

Clothing Textiles, 16 CFR part 1610, and the Standard for the Flammability of Vinyl Plastic Film, 16 CFR part 1611.

After the stay expires, children's sleepwear must either pass the flammability tests described in the regulations at 16 CFR parts 1615 and 1616 or meet the definition of "tight-fitting garments" described in 16 CFR 1615.1(o) and 1616.1(m), or be in infant sizes 9 months or smaller.

Dated: October 31, 1997.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

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DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 97-88]

19 CFR Parts 101 and 122

Customs Service Field Organization; Establishment of Sanford Port of Entry

AGENCY: Customs Service, Treasury.

ACTION: Interim rule; solicitation of comments.

SUMMARY: This document delays the effective date for implementation of a final rule document published in the **Federal Register** July 11, 1997, as T.D. 97-64, which would establish a new port of entry at Orlando-Sanford Airport in Sanford, Florida effective November 10, 1997. Since publication of the final rule document, the Airport Operator has brought to Customs attention that the date chosen by Customs significantly impairs its agreements with air carriers that were signed prior to Customs announcement of its decision. In addition, the Airport Operator claims that cargo and warehousing space currently available at the airport must be expanded to accommodate projected needs. Because of these factors, Customs is delaying the effective date to May 1, 1998 for the port of entry designation. The user-fee status of the airport will continue until the new effective date.

DATES: Effective date of November 10, 1997, of the amendments of §§ 101.3(b)(1) and 122.15(b), Customs Regulations, published in the **Federal Register** (62 FR 37131) on July 11, 1997, is delayed until May 1, 1998. Comments must be received on or before December 8, 1997.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the U.S. Customs Service, Office of Regulations and Rulings—

ATTN: Regulations Branch, The Ronald Reagan Building, 1300 Pennsylvania Avenue, NW., Washington, D.C. 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, The Ronald Reagan Building, 1300 Pennsylvania Avenue, NW, Suite 3000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Harry Denning, Office of Field Operations, Resource Management Division (202) 927-0196.

SUPPLEMENTARY INFORMATION:

Background

On July 11, 1997, Customs published in the **Federal Register** (62 FR 37131) T.D. 97-64 which amended § 101.3(b), Customs Regulations (19 CFR 101.3), to establish a new port of entry at Orlando-Sanford Airport in Sanford, Florida, and § 122.15(b), Customs Regulations (19 CFR 122.15(b)), to remove the Sanford Regional Airport from the list of user-fee airports.

That action was taken by Customs based on analysis of a report prepared for the Central Florida Regional Airport Board that manages the airport at Sanford. The report showed that the Sanford Regional Airport was becoming the fastest growing airport for international passenger clearance services in Florida. In response to this growth, the report indicated that the Airport Board had decided to make substantial and long term investment in new international arrival facilities to serve this growing Central Florida market. Applying the criteria used by Customs since 1973 for the establishment of ports of entry (see Treasury Decision (T.D.) 82-37 (47 FR 10137), as revised by T.D. 86-14 (51 FR 4559) and T.D. 87-65 (52 FR 16328)), to the figures projected by the Central Florida Regional Airport Board, Customs believed that sufficient justification existed for redesignating the airport facility from its user-fee status to that of a port of entry. Customs announced this decision on July 11, 1997, and designated November 10, 1997 as the effective date.

Since publication of the final rule document, it has come to Customs attention that agreements currently in force between the Orlando-Sanford Airport and the air carriers it serves effectively requires the Airport to absorb additional Customs fees through the end of April 1998. Moreover, the facilities for cargo processing and warehousing at Orlando-Sanford Airport need to be expanded and that construction will not be completed until late Spring of 1998.

Delayed Effective Date

For the reasons set forth in the above discussion, Customs has determined that the effective date for the establishment of the new port of entry at Sanford, Florida shall be delayed for approximately 6 months—until May 1, 1998—to afford the airport facility time to complete projected facilities. Until that time, the airport may continue to operate as a user-fee facility.

Public Comment Requirements

Customs establishes, expands, and consolidates Customs ports of entry throughout the United States to accommodate the volume of Customs-related activity in various parts of the country. Because the establishment, expansion or consolidation of a port of entry relates to agency management and organization, a regulatory change involving such an action is not subject to the notice and public procedure requirements of the Administrative Procedure Act (APA) (5 U.S.C. 553).

In addition, pursuant to 5 U.S.C. 553(b)(B), Customs finds for good cause in this instance that notice and public procedure are impracticable, unnecessary and contrary to public interest. It would be impracticable for Customs to issue a proposal in this instance as the rulemaking process could not be completed timely.

If a proposal were to be issued, it would be unlikely that a final decision could be published before November 10, causing possible unforeseen consequences for the airport operator and other members of the public. Also the temporary postponement of the effective date of a rule is a technical change for which it is unnecessary to provide notice and comment. The substantive decision to create a port of entry at Sanford has already been made; the only question is when that port of entry will open.

Notwithstanding the above, Customs generally provides the public with an opportunity to comment on the establishment of ports of entry. Even though notice and public comment are not required in this instance pursuant to 5 U.S.C. 553(a)(2) because this is a matter relating to agency management, and pursuant to 5 U.S.C. 553(b)(B) for good cause, Customs is requesting the public to submit comments regarding the delayed effective date. If comments submitted within the next 30 days demonstrate that there exist sufficient grounds for not delaying the effective date of the establishment of a port of entry in Sanford until May 1, 1998, Customs will issue another document.

Comments submitted will be available for public inspection in accordance with

the Freedom of Information Act (5 U.S.C. 552), § 1.4 of the Treasury Department Regulations (31 CFR 1.4), and § 103.11(b) of the Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, Suite 3000, The Ronald Reagan Building, 1300 Pennsylvania Avenue, N.W., Washington, D.C.

Amendments to the Regulations

For the reasons stated above, the effective date of final rule document FR Doc. 97-18206, published in the **Federal Register** on July 11, 1997 is delayed until May 1, 1998.

The Regulatory Flexibility Act, and Executive Order 12866

Because this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This amendment does not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

Approved: October 9, 1997.

Samuel H. Banks,

Acting Commissioner of Customs.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8738]

RIN 1545-AV43

Tax Treatment of Cafeteria Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations that clarify the circumstances under which an employer may permit a cafeteria plan participant to revoke an existing election and make a new election during a period of coverage. The text of these temporary 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**.

DATES: These regulations are effective on December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Sharon Cohen, (202) 622-6080 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 125. These temporary regulations provide guidance relating to the circumstances under which a cafeteria plan participant may revoke an existing election and make a new election during a period of coverage.

Explanation of Provisions

A "cafeteria plan" under section 125 allows an employee to choose between cash and certain nontaxable benefits, such as accident or health coverage. Section 125 generally permits the employee to choose the nontaxable benefit (rather than the available cash) without the employee having to include the available cash in gross income. The temporary regulations:

- Permit a cafeteria plan to allow an employee, during a plan year, to change his or her health coverage election to conform with the new special enrollment rights provided under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and
- Permit a cafeteria plan to allow a change in coverage election for a variety of other changes in status.

These regulations are designed to provide clear, administrable guidelines for determining when changes can be made in cafeteria plan elections during a plan year.

These regulations are effective for plan years beginning after December 31, 1998. However, taxpayers may rely on the guidance in the temporary regulations (or on the existing proposed regulations) for prior periods.

Summary

Section 125 generally provides that an employee in a cafeteria plan will not have an amount included in gross income solely because the employee may choose among two or more benefits consisting of cash and "qualified benefits." A qualified benefit generally is any benefit that is excludable from gross income because of an express provision of the Code, including coverage under an employer-provided accident or health plan under sections 105 and 106, group-term life insurance under section 79, elective contributions under a qualified cash or deferred

arrangement within the meaning of section 401(k), dependent care assistance under section 129, and adoption assistance under section 137.¹ Under §§ 1.125-1 and 1.125-2 of the existing proposed regulations,² an employee is permitted to make an election between cash and qualified benefits before the beginning of the period of coverage (which generally is the plan year of the cafeteria plan); changes in the election during the plan year are permitted only in limited circumstances.

The temporary regulations clarify the circumstances under which a cafeteria plan may permit an employee to change his or her cafeteria plan election with respect to accident or health coverage or group-term life insurance coverage during the plan year. Proposed regulations are also being published that cross-reference these temporary regulations, and that replace the change in family status provisions in Q&A-6 of proposed § 1.125-2 with respect to accident or health plans and group-term life insurance.

HIPAA Special Enrollment Rules

The temporary regulations conform the cafeteria plan rules to the new special enrollment rights provided under HIPAA (which generally require group health plans to permit individuals to be enrolled for coverage following the loss of other health coverage, or if a person becomes the spouse or dependent of an employee through birth, marriage, adoption, or placement for adoption).³ Under the regulations, if an employee has a right to enroll in an employer's group health plan or to add coverage for a family member under HIPAA, the employee can make a conforming election under the cafeteria plan. This allows required contributions for such health coverage to be paid on a pre-tax basis.

Changes in Status

The temporary regulations include rules for other events, called "changes in status," under which a cafeteria plan may allow an employee to change his or

¹ The following are not qualified benefits: products advertised, marketed, or offered as long-term care insurance; medical savings accounts under section 106(b); qualified scholarships under section 117; educational assistance programs under section 127; and fringe benefits under section 132.

² Published as proposed rules at 49 FR 19321 (May 7, 1984) and 54 FR 9460 (March 7, 1989), respectively.

³ See section 9801(f). Similar provisions are set forth in section 701(f) of the Employee Retirement Income Security Act of 1974 (ERISA), and section 2701(f) of the Public Health Service Act. Regulations under these provisions are set forth in Treas. Reg. § 54.9801-6T; 29 C.F.R. § 2590.701-6; and 45 C.F.R. § 146.117.