

SUMMARY: The final rule published on December 19, 1994, is being further amended to correct technical errors and to conform the rule text and an Appendix. Previously, on January 10, 1995, the Department published a substitute page correcting Appendix MS-1 to Part 3500 and correcting a cross-reference. The corrections published today are necessary to clarify certain other provisions.

EFFECTIVE DATE: June 19, 1995. This is the same effective date as applies to the final rule and earlier corrections.

However, the Department continues to encourage persons covered by the new rule to implement all of its provision earlier than the rule's effective date.

FOR FURTHER INFORMATION CONTACT: David R. Williamson, Director, RESPA Enforcement, Room 5239, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410, telephone (202) 708-4560. The TDD number for hearing-impaired persons is (202) 708-4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Under the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.) (RESPA), the Secretary is to publish regulations implementing the requirements in Section 6 (12 U.S.C. 2605) concerning the servicing of mortgage loans. On December 19, 1994 (59 FR 65442), the Department published a final rule implementing Section 6 of RESPA. On January 10, 1995 (60 FR 2642), the Department published a substitute page correcting Appendix MS-1 to Part 3500, the Servicing Disclosure Statement, to include the Acknowledgment of Mortgage Loan Applicant that was referenced in the rule text. In addition, the January 10, 1995, publication corrected a cross-reference in § 3500.21(e) of the rule.

Additional corrections are necessary:

(a) To clarify terminology relating to the period of time applicable to certain calculations;

(b) To clarify how long signed acknowledgements must be retained;

(c) To clarify the contents of the Notices of Transfer, including removing one unnecessary requirement and ensuring that borrowers are advised of their rights in connection with complaint resolution; and

(d) To clarify the protections applicable to borrowers during a transfer of loan servicing and to conform the text of the rule with Appendix MS-2, Notice of Assignment, Sale, or Transfer of Servicing Rights.

In addition, the Department is correcting a cross-reference in one of the definitions applicable to part 3500.

Accordingly, 24 CFR 3500.2 is amended and FR Doc. 94-30413, the final rule on Real Estate Settlement Procedures Act, Section 6 Transfer of Servicing of Mortgage Loans (Regulation X); and Real Estate Settlement Procedures Act (Regulation X); Escrow Accounting Procedures: Technical Correction, published December 19, 1994 (59 FR 65442), is corrected, as follows:

PART 3500—REAL ESTATE SETTLEMENT PROCEDURES ACT

1. The authority citation for 24 CFR part 3500 continues to read as follows:

Authority: 12 U.S.C. 2601 *et seq.*

2. In § 3500.2, the definition of "Lender" is amended by revising the fourth sentence to read as follows:

§ 3500.2 Definitions.

* * * * *

Lender * * * See also § 3500.5(b)(7), secondary market transactions.

* * * * *

§ 3500.21 [Corrected]

3. In the **Federal Register** of December 19, 1994, on page 65449, the second sentence in § 3500.21(b)(3)(iii) is amended at the first and fourth line of the third column by substituting the phrase "12-month period" for the phrase "calendar year" in the two places where it appears.

4. On page 65450, in the first column, in § 3500.21, a new paragraph (c)(3) is added, to read as follows:

§ 3500.21 Mortgage servicing transfers.

* * * * *

(c) * * *

(3) The signed Applicant Acknowledgment(s) shall be retained for a period of 5 years after the date of settlement as part of the loan file for every settled loan. There is no requirement for retention of Applicant Acknowledgment(s) if the loan is not settled.

* * * * *

5. On page 65450, beginning in the second column, in § 3500.21:

a. Paragraphs (d)(3) (ii) and (iii) are revised;

b. The word "and" is removed following the semicolon at the end of paragraph (d)(3)(v) in the third column;

c. The period at the end of paragraph (d)(3)(vi) in the third column is replaced with the word ";" and";

d. A new paragraph (d)(3)(vii) is added; and

e. Paragraph (d)(5) is revised, to read as follows:

* * * * *

(d) * * *

(3) * * *

(ii) The name, consumer inquiry addresses (including, at the option of the servicer, a separate address where qualified written requests must be sent), and a toll-free or collect-call telephone number for an employee or department of the transferee servicer;

(iii) A toll-free or collect-call telephone number for an employee or department of the transferor servicer that can be contacted by the borrower for answers to servicing transfer inquiries;

* * * * *

(vii) A statement of the borrower's rights in connection with complaint resolution, including the information set forth in paragraph (e) of this section. Appendix MS-2 of this part illustrates a statement satisfactory to the Secretary.

* * * * *

(5) *Consumer protection during transfer of servicing.* During the 60-day period beginning on the effective date of transfer of the servicing of any mortgage servicing loan, if the transferor servicer (rather than the transferee servicer that should properly receive payment on the loan) receives payment on or before the applicable due date (including any grace period allowed under the loan documents), a late fee may not be imposed on the borrower with respect to that payment and the payment may not be treated as late for any other purposes.

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Dated: March 14, 1995.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8590]

RIN 1545-AR10

Dividends Received Deduction Holding Period Reduced for Periods Where Risk of Loss Diminished

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the reduction in the holding period of stock where a taxpayer has diminished its risk of loss by holding one or more other positions with respect to substantially similar or

related property. In addition, this document contains final regulations relating to tax straddles involving stock and substantially similar or related property. The regulations, in response to specific congressional direction, provide guidance to taxpayers with respect to the availability of the dividends received deduction and the application of the rules relating to tax straddles.

DATES: These regulations are effective March 20, 1995.

For dates of applicability of these regulations, see § 1.246–5(e) and § 1.1092(d)–2(b).

FOR FURTHER INFORMATION CONTACT:

Nicholas G. Bogos or Thomas M. Preston of the Office of the Assistant Chief Counsel, Financial Institutions and Products, (202) 622–3920 or 622–3940, respectively (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On May 27, 1993, proposed regulations § 1.246–5 and § 1.1092(d)–2 under sections 246(c)(4)(C) and 1092(d)(3)(B) respectively were published in the **Federal Register** (58 FR 45080). A public hearing was held on September 28, 1993. After IRS and Treasury consideration of the public comments on the proposed regulations, the regulations are adopted as revised by this Treasury decision.

Explanation of Provisions

The final regulations retain, with only minor modifications, the definitions of substantially similar or related property and diminished risk of loss that are contained in the proposed regulations. Property is substantially similar or related to stock if the property and the stock primarily reflect the performance of a single firm or enterprise, the same industry or industries, or the same economic factor or factors (such as interest rates, commodity prices, or foreign-currency exchange rates), and changes in the fair market value of the stock are reasonably expected to approximate, directly or inversely, changes in the fair market value of the property. A taxpayer has diminished its risk of loss if changes in the fair market values of the stock and a position with respect to substantially similar or related property are reasonably expected to vary inversely.

Several commentators argued that the definition of substantially similar or related property improperly focuses on the economic relationship between the stock and the other property held by the taxpayer. They argued that this approach fails to give independent substance to the two parts of the

statutory test, namely, (a) risk reduction, and (b) holding positions in substantially similar or related property.

The IRS and Treasury believe that the rule, as finalized, gives appropriate weight both to risk reduction and to whether the taxpayer holds a position in substantially similar or related property. The only way to determine when properties are substantially similar or related for purposes of section 246(c)(4)(C) is by taking into account the economic characteristics of the properties. A definition that did not look to the economic relationships of properties would give undue deference to labels and would not serve the purposes of section 246(c)(4)(C).

Several commentators suggested that the regulations should provide a safe harbor under which taxpayers could establish that properties are not substantially similar or related by demonstrating a sufficiently low mathematical correlation between the changes in the price of stock and changes in the price of the other property. The final regulations do not include the suggested safe harbor because the IRS and Treasury have not identified a simple, workable safe harbor that would be appropriate in all cases and that the IRS could effectively administer. The IRS and Treasury continue to welcome suggestions for a safe harbor.

Although the final regulations retain the definition of substantially similar or related property, *Example 6* of the proposed regulations has been eliminated. This example, which was widely criticized by commentators, concludes that a nonparticipating, fixed-term, preferred stock is substantially similar to Treasury securities because both types of property primarily reflect the performance of the same economic factor—interest rates—and changes in the value of the stock will approximate changes in the value of the Treasury securities. The commentators argued that, although hedging preferred stock with Treasury securities may provide protection against the impact of substantial movements in overall interest rates, the value of preferred stock can also be significantly affected by other economic factors, such as the issuer's credit risk. Thus, they argued, the stock and the Treasury securities do not primarily reflect the performance of the same economic factor, and changes in their fair market values are not reasonably expected to approximate each other.

Whether offsetting positions constitute substantially similar or related property is determined based on the facts and circumstances of each

case. Commentators demonstrated that, in many cases, changes in the price of Treasury securities would not approximate changes in the price of a preferred stock. Therefore, *Example 6* of the proposed regulations has been eliminated. Whether Treasury securities or other interest-sensitive property is substantially similar or related to a particular preferred stock must be decided on a case-by-case basis. The elimination of *Example 6* does not preclude a finding that such property or securities are substantially similar or related to preferred stock in appropriate cases.

Examples 3 and 8 of the proposed regulations were eliminated because, after further consideration, the IRS and Treasury decided the regulations were sufficiently clear without the examples.

The proposed regulations state that, notwithstanding the general rule, two portfolios of stocks are substantially similar or related if changes in their fair market values are reasonably expected to approximate each other.

Commentators suggested that this rule did not give effect to the statement in the legislative history that the substantially similar or related standard is not satisfied merely because the taxpayer is an investor with diversified holdings and acquires a regulated futures contract or an option on a stock index to hedge general market risks. Commentators suggested that, even if changes in the values of two portfolios approximate each other, the substantially similar or related standard should be met only if the portfolios substantially overlap.

The final regulations adopt this suggestion subject to an anti-abuse rule. Under the final regulations, a position that reflects the value of a portfolio is not treated as substantially similar or related to the taxpayer's stock holdings unless the stock holdings and the portfolio substantially overlap. For this purpose, a taxpayer's stock holdings substantially overlap with a portfolio if the taxpayer holds 70 percent, by value, of the stocks in the portfolio (that is, the taxpayer holds 70 percent of the capitalization of the portfolio). A mechanical rule is provided for determining substantial overlap. The final regulations also define a portfolio as 20 or more stocks and provide that positions that reflect the value of more than one stock but less than 20 are treated as positions in each of the underlying stocks.

If the anti-abuse rule applies, a position that reflects the value of two or more stocks (including a portfolio) is treated as substantially similar or related property even if those stocks and

the taxpayer's stock holdings do not substantially overlap. The anti-abuse rule applies when the following two conditions are met. First, changes in the value of the position or the stocks reflected in a position are reasonably expected to virtually track (directly or inversely) changes in the value of the taxpayer's stock holdings or any portion of the taxpayer's stock holdings and other positions of the taxpayer; and, second, the position is acquired or held as part of a plan a principal purpose of which is to obtain tax savings (including by deferring tax) that are significantly in excess of the expected pre-tax economic profits from the plan. Of course, common law doctrines and statutory authorities, such as substance over form, the sham transaction doctrine, and the clear reflection of income requirement, continue to apply notwithstanding any provision of these regulations. See, e.g., *Sheldon v. Commissioner*, 94 T.C. 738 (1990).

The final regulations generally retain the other provisions of the proposed regulations with the following modifications. The final regulations define a position, for purposes of section 246(c)(4)(C), as an interest (including a futures or forward contract or an option) in property or any contractual right to a payment, whether or not severable from stock or other property. Thus, for purposes of section 246(c)(4)(C), stock coupled with an option to sell the stock will not be treated as a single instrument (regardless of whether the option trades separately from the stock). A position does not, however, include traditional equity rights to demand payment from the issuer, such as rights traditionally provided by mandatorily redeemable preferred stock. The definition of position does not apply for purposes of section 1092, which includes its own definition of position in section 1092(d)(2).

The final regulations make clear that certain convertible instruments are substantially similar or related property. Thus, the holding period of stock may be tolled if the taxpayer holds an instrument that is convertible into property that is substantially similar or related to the taxpayer's stock. The situations identified in the final regulations are taken directly from the legislative history underlying the statutory provision. See H.R. Conf. Rep. No. 861, 98th Cong., 2d Sess. 818 (1984).

For hedges of positions other than stock, the final regulations retain the rule in the proposed regulations that hedges of one position are not treated as hedges of another position (including

stock). The final regulations clarify that relationships established in the taxpayer's books and records at the time the positions are entered into are given substantial deference. In addition, the final regulations provide that a taxpayer that diminishes its risk of loss in stock by holding a position in substantially similar or related property is treated as diminishing the risk of loss on the shares with the shortest holding period.

The final regulations retain the rule in the proposed regulations that a guarantee, surety agreement, or similar arrangement is treated as substantially similar or related property if it substantially offsets decreases in the fair market value of the stock. The IRS and Treasury caution that these arrangements or similar rights (even if they do not substantially offset decreases in the fair market value of the stock) may also be treated as options (whether settled in cash or property) to sell the stock for purposes of section 246(c)(4)(A). For example, if an instrument is debt for state law purposes but stock for federal income tax purposes, creditor's rights on the instrument are treated as options to sell. See Rev. Rul. 94-28, 1994-1 C.B. 86.

The final regulations clarify the treatment of notional principal contracts as substantially similar or related property. Under the final regulations, an analysis of whether a notional principal contract is a position in substantially similar or related property that diminishes risk must take into account the gross payments due under the contract even if payments under the contract are netted for other purposes. Thus, a taxpayer cannot look solely to the net payments that it expects to receive and argue that, because fluctuations in the value of the swap may not approximate changes in the value of the stock, the swap is not substantially similar or related to the stock, and does not diminish the taxpayer's risk of loss.

The final regulations defining substantially similar or related property under section 1092 of the Code are found in new § 1.1092(d)-2. The regulations provide that the definition of the term substantially similar or related property in § 1.246-5 is generally applicable for purposes of section 1092(d)(3)(B).

Effective Dates

The regulations contained in this Treasury decision generally are effective with respect to dividends received, and to positions established, on or after March 17, 1995 with respect to stock acquired after July 18, 1984. However, the regulations apply to dividends

received by a taxpayer on stock acquired after July 18, 1984, and to positions established after March 1, 1984, with respect to certain specific transactions listed in the legislative history.

Special Analysis

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal authors of these regulations are Nicholas G. Bogos and Thomas M. Preston, both of the Office of Assistant Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended to read as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read as follows:

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

Section 1.246-5 also issued under 26

U.S.C. 246(c) and 7701(f). * * *

Section 1.1092(d)-2 also issued under 26

U.S.C. 1092(d)(3)(B). * * *

Par. 2. Section 1.246-5 is added to read as follows:

§ 1.246-5 Reduction of holding periods in certain situations.

(a) *In general.* Under section 246(c)(4)(C), the holding period of stock for purposes of the dividends received deduction is appropriately reduced for any period in which a taxpayer has diminished its risk of loss by holding one or more other positions with respect to substantially similar or related property. This section provides rules for applying section 246(c)(4)(C).

(b) *Definitions*—(1) *Substantially similar or related property*. The term substantially similar or related property is applied according to the facts and circumstances in each case. In general, property is substantially similar or related to stock when—

(i) The fair market values of the stock and the property primarily reflect the performance of—

- (A) A single firm or enterprise;
- (B) The same industry or industries; or

(C) The same economic factor or factors such as (but not limited to) interest rates, commodity prices, or foreign-currency exchange rates; and

(ii) Changes in the fair market value of the stock are reasonably expected to approximate, directly or inversely, changes in the fair market value of the property, a fraction of the fair market value of the property, or a multiple of the fair market value of the property.

(2) *Diminished risk of loss*. A taxpayer has diminished its risk of loss on its stock by holding positions with respect to substantially similar or related property if changes in the fair market values of the stock and the positions are reasonably expected to vary inversely.

(3) *Position*. For purposes of this section, a position with respect to property is an interest (including a futures or forward contract or an option) in property or any contractual right to a payment, whether or not severable from stock or other property. A position does not include traditional equity rights to demand payment from the issuer, such as the rights traditionally provided by mandatorily redeemable preferred stock.

(4) *Reasonable expectations*. For purposes of paragraphs (b)(1)(i), (b)(2), or (c)(1)(vi) of this section, reasonable expectations are the expectations of a reasonable person, based on all the facts and circumstances at the later of the time the stock is acquired or the positions are entered into. Reasonable expectations include all explicit or implicit representations made with respect to the marketing or sale of the position.

(c) *Special rules*—(1) *Positions in more than one stock*—(i) *In general*. This paragraph (c)(1) provides rules for the treatment of positions that reflect the value of more than one stock. In general, positions that reflect the value of a portfolio of stocks are treated under the rules of paragraphs (c)(1) (ii) through (iv) of this section, and positions that reflect the value of more than one stock but less than a portfolio are treated under the rules of paragraph (c)(1)(v) of this section. A portfolio for this purpose is any group of stocks of 20 or more

unrelated issuers. Paragraph (c)(1)(vi) of this section provides an anti-abuse rule.

(ii) *Portfolios*. Notwithstanding paragraph (b)(1) of this section, a position reflecting the value of a portfolio of stocks is substantially similar or related to the stocks held by the taxpayer only if the position and the taxpayer's holdings substantially overlap as of the most recent testing date. A position may be substantially similar or related to a taxpayer's entire stock holdings or a portion of a taxpayer's stock holdings.

(iii) *Determining substantial overlap*. This paragraph (c)(1)(iii) provides rules for determining whether a position and a taxpayer's stock holdings or a portion of a taxpayer's stock holdings substantially overlap. Paragraphs (c)(1)(iii) (A) through (C) of this section determine whether there is substantial overlap as of any testing date.

(A) *Step One*. Construct a subportfolio (the Subportfolio) that consists of stock in an amount equal to the lesser of the fair market value of each stock represented in the position and the fair market value of the stock in the taxpayer's stock holdings. (The Subportfolio may contain fewer than 20 stocks.)

(B) *Step Two*. If the fair market value of the Subportfolio is equal to or greater than 70 percent of the fair market value of the stocks represented in the position, the position and the Subportfolio substantially overlap.

(C) *Step Three*. If the position does not substantially overlap with the Subportfolio, repeat Steps One and Two (paragraphs (c)(1)(iii)(A) and (B) of this section) reducing the size of the position. The largest percentage of the position that results in a substantial overlap is substantially similar or related to the Subportfolio determined with respect to that percentage of the position.

(iv) *Testing date*. A testing date is any day on which the taxpayer purchases or sells any stock if the fair market value of the stock or the fair market value of substantially similar or related property is reflected in the position, any day on which the taxpayer changes the position, or any day on which the composition of the position changes.

(v) *Nonportfolio positions*. A position that reflects the fair market value of more than one stock but not of a portfolio of stocks is treated as a separate position with respect to each of the stocks the value of which the position reflects.

(vi) *Anti-abuse rule*. Notwithstanding paragraphs (c)(1)(i) through (v) of this section, a position that reflects the value of more than one stock is a position in

substantially similar or related property to the appropriate portion of the taxpayer's stock holdings if—

(A) Changes in the value of the position or the stocks reflected in the position are reasonably expected to virtually track (directly or inversely) changes in the value of the taxpayer's stock holdings, or any portion of the taxpayer's stock holdings and other positions of the taxpayer; and

(B) The position is acquired or held as part of a plan a principal purpose of which is to obtain tax savings (including by deferring tax) the value of which is significantly in excess of the expected pre-tax economic profits from the plan.

(2) *Options*—(i) *Options that are significantly out of the money*. For purposes of paragraph (b)(2) of this section, an option to sell that is significantly out of the money does not diminish the taxpayer's risk of loss on its stock unless the option is held as part of a strategy to substantially offset changes in the fair market value of the stock.

(ii) *Conversion rights*. Notwithstanding paragraphs (b)(1) and (2) of this section, a taxpayer is treated as diminishing its risk of loss by holding substantially similar or related property if it engages in the following transactions or their substantial equivalents—

(A) A short sale of common stock while holding convertible preferred stock of the same issuer and the price changes of the convertible preferred stock and the common stock are related;

(B) A short sale of a convertible debenture while holding convertible preferred stock into which the debenture is convertible or common stock; or

(C) A short sale of convertible preferred stock while holding common stock.

(3) *Stacking rule*. If a taxpayer diminishes its risk of loss by holding a position in substantially similar or related property with respect to only a portion of the shares that the taxpayer holds in a particular stock, the holding period of those shares having the shortest holding period is reduced.

(4) *Guarantees, surety agreements, or similar arrangements*. A taxpayer has diminished its risk of loss on stock by holding a position in substantially similar or related property if the taxpayer is the beneficiary of a guarantee, surety agreement, or similar arrangement and the guarantee, surety agreement, or similar arrangement provides for payments that will substantially offset decreases in the fair market value of the stock.

(5) *Hedges counted only once.* A position established as a hedge of one outstanding position, transaction, or obligation of the taxpayer (other than stock) is not treated as diminishing the risk of loss with respect to any other position held by the taxpayer. In determining whether a position is established to hedge an outstanding position, transaction, or obligation of the taxpayer, substantial deference will be given to the relationships that are established in its books and records at the time the position is entered into.

(6) *Use of related persons or pass-through entities.* Positions held by a party related to the taxpayer within the meaning of sections 267(b) or 707(b)(1) are treated as positions held by the taxpayer if the positions are held with a view to avoiding the application of this section or § 1.1092(d)-2. In addition, a taxpayer is treated as diminishing its risk of loss by holding substantially similar or related property if the taxpayer holds an interest in, or is the beneficiary of, a pass-through entity, intermediary, or other arrangement with a view to avoiding the application of this section or § 1.1092(d)-2.

(7) *Notional principal contracts.* For purposes of this section, rights and obligations under notional principal contracts are considered separately even though payments with regard to those rights and obligations are generally netted for other purposes. Therefore, if a taxpayer is treated under the preceding sentence as receiving payments under a notional principal contract when the fair market value of the taxpayer's stock declines, the taxpayer has diminished its risk of loss by holding a position in substantially similar or related property regardless of the netting of the payments under the contract for any other purposes.

(d) *Examples.* The following examples illustrate the provisions of this section:

Example 1. General application to common stock. Corporation A and Corporation B are both automobile manufacturers. The fair market values of Corporation A and Corporation B common stock primarily reflect the value of the same industry. Because Corporation A and Corporation B common stock are affected not only by the general level of growth in the industry but also by individual corporate management decisions and corporate capital structures, changes in the fair market value of Corporation A common stock are not reasonably expected to approximate changes in the fair market value of the Corporation B common stock. Under paragraph (b)(1) of this section, Corporation A common

stock is not substantially similar or related to Corporation B common stock.

Example 2. Common stock value primarily reflects commodity price. Corporation C and Corporation D both hold gold as their primary asset, and historically changes in the fair market value of Corporation C common stock approximated changes in the fair market value of Corporation D common stock. Corporation M purchased Corporation C common stock and sold short Corporation D common stock. Corporation C common stock is substantially similar or related to Corporation D common stock because their fair market values primarily reflect the performance of the same economic factor, the price of gold, and changes in the fair market value of Corporation C common stock are reasonably expected to approximate changes in the fair market value of Corporation D common stock. It was reasonably expected that changes in the fair market values of the Corporation C common stock and the short position in Corporation D common stock would vary inversely. Thus, Corporation M has diminished its risk of loss on its Corporation C common stock for purposes of section 246(c)(4)(C) and this section by holding a position in substantially similar or related property.

Example 3. Portfolios of stocks—(i) Corporation Z holds a portfolio of stocks and acquires a short position on a publicly traded index through a regulated futures contract (RFC) that reflects the value of a portfolio of stocks as defined in paragraph (c)(1)(i) of this section. The index reflects the fair market value of stocks A through T. The values of stocks reflected in the index and the values of the same stocks in Corporation Z's holdings are as follows:

Stock	Z's holdings	RFC	Subportfolio
A	\$300	\$300	\$300
B	300	300	300
C	—	300	—
D	400	500	400
E	300	500	300
F	300	500	300
G	500	600	500
H	300	300	300
I	—	300	—
J	400	450	400
K	200	500	200
L	200	400	200
M	200	500	200
N	100	200	100
O	—	200	—
P	200	200	200
Q	100	300	100
R	200	100	100
S	100	100	100
T	100	160	100
Totals	\$4,200	\$5,400	\$3,780

Stock	Z's holdings	RFC	Subportfolio
T	100	200	100
Totals	\$4,200	\$6,750	\$4,100

(ii) The position is substantially similar or related to Z's stock holdings only if they substantially overlap. To determine whether they substantially overlap, Corporation Z must construct a Subportfolio of stocks with the lesser of the value of the stock as reflected in the RFC and its holdings. The Subportfolio is given in the rightmost column above. The value of the Subportfolio is 60.74 percent of the value of the stocks represented in the position (\$4100÷\$6750), so the position and the Subportfolio do not substantially overlap.

(iii) To determine whether any portion of the position substantially overlaps with any portion of the Z's stock holdings, the values of the stocks in the RFC are reduced for purposes of the above steps. Eighty percent of the position and the corresponding subportfolio (consisting of stocks with a value of the lesser of the stocks represented in Z's holdings and in 80 percent of the RFC) substantially overlap, computed as follows:

Stock	Z's holdings	80% of RFC	Subportfolio
A	\$300	\$240	\$240
B	300	240	240
C	—	240	—
D	400	400	400
E	300	400	300
F	300	400	300
G	500	480	480
H	300	240	240
I	—	240	—
J	400	360	360
K	200	400	200
L	200	320	200
M	200	400	200
N	100	160	100
O	—	160	—
P	200	160	160
Q	100	240	100
R	200	80	80
S	100	80	80
T	100	160	100
Totals	\$4,200	\$5,400	\$3,780

(iv) Because \$3,780 is 70 percent of \$5,400, the Subportfolio substantially overlaps with 80 percent of the position. Under paragraph (c)(3) of this section, Z's stocks having the shortest holding period are treated as included in the Subportfolio. A larger portion of Z's stocks may be treated as substantially similar or related property under the

anti-abuse rule of paragraph (c)(1)(vi) of this section.

Example 4. Hedges counted only once. January 1, 1996, Corporation X owns a \$100 million portfolio of stocks all of which would substantially overlap with a \$100 million regulated futures contract (RFC) on a commonly used index (the Index). On January 15, Corporation X enters into a \$100 million short position in an RFC on the Index with a March delivery date and enters into a \$75 million long position in an RFC on the Index for June delivery. Also on January 15, 1996, Corporation X indicates in its books and records that the long and short RFC positions are intended to offset one another. Under paragraph (c)(5) of this section, \$75 million of the short position in the RFC is not treated as diminishing the risk of loss on the stock portfolio and instead is treated as a straddle or a hedging transaction, as appropriate, with respect to the \$75 million long position in the RFC, under section 1092. The remaining \$25 million short position is treated as diminishing the risk of loss on the portfolio by holding a position in substantially similar or related property. The rules of paragraph (c)(1) determine how much of the portfolio is subject to this rule and the rules of paragraph (c)(3) determine which shares have their holding periods tolled.

(e) **Effective date—(1) In general.** The provisions of this section apply to dividends received on or after March 17, 1995, on stock acquired after July 18, 1984.

(2) **Special rule for dividends received on certain stock.** Notwithstanding paragraph (e)(1) of this section, this section applies to any dividends received by a taxpayer on stock acquired after July 18, 1984, if the taxpayer has diminished its risk of loss by holding substantially similar or related property involving the following types of transactions—

(i) The short sale of common stock when holding convertible preferred stock of the same issuer and the price changes of the two stocks are related, or the short sale of a convertible debenture while holding convertible preferred stock into which the debenture is convertible (or common stock), or a short sale of convertible preferred stock while holding common stock; or

(ii) The acquisition of a short position in a regulated futures contract on a stock index, or the acquisition of an option to sell the regulated futures contract or the stock index itself, or the grant of a deep-in-the-money option to buy the regulated futures contract or the stock index while holding the stock of an

investment company whose principal holdings mimic the performance of the stocks included in the stock index; or alternatively, while holding a portfolio composed of stocks that mimic the performance of the stocks included in the stock index.

Par. 3. Section 1.1092(d)-2 is added to read as follows:

§ 1.1092(d)-2 Personal property.

(a) **Special rules for stock.** Under section 1092(d)(3)(B), personal property includes any stock that is part of a straddle, at least one of the offsetting positions of which is a position with respect to substantially similar or related property (other than stock). For purposes of this rule, the term *substantially similar or related property* is defined in § 1.246-5 (other than § 1.246-5(b)(3)). The rule in § 1.246-5(c)(6) does not narrow the related party rule in section 1092(d)(4).

(b) **Effective date—(1) In general.** This section applies to positions established on or after March 17, 1995.

(2) **Special rule for certain straddles.** This section applies to positions established after March 1, 1984, if the taxpayer substantially diminished its risk of loss by holding substantially similar or related property involving the following types of transactions—

(i) Holding offsetting positions consisting of stock and a convertible debenture of the same corporation where the price movements of the two positions are related; or

(ii) Holding a short position in a stock index regulated futures contract (or alternatively an option on such a regulated futures contract or an option on the stock index) and stock in an investment company whose principal holdings mimic the performance of the stocks included in the stock index (or alternatively a portfolio of stocks whose performance mimics the performance of the stocks included in the stock index).

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Dated: March 3, 1995.

Approved: Leslie Samuels, Assistant Secretary of the Treasury (Tax Policy).

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL-5173-4]

The National Priorities List for Uncontrolled Hazardous Waste Sites; Deletion Policy for Resource Conservation and Recovery Act Facilities

AGENCY: Environmental Protection Agency.

ACTION: Notice of policy statement.

SUMMARY: The Environmental Protection Agency ("EPA") is announcing a policy relating to the National Oil and Hazardous Substances Contingency Plan ("NCP"), 40 CFR part 300, which was promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") (amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA")) and Executive Order 12580 (52 FR 2023, January 29, 1987). CERCLA requires that the NCP include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants or contaminants throughout the United States, and that the list be revised at least annually. The National Priorities List ("NPL"), initially promulgated as Appendix B of the NCP on September 8, 1983 (48 FR 40658), constitutes this list.

This document describes a policy for deleting sites from the NPL and deferring them to the Resource Conservation and Recovery Act ("RCRA"), as amended by the Hazardous and Solid Waste Amendments of 1984 ("HSWA") corrective action program, if they meet the eligibility criteria for deletion set out in the NCP. EPA requested public comment on this policy on December 21, 1988 (53 FR 51421). The policy applies to sites on the NPL that are RCRA-regulated facilities engaged in treatment, storage or disposal of hazardous waste ("TSDs" under the RCRA program).

EFFECTIVE DATE: This policy is effective on April 19, 1995.

ADDRESSES: Comments received and the Agency's responses to them are contained in the Headquarters Superfund Docket. The Headquarters Superfund Docket is located at the U.S. Environmental Protection Agency, Crystal Gateway #1, 12th Floor, 1235 Jefferson Davis Highway, Arlington, VA. It is available for viewing by appointment only from 9:00 a.m. to 4:00