

Bulletin 767–21A0167, Revision 1, dated December 19, 2006.

#### Unsafe Condition

(d) This AD results from reports of duct assemblies in the environmental control system (ECS) with burned Boeing Material Specification (BMS) 8–39 polyurethane foam insulation. This AD also results from a report from the airplane manufacturer that airplanes were assembled with duct assemblies in the ECS wrapped with BMS 8–39 polyurethane foam insulation, a material of which the fire retardant properties deteriorate with age. We are issuing this AD to prevent a potential electrical arc from igniting the BMS 8–39 polyurethane foam insulation on the duct assemblies or the ECS, which could propagate a small fire and lead to a larger fire that might spread throughout the airplane through the ECS.

#### Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

#### ECS Duct Assembly Rework

(f) Except as provided by paragraph (g) of this AD, within 72 months after the effective date of this AD, rework the duct assemblies in the ECS for the air distribution system at sections 41, 45, and 46; the Gasper air system at sections 41, 43, 45, and 46; the forward electronic and electrical (E/E) compartment air supply; and the instrument panel cooling supply; in accordance with the Accomplishment Instructions and Appendices A and B of Boeing Service Bulletin 767–21A0167, Revision 1, dated December 19, 2006.

#### Optional Part Installed

(g) If an affected duct assembly having a part number other than part number 217T2109–12, or a part number other than any part number specified in the applicable figure of Boeing Service Bulletin 767–21A0167, Revision 1, dated December 19, 2006, is found installed, and that part number is listed as an optional part number in the table in paragraph B.2., “Optional Part Table,” of the Accomplishment Instructions of the service bulletin: No rework is required for that duct assembly only.

#### Parts Installation

(h) As of the effective date of this AD, no person may install an air distribution system, Gasper air system, forward E/E compartment air supply, or instrument panel cooling supply duct assembly with BMS 8–39 polyurethane foam insulation on any airplane.

#### Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, Seattle Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on

any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Issued in Renton, Washington, on June 8, 2007.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E7–11781 Filed 6–18–07; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[REG–128274–03]

RIN 1545–BC22

#### Section 42 Utility Allowance Regulations Update

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

**ACTION:** Notice of proposed rulemaking and notice of public hearing.

**SUMMARY:** This document contains proposed regulations that amend the utility allowances regulations concerning the low-income housing tax credit. The proposed regulations update the utility allowances regulations to provide new options for estimating tenant utility costs. The proposed regulations affect owners of low-income housing projects who claim the credit, the tenants in those low-income housing projects, and the state and local housing credit agencies who administer the credit. This document also provides notice of a public hearing on these proposed regulations.

**DATES:** Written or electronic comments must be received by **September 17, 2007**. Outlines of topics to be discussed at the public hearing scheduled for October 9, 2007, must be received by September 18, 2007.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG–128274–03), room 5203, Internal Revenue Service, P.O. 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–128274–03), Courier’s Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (IRS REG–128274–03). The public hearing will be held in the auditorium, Internal Revenue

Building, 1111 Constitution Avenue, NW., Washington, DC.

#### FOR FURTHER INFORMATION CONTACT:

Concerning the proposed regulations, David Selig, at (202) 622–3040; concerning submissions of comments, the hearing, or to be placed on the building access list to attend the hearing, Richard Hurst, at [Richard.A.Hurst@irscounsel.treas.gov](mailto:Richard.A.Hurst@irscounsel.treas.gov) or (202) 622–7180 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking in § 1.42–10(b)(4)(ii) have previously been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1102.

##### Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) relating to the low-income housing credit under section 42 of the Internal Revenue Code. Section 42(a) provides that, for purposes of section 38, the amount of the low-income housing credit determined under section 42 for any taxable year in the credit period is an amount equal to the applicable percentage of the qualified basis of each qualified low-income building. A qualified low-income building is defined in section 42(c)(2) as any building that is part of a qualified low-income housing project.

A qualified low-income housing project is defined in section 42(g)(1) as any project for residential rental housing if the project meets one of the following tests elected by the taxpayer: (1) At least 20 percent of the residential units in the project are rent-restricted and occupied by individuals whose income is 50 percent or less of area median gross income; or (2) at least 40 percent of the residential units in the project are rent-restricted and occupied by individuals whose income is 60 percent or less of area median gross income. If a taxpayer does not meet the elected test, the project is not eligible for the section 42 credit.

In order to qualify as a rent-restricted unit within the meaning of section 42(g), the gross rent for the unit must not exceed 30 percent of the applicable income limitation. If any utilities are paid directly by the tenant, section 42(g)(2)(B)(ii) requires the inclusion in gross rent of a utility allowance determined by the Secretary, after taking into account the procedures under section 8 of the United States Housing Act of 1937.

Section 1.42–10(b) provides rules for calculating the appropriate utility allowance based upon whether (1) the building receives rental assistance from the Farmers Home Administration (FmHA), now known as the Rural Housing Service; (2) the building has any tenant that receives FmHA rental assistance; (3) the building's rents and utility allowances are reviewed by the Department of Housing and Urban Renewal (HUD) on an annual basis; or (4) the building is not described in (1), (2), or (3) above (other buildings).

Under § 1.42–10(b)(4), other buildings generally use the applicable Public Housing Authority (PHA) utility allowance established for the Section 8 Existing Housing Program or use a local utility company estimate. The local utility company estimate may be obtained by any interested party (including a low-income tenant, a building owner, or a State or local housing credit agency (Agency)).

#### Explanation of Provisions

The IRS and Treasury Department have received comments from organizations representing tenants, non-profit housing organizations, housing credit agencies, building owners, building management companies, developers, and others noting that the existing methods in § 1.42–10 that provide rules for calculating utility expenses often result in flawed information being used for calculating rent adjustments and need updating. These organizations assert that PHA utility schedules referenced by the existing regulations do not represent the proper usage of utilities for low-income housing tax credit units. This is primarily because PHA utility schedules are designed for Section 8 properties, which generally are older buildings with higher utility costs, whereas low-income housing projects require measurements that are appropriate for new construction. Further, a number of project developers, owners, and building managers have indicated that they are unable to obtain local utility estimates due to a lack of data or an unwillingness on the part of utility companies to provide the information. Even if a utility company is willing to provide an initial estimate, annual updates are often difficult to obtain. Therefore, these commentators have recommended that § 1.42–10 be amended to provide more viable and accurate options for estimating tenant utility costs.

In response to these concerns, § 1.42–10(b)(4)(ii) is amended by these proposed regulations to provide additional options for accurately

calculating utility allowances. Section 1.42–10(b)(4)(ii)(B), which permits any interested party to obtain a local utility company estimate for a unit, is revised to accommodate multiple utility services to a property. When charges for electricity transmission and distribution are paid to more than one company, cost estimates must be obtained from each of the utilities when computing the utility allowance.

Section 1.42–10(b)(4)(ii) is amended to permit a building owner to obtain a utility estimate for each unit in a building from the Agency that has jurisdiction over the building. The Agency's estimate must take into account the local utility rate data, property type, climate variables by region in the State, taxes and fees on utility charges, and property building materials and mechanical systems. An Agency may also use actual utility company usage data and rates for the building.

Further, the regulations are proposed to be amended to permit a building owner to calculate utility allowances using the "HUD Utility Schedule Model" that can be found on the Low-Income Housing Tax Credits page at <http://www.huduser.org/datasets/lihtc.html>. The HUD Utility Schedule Model is based on data from the Residential Energy Consumption Survey (RECS) conducted by the Department of Energy. RECS data provides energy consumption by structure for heating, air conditioning, cooking, water heating, and other electric (lighting and refrigeration). The HUD Utility Schedule Model incorporates building location and climate. A building owner who chooses to use the HUD Utility Schedule Model must furnish a copy of the calculations using the HUD Utility Schedule Model to the Agency that has jurisdiction over the building. A building owner also must make available copies of the calculations to the tenants in the building.

Section 1.42–10(c) provides that if the applicable utility allowance for a unit in a building changes, the new utility allowance must be used to compute gross rent of rent-restricted units due 90 days after the change. Commentators requested that this rule be modified to restrict changes to the building's utility allowance until after the building has achieved 90 percent occupancy for a period of 90 consecutive days, or by the end of the first year of the credit period, whichever is earlier. The proposed regulations adopt this comment. Section 1.42–10(c) also is modified to require that a building owner must review at least annually the basis on which utility allowances have been established and

must update the applicable utility allowance. The review must take into account any changes to the building such as any energy conservation measures that affect energy consumption and changes in utility rates.

The IRS and Treasury Department request comments on whether other methods should be used for calculating utility allowances such as energy or water and sewer services using a software model run by a State-certified engineer who is approved by the Agency that has jurisdiction over the building.

#### Proposed Effective Date

The regulations are proposed to apply to taxable years beginning on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

#### 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 Internal Revenue Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

#### Comments and 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. Comments are requested on all aspects of the proposed regulations. In addition, the IRS and Treasury Department specifically request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for October 9, 2007, at 10 a.m. in the auditorium of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 30 minutes before the hearing starts. Due to

building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments by September 17, 2007 and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by September 18, 2007. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

#### Drafting Information

The principal author of these regulations is David Selig, Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS. 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 citation for part 1 continues to read in part as follows:

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

**Par. 2.** Section 1.42–10 is amended by:

1. Revising the first sentence of paragraph (a).
2. Revising paragraphs (b)(1), (b)(2), (b)(3), (b)(4) introductory text and (c).
3. Removing the language “HUD rental assistance” from the first place that it appears in paragraph (b)(4)(i) and adding the language “rental assistance from the Department of Housing and Urban Development” in its place.
4. Adding two sentences at the end of paragraph (b)(4)(ii)(A).
5. Revising the second sentence in paragraph (b)(4)(ii)(B).
6. Adding new paragraphs (b)(4)(ii)(C) and (b)(4)(ii)(D).

The additions and revisions read as follows:

#### § 1.42–10 Utility allowances.

(a) \* \* \* If the cost of any utility (other than telephone or cable television) for a residential rental unit is paid directly by the tenant(s), the gross rent for that unit includes the applicable utility allowance determined under this section. \* \* \*

(b) *Applicable utility allowances*—(1) *Buildings assisted by the Rural Housing Service.* If a building receives assistance from the Rural Housing Service (RHS-assisted building) the applicable utility allowance for all rent-restricted units in the building is the utility allowance determined under the method prescribed by the Rural Housing Service (RHS) for the building.

(2) *Buildings with Rural Housing Service assisted tenants.* If any tenant in a building receives RHS rental assistance payments (RHS tenant assistance), the applicable utility allowance for all rent-restricted units in the building (including any units occupied by tenants receiving rental assistance payments from the Department of Housing and Urban Development (HUD)) is the applicable RHS utility allowance.

(3) *Buildings regulated by the Department of Housing and Urban Development.* If neither a building nor any tenant in the building receives RHS housing assistance, and the rents and utility allowances of the building are reviewed by HUD on an annual basis (HUD-regulated building), the applicable utility allowance for all rent-restricted units in the building is the applicable HUD utility allowance.

(4) *Other buildings.* If a building is neither an RHS-assisted nor a HUD-regulated building, and no tenant in the building receives RHS tenant assistance, the applicable utility allowance for rent-restricted units in the building is determined under the following methods.

- (i) \* \* \*
- (ii) \* \* \* (A) \* \* \* However, if a local utility company estimate is obtained for any unit in the building under paragraph (b)(4)(ii)(B) of this section, a State or local housing credit agency (Agency) provides a building owner with an estimate for any unit in a building under paragraph (b)(4)(ii)(C) of this section, or a cost estimate is calculated using the HUD Utility Schedule Model under paragraph (b)(4)(ii)(D) of this section, then the estimate under paragraph (b)(4)(ii)(B), (C), or (D) of this section becomes the applicable utility allowance for all rent-restricted units of similar size and construction in the building. Paragraphs (b)(4)(ii)(B), (C), and (D) of this section do not apply to units to which the rules

of paragraphs (b)(1), (2), (3), or (4)(i) of this section apply.

(B) \* \* \* The estimate is obtained when the interested party receives, in writing, information from a local utility company (including combined rate charges from multiple utility companies) providing the estimated cost of the utilities provided by that company for a unit of similar size and construction for the geographic area in which the building containing the unit is located.

(C) *Agency estimate.* A building owner may obtain a utility estimate for each unit in the building from the Agency that has jurisdiction over the building provided the Agency agrees to provide the estimate. The estimate is obtained when the building owner receives, in writing, information from the Agency providing the estimated per-unit cost of the utilities for units of similar size and construction for the geographic area in which the building containing the units is located. The Agency estimate may be obtained by a building owner at any time during the building's extended use period (see section 42(h)(6)(D)). Costs incurred in obtaining the estimate are borne by the building owner. In establishing an accurate utility allowance estimate for a particular building, an Agency (or an agent or other private contractor of the Agency) must take into account, among other things, local utility rate data, property type, climate and degree-day variables by region in the state, taxes and fees on utility charges, building materials, and mechanical systems. An Agency may also use actual utility company usage data and rates for the building.

(D) *HUD Utility Schedule Model.* A building owner may calculate a utility estimate using the “HUD Utility Schedule Model” that can found on the Low-Income Housing Tax Credits page at <http://www.huduser.org/datasets/lihtc.html>. A building owner who chooses this method must furnish a copy of the calculations using the HUD Utility Schedule Model to the Agency that has jurisdiction over the building. A building owner also must make available copies of the calculations to the tenants in the building.

(c) *Changes in applicable utility allowance*—(1) *In general.* If at any time during the building's extended use period, the applicable utility allowance for a unit changes, the new utility allowance must be used to compute gross rents of rent-restricted units due 90 days after the change. For example, if rent must be lowered because a local utility company estimate is obtained that shows a higher utility cost than the

otherwise applicable PHA utility allowance, the lower rent must be in effect for rent due more than 90 days after the date of the local utility company estimate. This paragraph (c)(1) does not apply until the building has achieved 90 percent occupancy for a period of 90 consecutive days or by the end of the first year of the credit period, whichever is earlier.

(2) *Annual review.* A building owner must review at least annually the basis on which utility allowances have been established and must update the applicable utility allowance in accordance with paragraph (c)(1) of this section. The review must take into account any changes to the building such as any energy conservation measures that affect energy consumption and changes in utility rates.

**Par. 3.** Section 1.42-12 is amended by adding paragraph (a)(4) to read as follows:

**§ 1.42-12 Effective dates and transitional rules.**

(a) \* \* \*

(4) *Utility allowances.* Section 1.42-10 is applicable to taxable years beginning on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

\* \* \* \* \*

**Kevin M. Brown,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. E7-11731 Filed 6-18-07; 8:45 am]

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**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

[REG-114084-04]

RIN 1545-BD20

**Section 42 Qualified Contract Provisions**

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

**ACTION:** Notice of proposed rulemaking and notice of public hearing.

**SUMMARY:** Section 42(h)(6)(F) requires the Secretary to prescribe such regulations as may be necessary or appropriate to carry out the provisions of section 42(h)(6)(F), including regulations to prevent the manipulation of the qualified contract amount. This document contains proposed regulations that provide guidance

concerning taxpayers' requests to housing credit agencies to obtain a qualified contract (as defined in section 42(h)(6)(F) of the Internal Revenue Code) for the acquisition of a low-income housing credit building. The regulations will affect taxpayers requesting a qualified contract, potential buyers, and low-income housing credit agencies responsible for the administration of the low-income housing credit program. This document also provides notice of a public hearing on these proposed regulations.

**DATES:** Written or electronic comments must be received by September 17, 2007. Outlines of topics to be discussed at the public hearing scheduled for October 15, 2007, must be received by September 13, 2007.

**ADDRESSES:** Send submissions to: Internal Revenue Service, CC:PA:LPD:PR (REG-114084-04), room 5203, 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-114084-04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or may be sent electronically via the Federal eRulemaking Portal at: <http://www.regulations.gov> (IRS REG-114084-04). The public hearing will be held in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Jack Malgeri (202) 622-3040; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Kelly Banks, (202) 622-7180 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

**Paperwork Reduction Act**

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent 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, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of

information should be received by August 20, 2007.

Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collection of information in this proposed regulation is in § 1.42-18(a)(1)(ii)(B). This information is required in order for a taxpayer to provide a written request to a housing credit agency to obtain a qualified contract (as defined in section 42(h)(6)(F) of the Internal Revenue Code) for the acquisition of a low-income housing credit building. The collection of information is voluntary to obtain a benefit. The likely respondents are business or other for-profit institutions.

*Estimated total annual reporting burden:* 20,000 hours.

*Estimated average annual burden hours per respondent:* 1 hour.

*Estimated number of respondents:* 20,000.

*Estimated annual frequency of responses:* One time.

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

Books or records relating to a collection of information must be retained as long as their contents may become 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 26 CFR part 1 under section 42 of the Internal Revenue Code (Code). Section 42 was amended by section 7108(c)(1) of the Omnibus Budget Reconciliation Act