

The Board, with the concurrence of the Office of Management and Budget, has determined that this is not a significant regulatory action for purposes of Executive Order 12866. Therefore, no regulatory impact analysis is required. There are no information collections associated with this rule.

List of Subjects in 20 CFR Parts 355 and 356

Railroad employees, Railroad retirement.

For the reasons set forth in the preamble, title 20, chapter II, subchapter E, is amended as follows:

#### **PART 355—REGULATIONS UNDER THE PROGRAM FRAUD CIVIL REMEDIES ACT OF 1986**

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

Authority: 31 U.S.C. 3809.

##### **§ 355.3 [Amended]**

2. Section 355.3(a)(1)(iv) is amended by adding at the end thereof a new sentence to read "This penalty is subject to adjustment in accord with part 356 of this chapter."

3. Section 355.3(b)(1)(ii) is amended by adding at the end thereof a new sentence to read "This penalty is subject to adjustment in accord with part 356 of this chapter."

4. A new part 356 is added to subchapter E to read as follows:

#### **PART 356—CIVIL MONETARY PENALTY INFLATION ADJUSTMENT**

Sec.

356.1 Introduction.

356.2 Program Fraud Civil Remedies Act of 1986.

356.3 False claims.

Authority: 28 U.S.C. 2461; 31 U.S.C. 3729, 3809.

##### **§ 356.1 Introduction.**

(a) The Federal Civil Penalties Inflation Adjustment Act requires that civil monetary penalties be adjusted by the percentage by which the Consumer Price Index for the month of June of the calendar year preceding the adjustment exceeds the Consumer Price Index for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted. That Act also mandates rounding of the adjustment, depending on the amount of the maximum penalty.

(b) The ratio of the Consumer Price Index for the month of June of the calendar year preceding this adjustment to the Consumer Price Index for the month of June of the calendar year in which the amount of civil monetary

penalties provided for under the Program Fraud Civil Remedies Act (31 U.S.C. 3801–3812) and the false claims provisions at 31 U.S.C. 3729(a) was last set or adjusted, 1986, is 456.7/327.9, which produces the following increases in the penalties after applicable rounding:

(1) The maximum penalty under the Program Fraud Civil Remedies Act for a false claim or statement would be increased from \$5,000 to \$7,000.

(2) The maximum and minimum penalties under the false claims provisions at 31 U.S.C. 3729(a) would be increased from \$10,000 to \$14,000 and \$5,000 to \$7,000, respectively.

(c) Imposition of the increases are limited to actions occurring after the effective date of the increases.

(d) No increase may exceed ten percent of the penalty or range of penalties, as applicable.

##### **§ 356.2 Program Fraud Civil Remedies Act of 1986.**

In the case of penalties assessed under part 355 of this chapter, an additional penalty of \$500 may be assessed for claims or statements made after October 23, 1996.

##### **§ 356.3 False claims.**

In the case of penalties assessed under 31 U.S.C. 3729 based on actions occurring after October 23, 1996, the minimum penalty is \$5,500 and the maximum penalty is \$11,000.

Dated: January 15, 1997.

By Authority of the Board.

Beatrice Ezerski,

*Secretary to the Board.*

[FR Doc. 97-1916 Filed 1-24-97; 8:45 am]

BILLING CODE 7905-01-P

#### **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

##### **Food and Drug Administration**

##### **21 CFR Part 101**

[Docket No. 95P-0337]

##### **Food Labeling: Saccharin and Its Salts; Retail Establishment Notice**

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

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is revoking the food labeling regulation that prescribes conditions for the display by a retail establishment of a notice concerning the sale of products containing saccharin and its salts. This action is being taken

in response to an act to repeal the saccharin notice requirement and a citizen petition submitted by the Calorie Control Council. This action is intended to reduce the burden on small businesses.

**EFFECTIVE DATE:** January 27, 1997.

##### **FOR FURTHER INFORMATION CONTACT:**

Gerard L. McCowin, Center for Food Safety and Applied Nutrition (HFS-151), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-4561.

**SUPPLEMENTARY INFORMATION:** In the Federal Register of September 27, 1996 (61 FR 50770), FDA published a proposal to amend its food labeling regulations by revoking § 101.11 *Saccharin and its salts; retail establishment notice* (21 CFR 101.11). The agency had issued this proposal partly in response to enactment on April 1, 1996, of Pub. L. 104-124, which amended the Federal Food, Drug, and Cosmetic Act (the act) by repealing section 403(p) (21 U.S.C. 343(p)), and partly in response to a citizen petition that it received on October 11, 1995, from the Calorie Control Council requesting that the agency revoke this provision. No comments were received in response to the proposal.

Having received no comments, FDA concludes that, for the reasons set forth in the proposal, it is appropriate to amend its food labeling regulations by revoking § 101.11. In view of the revocation of section 403(p) of the act by Pub. L. 104-124 and the fact that section 403(o) of the act requires that all food products containing saccharin include on their labeling a warning statement (see Statement of final guidelines for labeling of food products containing saccharin (42 FR 62209, December 9, 1977)), the agency finds that § 101.11 is no longer necessary. This action is also consistent with the Administration's "Reinventing Government" initiative which seeks to ease burdens on regulated industry and consumers.

FDA has determined that this final rule is not a significant regulatory action for the purposes of Executive Order 12866. This final rule is expected to reduce the burden on small businesses. Therefore, the agency certifies that this final rule will not have a significant adverse impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601-612).

The agency has determined under 21 CFR 25.24(a)(11) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment

nor an environmental impact statement is required.

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*).

#### List of Subjects in 21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 101 is amended as follows:

### PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 371).

#### § 101.11 [Removed]

2. Section 101.11 *Saccharin and its salts; retail establishment notice* is removed from subpart A.

Dated: January 17, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97-1853 Filed 1-24-97; 8:45 am]

BILLING CODE 4160-01-F

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[TD 8713]

RIN 1545-AU93

#### Section 42(d)(5) Federal Grants

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

**ACTION:** Temporary regulations.

**SUMMARY:** This document contains temporary regulations with respect to the low-income housing tax credit relating to the application of section 42(d)(5) to certain rental assistance programs under section 42(g)(2)(B)(i). The regulations clarify that certain types of federal rental assistance payments do not result in a reduction in the eligible basis of a low-income housing building. The text of these regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the Federal Register.

**EFFECTIVE DATE:** These regulations are effective January 27, 1997.

**FOR FURTHER INFORMATION CONTACT:** Christopher J. Wilson (202) 622-3040 (not a toll-free call).

#### SUPPLEMENTARY INFORMATION:

##### Background

Under section 42(d)(1), the eligible basis used to compute the low-income housing tax credit of a new low-income building is the adjusted basis of the building as of the close of the first taxable year of the credit period. Section 42(d)(5) provides that if, during a taxable year in the compliance period (as defined in section 42(i)(1)), a federal grant is made with respect to a low-income building or the operation thereof, the eligible basis of the building for the taxable year and all succeeding taxable years is reduced to the extent of the federal grant. Questions have arisen whether rental assistance payments under section 8 of the United States Housing Act of 1937 (Act) (42 U.S.C. § 1437f) and certain rental assistance payments under section 9 of the Act (42 U.S.C. 1437g) are federal grants requiring a reduction in eligible basis.

The legislative history of section 42 indicates that section 42(d)(5) was enacted to prevent a taxpayer from "double-dipping" in federal benefits. S. Rep. No. 313, 99th Cong., 2d Sess. II-767 (1986), 1986-3 (Vol 3) C.B. 767. This would occur, for example, if the owner of a building received both the low-income housing credit and a federal-interest subsidy or federal grant with respect to the building. The legislative history further indicates, however, that Congress did not intend to treat federal rental assistance payments as grants for this purpose. Thus, the legislative history indicates that no basis reduction is required for rental assistance payments provided by the Department of Housing and Urban Development (HUD) under section 8 of the Act. (In contrast to this treatment of section 8 rental assistance payments, section 42(c)(2) generally denies the low-income housing tax credit to buildings that receive "moderate rehabilitation assistance" under section 8(e)(2) of the Act.)

HUD recently was granted the authority to assist mixed-finance projects under section 9 of the Act. Under this new initiative, public housing authorities receiving HUD assistance are permitted to disburse that assistance to private owners as reimbursement for the operating expenses of units the owner has agreed to maintain for public-housing tenants. This section 9 assistance for operating

expenses functions in a manner similar to rental assistance payments under section 8 of the Act. The section 8 rental assistance payments are designed to compensate the unit owner for all or part of the difference between the rent a low-income tenant is able to pay and a fair market rent standard as set by HUD. Similarly, the section 9 payments are designed to cover an allocable share of operating costs of the units rented to low-income tenants, thus, in effect, supplementing the rents that these tenants are required to pay.

#### Explanation of Provisions

These temporary regulations provide that certain federal rental assistance payments made to the owner of a building on behalf of low-income tenants are not federal grants with respect to a building or its operation that require a reduction in the building's eligible basis under section 42(d)(5). These payments include rental assistance payments made under section 8 of the Act, certain payments made under section 9 of the Act, and payments made under such other programs or methods of rental assistance as may be designated in the Federal Register or the Internal Revenue Bulletin.

#### Special Analyses

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 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 these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this temporary regulation will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

#### Drafting Information

The principal author of these regulations is Christopher J. Wilson, Office of Assistant Chief Counsel (Passthroughs and Special Industries). 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.