with a contemporaneous written acknowledgment from the donee organization. A taxpayer who makes more than one contribution of \$250 or

more to a donee organization in a taxable year may substantiate the contributions with one or more contemporaneous written acknowledgments. Section 170(f)(8) does not apply to a payment of \$250 or more if the amount contributed (as determined under § 1.170A-1(h)) is less than \$250. Separate contributions of less than \$250 are not subject to the requirements of section 170(f)(8), regardless of whether the sum of the contributions made by a taxpayer to a donee organization during a taxable year equals \$250 or more.

(2) **Written acknowledgment.** Except as otherwise provided in paragraphs (f)(8) through (f)(11) and (f)(13) of this section, a written acknowledgment from a donee organization must provide the following information—

(i) The amount of any cash the taxpayer paid and a description (but not necessarily the value) of any property other than cash the taxpayer transferred to the donee organization;

(ii) A statement of whether or not the donee organization provides any goods or services in consideration, in whole or in part, for any of the cash or other property transferred to the donee organization;

(iii) If the donee organization provides any goods or services other than intangible religious benefits (as described in section 170(f)(8)), a description and good faith estimate of the value of those goods or services; and

(iv) If the donee organization provides any intangible religious benefits, a statement to that effect.

(3) **Contemporaneous.** A written acknowledgment is contemporaneous if it is obtained by the taxpayer on or before the earlier of—

(i) The date the taxpayer files the original return for the taxable year in which the contribution was made; or

(ii) The due date (including extensions) for filing the taxpayer's original return for that year.

(4) **Donee organization.** For purposes of this paragraph (f), a donee organization is an organization described in section 170(c).

(5) **Goods or services.** Goods or services means cash, property, services, benefits, and privileges.

(6) **In consideration for.** A donee organization provides goods or services in consideration for a taxpayer's payment if, at the time the taxpayer makes the payment to the donee organization, the taxpayer receives or expects to receive goods or services in exchange for that payment. Goods or services a donee organization provides in consideration for a payment by a taxpayer include goods or services

provided in a year other than the year in which the taxpayer makes the payment to the donee organization.

(7) **Good faith estimate.** For purposes of this section, good faith estimate means a donee organization's estimate of the fair market value of any goods or services, without regard to the manner in which the organization in fact made that estimate. See § 1.170A-1(h)(4) for rules regarding when a taxpayer may treat a donee organization's estimate of the value of goods or services as the fair market value.

(8) **Certain goods or services disregarded—(i) In general.** For purposes of section 170(f)(8), the following goods or services are disregarded—

(A) Goods or services that have insubstantial value under the guidelines provided in Revenue Procedures 90-12, 1990-1 C.B. 471, 92-49, 1992-1 C.B. 987, and any successor documents. (See § 601.601(d)(2)(ii) of the Statement of Procedural Rules, 26 CFR part 601.); and

(B) Annual membership benefits offered to a taxpayer in exchange for a payment of \$75 or less per year that consist of—

(1) Any rights or privileges, other than those described in section 170(l), that the taxpayer can exercise frequently during the membership period. Examples of such rights and privileges may include, but are not limited to, free or discounted admission to the organization's facilities or events, free or discounted parking, preferred access to goods or services, and discounts on the purchase of goods or services; and

(2) Admission to events during the membership period that are open only to members of a donee organization and for which the donee organization reasonably projects that the cost per person (excluding any allocable overhead) attending each such event is within the limits established for "low cost articles" under section 513(h)(2). The projected cost to the donee organization is determined at the time the organization first offers its membership package for the year (using section 3.07 of Revenue Procedure 90-12, or any successor documents, to determine the cost of any items or services that are donated).

(ii) **Examples.** The following examples illustrate the rules of this paragraph (f)(8).

Example 1. Membership benefits disregarded. Performing Arts Center *E* is an organization described in section 170(c). In return for a payment of \$75, *E* offers a package of basic membership benefits that includes the right to purchase tickets to performances one week before they go on sale to the general public, free parking in *E*'s

garage during evening and weekend performances, and a 10% discount on merchandise sold in *E*'s gift shop. In return for a payment of \$150, *E* offers a package of preferred membership benefits that includes all of the benefits in the \$75 package as well as a poster that is sold in *E*'s gift shop for \$20. The basic membership and the preferred membership are each valid for twelve months, and there are approximately 50 performances of various productions at *E* during a twelve-month period. *E*'s gift shop is open for several hours each week and at performance times. *F*, a patron of the arts, is solicited by *E* to make a contribution. *E* offers *F* the preferred membership benefits in return for a payment of \$150 or more. *F* makes a payment of \$300 to *E*. *F* can satisfy the substantiation requirement of section 170(f)(8) by obtaining a contemporaneous written acknowledgment from *E* that includes a description of the poster and a good faith estimate of its fair market value (\$20) and disregards the remaining membership benefits.

Example 2. Contemporaneous written acknowledgment need not mention rights or privileges that can be disregarded. The facts are the same as in Example 1, except that *F* made a payment of \$300 and received only a basic membership. *F* can satisfy the section 170(f)(8) substantiation requirement with a contemporaneous written acknowledgment stating that no goods or services were provided.

Example 3. Rights or privileges that cannot be exercised frequently. Community Theater Group *G* is an organization described in section 170(c). Every summer, *G* performs four different plays. Each play is performed two times. In return for a membership fee of \$60, *G* offers its members free admission to any of its performances. Non-members may purchase tickets on a performance by performance basis for \$15 a ticket. *H*, an individual who is a sponsor of the theater, is solicited by *G* to make a contribution. *G* tells *H* that the membership benefit will be provided in return for any payment of \$60 or more. *H* chooses to make a payment of \$350 to *G* and receives in return the membership benefit. *G*'s membership benefit of free admission is not described in paragraph (f)(8)(i)(B) of this section because it is not a privilege that can be exercised frequently (due to the limited number of performances offered by *G*). Therefore, to meet the requirements of section 170(f)(8), a contemporaneous written acknowledgment of *H*'s \$350 payment must include a description of the free admission benefit and a good faith estimate of its value.

Example 4. Multiple memberships. In December of each year, *K*, an individual, gives each of her six grandchildren a junior membership in Dinosaur Museum, an organization described in section 170(c). Each junior membership costs \$50, and *K* makes a single payment of \$300 for all six memberships. A junior member is entitled to free admission to the museum and to weekly films, slide shows, and lectures about dinosaurs. In addition, each junior member receives a bi-monthly, non-commercial quality newsletter with information about dinosaurs and upcoming events. *K*'s

contemporaneous written acknowledgment from Dinosaur Museum may state that no goods or services were provided in exchange for *K*'s payment.

(9) Goods or services provided to employees or partners of donors—(i) Certain goods or services disregarded. For purposes of section 170(f)(8), goods or services provided by a donee organization to employees of a donor, or to partners of a partnership that is a donor, in return for a payment to the organization may be disregarded to the extent that the goods or services provided to each employee or partner are the same as those described in paragraph (f)(8)(i) of this section.

(ii) No good faith estimate required for other goods or services. If a taxpayer makes a contribution of \$250 or more to a donee organization and, in return, the donee organization offers the taxpayer's employees or partners goods or services other than those described in paragraph (f)(9)(i) of this section, the contemporaneous written acknowledgment of the taxpayer's contribution is not required to include a good faith estimate of the value of such goods or services but must include a description of those goods or services.

(iii) Example. The following example illustrates the rules of this paragraph (f)(9).

Example. Museum *J* is an organization described in section 170(c). For a payment of \$40, *J* offers a package of basic membership benefits that includes free admission and a 10% discount on merchandise sold in *J*'s gift shop. *J*'s other membership categories are for supporters who contribute \$100 or more. Corporation *K* makes a payment of \$50,000 to *J* and, in return, *J* offers *K*'s employees free admission for one year, a tee-shirt with *J*'s logo that costs *J* \$4.50, and a gift shop discount of 25% for one year. The free admission for *K*'s employees is the same as the benefit made available to holders of the \$40 membership and is otherwise described in paragraph (f)(8)(i)(B) of this section. The tee-shirt given to each of *K*'s employees is described in paragraph (f)(8)(i)(A) of this section. Therefore, the contemporaneous written acknowledgment of *K*'s payment is not required to include a description or good faith estimate of the value of the free admission or the tee-shirts. However, because the gift shop discount offered to *K*'s employees is different than that offered to those who purchase the \$40 membership, the discount is not described in paragraph (f)(8)(i) of this section. Therefore, the contemporaneous written acknowledgment of *K*'s payment is required to include a description of the 25% discount offered to *K*'s employees.

(10) Substantiation of out-of-pocket expenses. A taxpayer who incurs unreimbursed expenditures incident to the rendition of services, within the meaning of § 1.170A-1(g), is treated as

having obtained a contemporaneous written acknowledgment of those expenditures if the taxpayer—

(i) Has adequate records under paragraph (a) of this section to substantiate the amount of the expenditures; and

(ii) Obtains by the date prescribed in paragraph (f)(3) of this section a statement prepared by the donee organization containing—

(A) A description of the services provided by the taxpayer;

(B) A statement of whether or not the donee organization provides any goods or services in consideration, in whole or in part, for the unreimbursed expenditures; and

(C) The information required by paragraphs (f)(2) (iii) and (iv) of this section.

(11) Contributions made by payroll deduction—(i) Form of substantiation.

A contribution made by means of withholding from a taxpayer's wages and payment by the taxpayer's employer to a donee organization may be substantiated, for purposes of section 170(f)(8), by both—

(A) A pay stub, Form W-2, or other document furnished by the employer that sets forth the amount withheld by the employer for the purpose of payment to a donee organization; and

(B) A pledge card or other document prepared by or at the direction of the donee organization that includes a statement to the effect that the organization does not provide goods or services in whole or partial consideration for any contributions made to the organization by payroll deduction.

(ii) Application of \$250 threshold. For the purpose of applying the \$250 threshold provided in section 170(f)(8)(A) to contributions made by the means described in paragraph (f)(11)(i) of this section, the amount withheld from each payment of wages to a taxpayer is treated as a separate contribution.

(12) Distributing organizations as donees. An organization described in section 170(c), or an organization described in 5 CFR 950.105 (a Principal Combined Fund Organization for purposes of the Combined Federal Campaign) and acting in that capacity, that receives a payment made as a contribution is treated as a donee organization solely for purposes of section 170(f)(8), even if the organization (pursuant to the donor's instructions or otherwise) distributes the amount received to one or more organizations described in section 170(c). This paragraph (f)(12) does not apply, however, to a case in which the

distributee organization provides goods or services as part of a transaction structured with a view to avoid taking the goods or services into account in determining the amount of the deduction to which the donor is entitled under section 170.

(13) *Transfers to certain trusts.* Section 170(f)(8) does not apply to a transfer of property to a trust described in section 170(f)(2)(B), a charitable remainder annuity trust (as defined in section 664(d)(1)), or a charitable remainder unitrust (as defined in section 664(d)(2) or (d)(3) or § 1.664(3)(a)(1)(i)(b)). Section 170(f)(8) does apply, however, to a transfer to a pooled income fund (as defined in section 642(c)(5)); for such a transfer, the contemporaneous written acknowledgment must state that the contribution was transferred to the donee organization's pooled income fund and indicate whether any goods or services (in addition to an income interest in the fund) were provided in exchange for the transfer. The contemporaneous written acknowledgment is not required to include a good faith estimate of the income interest.

(14) *Substantiation of payments to a college or university for the right to purchase tickets to athletic events.* For purposes of paragraph (f)(2)(iii) of this section, the right to purchase tickets for seating at an athletic event in exchange for a payment described in section 170(l) is treated as having a value equal to twenty percent of such payment. For example, when a taxpayer makes a payment of \$312.50 for the right to purchase tickets for seating at an athletic event, the right to purchase tickets is treated as having a value of \$62.50. The remaining \$250 is treated as a charitable contribution, which the taxpayer must substantiate in accordance with the requirements of this section.

(15) *Substantiation of charitable contributions made by a partnership or an S corporation.* If a partnership or an S corporation makes a charitable contribution of \$250 or more, the partnership or S corporation will be treated as the taxpayer for purposes of section 170(f)(8). Therefore, the partnership or S corporation must substantiate the contribution with a contemporaneous written acknowledgment from the donee organization before reporting the contribution on its income tax return for the year in which the contribution was made and must maintain the contemporaneous written acknowledgment in its records. A partner of a partnership or a shareholder

of an S corporation is not required to obtain any additional substantiation for his or her share of the partnership's or S corporation's charitable contribution.

(16) *Purchase of an annuity.* If a taxpayer purchases an annuity from a charitable organization and claims a charitable contribution deduction of \$250 or more for the excess of the amount paid over the value of the annuity, the contemporaneous written acknowledgment must state whether any goods or services in addition to the annuity were provided to the taxpayer. The contemporaneous written acknowledgment is not required to include a good faith estimate of the value of the annuity. See § 1.170A-1(d)(2) for guidance in determining the value of the annuity.

(17) *Substantiation of matched payments—(i) In general.* For purposes of section 170, if a taxpayer's payment to a donee organization is matched, in whole or in part, by another payor, and the taxpayer receives goods or services in consideration for its payment and some or all of the matching payment, those goods or services will be treated as provided in consideration for the taxpayer's payment and not in consideration for the matching payment.

(ii) *Example.* The following example illustrates the rules of this paragraph (f)(17).

Example. Taxpayer makes a \$400 payment to Charity L, a donee organization. Pursuant to a matching payment plan, Taxpayer's employer matches Taxpayer's \$400 payment with an additional payment of \$400. In consideration for the combined payments of \$800, L gives Taxpayer an item that it estimates has a fair market value of \$100. L does not give the employer any goods or services in consideration for its contribution. The contemporaneous written acknowledgment provided to the employer must include a statement that no goods or services were provided in consideration for the employer's \$400 payment. The contemporaneous written acknowledgment provided to Taxpayer must include a statement of the amount of Taxpayer's payment, a description of the item received by Taxpayer, and a statement that L's good faith estimate of the value of the item received by Taxpayer is \$100.

(18) *Effective date.* This paragraph (f) applies to contributions made on or after December 16, 1996. However, taxpayers may rely on the rules of this paragraph (f) for contributions made on or after January 1, 1994.

Par. 4. Section 1.6115-1 is added under the undesignated centerheading

Miscellaneous Provisions to read as follows:

§ 1.6115-1 Disclosure requirements for quid pro quo contributions.

(a) *Good faith estimate defined—(1) In general.* A good faith estimate of the value of goods or services provided by an organization described in section 170(c) in consideration for a taxpayer's payment to that organization is an estimate of the fair market value, within the meaning of § 1.170A-1(c)(2), of the goods or services. The organization may use any reasonable methodology in making a good faith estimate, provided it applies the methodology in good faith. If the organization fails to apply the methodology in good faith, the organization will be treated as not having met the requirements of section 6115. See section 6714 for the penalties that apply for failure to meet the requirements of section 6115.

(2) *Good faith estimate for goods or services that are not commercially available.* A good faith estimate of the value of goods or services that are not generally available in a commercial transaction may be determined by reference to the fair market value of similar or comparable goods or services. Goods or services may be similar or comparable even though they do not have the unique qualities of the goods or services that are being valued.

(3) *Examples.* The following examples illustrate the rules of this paragraph (a).

Example 1. Facility not available on a commercial basis. Museum M, an organization described in section 170(c), is located in Community N. In return for a payment of \$50,000 or more, M allows a donor to hold a private event in a room located in M. Private events other than those held by such donors are not permitted to be held in M. In Community N, there are four hotels, O, P, Q, and R, that have ballrooms with the same capacity as the room in M. Of these hotels, only O and P have ballrooms that offer amenities and atmosphere that are similar to the amenities and atmosphere of the room in M (although O and P lack the unique collection of art that is displayed in the room in M). Because the capacity, amenities, and atmosphere of ballrooms in O and P are comparable to the capacity, amenities, and atmosphere of the room in M, a good faith estimate of the benefits received from M may be determined by reference to the cost of renting either the ballroom in O or the ballroom in P. The cost of renting the ballroom in O is \$2500 and, therefore, a good faith estimate of the fair market value of the right to host a private event in the room at M is \$2500. In this example, the ballrooms in O and P are considered similar and comparable facilities to the room in M for valuation purposes, notwithstanding the fact that the room in M displays a unique collection of art.

Example 2. Services available on a commercial basis. Charity S is an organization described in section 170(c). S offers to provide a one-hour tennis lesson

with Tennis Professional *T* in return for the first payment of \$500 or more that it receives. *T* provides one-hour tennis lessons on a commercial basis for \$100. Taxpayer pays \$500 to *S* and in return receives the tennis lesson with *T*. A good faith estimate of the fair market value of the lesson provided in exchange for Taxpayer's payment is \$100.

Example 3. Celebrity presence. Charity *U* is an organization described in section 170(c). In return for the first payment of \$1000 or more that it receives, *U* will provide a dinner for two followed by an evening tour of Museum *V* conducted by Artist *W*, whose most recent works are on display at *V*. *W* does not provide tours of *V* on a commercial basis. Typically, tours of *V* are free to the public. Taxpayer pays \$1000 to *U* and in return receives a dinner valued at \$100 and an evening tour of *V* conducted by *W*. Because tours of *V* are typically free to the public, a good faith estimate of the value of the evening tour conducted by *W* is \$0. In this example, the fact that Taxpayer's tour of *V* is conducted by *W* rather than *V*'s regular tour guides does not render the tours dissimilar or incomparable for valuation purposes.

(b) *Certain goods or services disregarded.* For purposes of section 6115, an organization described in section 170(c) may disregard goods or services described in § 1.170A-13(f)(8)(i).

(c) *Value of the right to purchase tickets to college or university athletic events.* For purposes of section 6115, the right to purchase tickets for seating at an athletic event in exchange for a payment described in section 170(l) is treated as having a value equal to twenty percent of such payment.

(d) *Goods or services provided to employees or partners of donors—(1) Certain goods or services disregarded.* For purposes of section 6115, goods or services provided by an organization described in section 170(c) to employees of a donor or to partners of a partnership that is a donor in return for a payment to the donee organization may be disregarded to the extent that the goods or services provided to each employee or partner are the same as those described in § 1.170A-13(f)(8)(i).

(2) *Description permitted in lieu of good faith estimate for other goods or services.* The written disclosure statement required by section 6115 may include a description of goods or services, in lieu of a good faith estimate of their value, if the donor is—

(i) An employer and, in return for the donor's quid pro quo contribution, an organization described in section 170(c) provides the donor's employees with goods or services other than those described in paragraph (d)(1) of this section; or

(ii) A partnership and, in return for its quid pro quo contribution, the

organization provides partners in the partnership with goods or services other than those described in paragraph (d)(1) of this section.

(e) *Effective date.* This section applies to contributions made on or after December 16, 1996. However, taxpayers may rely on the rules of this section for contributions made on or after January 1, 1994.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 5. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 6. Section 602.101(c) is amended by adding the following entries in numerical order to the table:

§ 602.101 OMB Control numbers.

CFR part or section where identified and described	Current OMB control No.
* * * * *	
Section 1.170A-13(f)	1545-1464
* * * * *	
Section 1.6115-1	1545-1464
* * * * *	

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved: November 27, 1996.
Donald C. Lubick,
Acting Assistant Secretary of the Treasury.
[FR Doc. 96-31719 Filed 12-13-96; 8:45 am]
BILLING CODE 4830-01-U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FL-067-1-9635a; FRL-5640-4]

Approval and Promulgation of Implementation Plans Florida: Approval of Revisions to Florida Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the Florida State Implementation Plan (SIP) for ozone. These revisions were submitted to EPA through the Florida

Department of Environmental Regulation (FDER) on April 8, 1996, and revise regulations for Stage II vapor recovery (Stage II) in Florida's SIP. These revisions meet all of EPA's requirements for Stage II programs and do not adversely affect the ability of the State to maintain the ozone standard. Therefore EPA is approving the SIP, revisions.

DATES: This action is effective February 14, 1997 unless adverse or critical comments are received by January 15, 1997. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments on this action should be addressed to Alan Powell at the Environmental Protection Agency, Region 4 Air Programs Branch, 100 Alabama Street, SW., Atlanta, Georgia 30303. Copies of documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Reference file FL-067. The Region 4 office may have additional background documents not available at the other locations.

Environmental Protection Agency, Region 4 Air Programs Branch, 100 Alabama Street, SW., Atlanta, Georgia 30303, Alan Powell, 404/562-9045.

Florida Department of Environmental Protection, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400.

FOR FURTHER INFORMATION CONTACT: Alan W. Powell of the EPA Region 4 Air Programs Branch at (404) 562-9045.

SUPPLEMENTARY INFORMATION: On November 15, 1990, the President signed into law the Clean Air Act Amendments of 1990. The Clean Air Act (CAA) as amended in 1990 includes new requirements for the improvement of air quality in ozone nonattainment areas. Under section 181(a) of the CAA, nonattainment areas were categorized by the severity of the area's ozone problem, and progressively more stringent control measures were required for each category of higher ozone concentrations. The basis for classifying an area in a specific category was the ambient air quality data obtained in the three year period 1987-1989. The CAA delineates in section 182 the SIP requirements for ozone nonattainment areas based on their classifications. Specifically, section 182(b)(3) requires areas classified as moderate to implement Stage II controls unless and until EPA promulgates On