

(i) The phrase “SEXUALLY-EXPLICIT:” in a clear and conspicuous manner;<sup>2</sup>

(ii) Clear and conspicuous identification that the message is an advertisement or solicitation;

(iii) Clear and conspicuous notice of the opportunity of a recipient to decline to receive further commercial electronic mail messages from the sender;

(iv) A functioning return electronic mail address or other Internet-based mechanism, clearly and conspicuously displayed, that—

(A) A recipient may use to submit, in a manner specified in the message, a reply electronic mail message or other form of Internet-based communication requesting not to receive future commercial electronic mail messages from that sender at the electronic mail address where the message was received; and

(B) Remains capable of receiving such messages or communications for no less than 30 days after the transmission of the original message;

(v) Clear and conspicuous display of a valid physical postal address of the sender; and

(vi) Any needed instructions on how to access, or activate a mechanism to access, the sexually oriented material, preceded by a clear and conspicuous statement that to avoid viewing the sexually oriented material, a recipient should delete the email message without following such instructions.

(b) *Prior affirmative consent.* Paragraph (a) of this section does not apply to the transmission of an electronic mail message if the recipient has given prior affirmative consent to receipt of the message.

#### **§ 316.5 Severability.**

The provisions of this part are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

By Direction of the Commission.

**Donald S. Clark,**  
*Secretary.*

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<sup>2</sup> This phrase consists of nineteen (19) characters and is identical to the phrase required in § 316.4(a)(1).

## **DEPARTMENT OF HOMELAND SECURITY**

### **Bureau of Customs and Border Protection**

#### **19 CFR part 101**

#### **Extension of Port Limits of Rockford, IL**

**AGENCY:** Customs and Border Protection; Department of Homeland Security.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document proposes to amend the Customs and Border Protection (CBP) Regulations pertaining to the field organization of CBP by extending the geographical limits of the port of Rockford, Illinois, to include the City of Rochelle, Illinois. The Union Pacific Railroad Company has a new intermodal facility in Rochelle. The proposed change is part of CBP's continuing program to more efficiently utilize its personnel, facilities, and resources, and to provide better service to carriers, importers, and the general public.

**DATES:** Comments must be received on or before October 12, 2004.

**ADDRESSES:** Comments must be submitted to Bureau of Customs and Border Protection, Office of Regulations and Rulings (Attention: Regulations Branch), 1300 Pennsylvania Avenue NW., (Mint Annex), Washington, DC 20229. Submitted comments may be inspected at 799 9th Street, NW., Washington, DC during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Dennis Dore, Office of Field Operations, 202-927-6871.

#### **SUPPLEMENTARY INFORMATION:**

#### **Background**

The Union Pacific Railroad Company has a new state-of-the-art intermodal rail facility that is located 25 miles south of Rockford in Rochelle, Illinois. This facility provides the capacity necessary to support the efficient interchange of shipments to and from rail connections, and expedite the operations of trains and containers. In order to accommodate this new facility and provide better service to carriers, importers, and the public, the Bureau of Customs and Border Protection (CBP) is proposing to extend the port limits of the port of Rockford, Illinois, to include the City of Rochelle, Illinois.

#### **Current Port Limits of Rockford, Illinois**

The current port limits of Rockford, Illinois, are described as follows in

Treasury Decision (T.D.) 95-62 of August 14, 1995:

Bounded to the north by the Illinois/Wisconsin border; bounded to the west by Illinois State Route 26; bounded to the south by Illinois State Route 72; and bounded to the east by Illinois State Route 23 north to the Wisconsin/Illinois border.

#### **Proposed Port Limits of Rockford, Illinois**

The new port limits of Rockford, Illinois, are proposed as follows: Bounded to the north by the Illinois/Wisconsin border; bounded to the west by Illinois State Route 26; bounded to the south by Interstate Route 88; bounded to the east by Illinois State Route 23 to the Wisconsin/Illinois border.

#### **Proposed Amendment to CBP Regulations**

If the proposed port limits are adopted, CBP will amend § 101.3(b)(1), CBP Regulations (19 CFR 101.3(b)(1)) to reflect the new boundaries of the Rockford, Illinois port of entry.

#### **Authority**

This change is proposed under the authority of 5 U.S.C. 301 and 19 U.S.C. 2, 66 and 1624.

#### **Signing Authority**

The signing authority for this document falls under § 0.2(a), CBP Regulations (19 CFR 0.2(a)) because this port extension is not within the bounds of those regulations for which the Secretary of the Treasury has retained sole authority. Accordingly, the notice of proposed rulemaking may be signed by the Secretary of Homeland Security (or his or her delegate).

#### **Comments**

Before adopting this proposal, consideration will be given to any written comments that are timely submitted to CBP. All such comments received from the public pursuant to this notice of proposed rulemaking will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and § 103.11(b), CBP Regulations (19 CFR 103.11(b)) during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, Customs and Border Protection, Department of Homeland Security, 799 9th Street, NW., Washington, DC. Arrangements to inspect submitted documents should be made in advance by calling Mr. Joseph Clark at 202-572-8768.

## The Regulatory Flexibility Act and Executive Order 12866

CBP establishes, expands and consolidates CBP ports of entry throughout the United States to accommodate the volume of CBP-related activity in various parts of the country. Thus, although this document is being issued with notice for public comment, because it relates to agency management and organization, it is not subject to the notice and public procedure requirements of 5 U.S.C. 553. Accordingly, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Agency organization matters such as this proposed port extension are exempt from consideration under Executive Order 12866.

### Drafting Information

The principal author of this document was Christopher W. Pappas, Regulations Branch, Office of Regulations and Rulings, CBP. However, personnel from other offices participated in its development.

**Robert C. Bonner,**

*Commissioner, Customs and Border Protection.*

**Tom Ridge,**

*Secretary, Department of Homeland Security.*  
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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[REG-116265-04]

RIN 1545-BD25

#### Additional Rules for Exchanges of Personal Property Under Section 1031(a)

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

**ACTION:** Notice of proposed rulemaking by cross-reference to temporary regulations.

**SUMMARY:** In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing final and temporary regulations replacing the use of the Standard Industrial Classification (SIC) system with the North American Industry Classification System (NAICS) for determining what properties are of a like class for purposes of section 1031 of the Internal Revenue Code (Code). The text of those temporary regulations

also serves as the text of these proposed regulations.

**DATES:** Written or electronic comments and requests for a public hearing must be received by November 12, 2004.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG-116265-04), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG-116265-04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit electronic comments directly to the IRS internet site at <http://www.irs.gov/regs> or via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS and REG-116265-04).

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, J. Peter Baumgarten, 202-622-4920; concerning submissions of comments and/or requests for a public hearing, Guy Traynor, 202-622-7180 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

#### Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend 26 CFR part 1 relating to section 1031(a)(1). The temporary regulations substitute NAICS classification codes for the SIC classification codes in the regulatory text and permit the use of NAICS codes for determining product classes, and therefore property of like kind, of depreciable tangible personal property exchanged under section 1031. The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

#### Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for

Advocacy of the Small Business Administration for comment on its impact.

#### Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of these proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

#### Drafting Information

The principal author of these regulations is J. Peter Baumgarten, Office of Associate Chief Counsel (Income Tax and Accounting). 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.

#### Proposed Amendments to the Regulations

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

#### PART 1—INCOME TAXES

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

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

**Par. 2.** In § 1.1031(a)-2, paragraphs (b)(3) through (b)(6), and *Example 3* and *Example 4* of paragraph (b)(7) are revised to read as follows:

#### § 1.1031(a)-2 Additional rules for exchanges of personal property.

[The text of proposed § 1.1031(a)-2, paragraphs (b)(3) through (b)(6), and *Example 3* and *Example 4* of paragraph (b)(7) is the same as the text of § 1.1031(a)-2T, paragraphs (b)(3) through (b)(6), and *Example 3* and *Example 4* of paragraph (b)(7) published elsewhere in this issue of the **Federal Register**.]

#### § 1.1031(j)-1 [Amended]

**Par. 3.** Section 1.1031(j)-1 is amended by removing the language "(SIC Code