

September 23, 2004 (69 FR 57008) (proposed Special Protection Waters designation), August 22, 2005 (70 FR 48923) (proposed extension through September 30, 2006), and August 21, 2006 (71 FR 48497) (proposed extension through September 30, 2007). The proposed and final versions of the initial designation, approved by Resolution No. 2005–2, and the subsequent extensions approved by Resolutions Nos. 2005–15 (extension through September 30, 2006) and 2006–22 (extension through September 30, 2007) were also published on the Commission's Web site, <http://www.drbc.net>.

Resolution No. 2005–2, temporarily amending the *Water Quality Regulations, Water Code*, and *Comprehensive Plan* of the Commission by designating the Lower Delaware River a Special Protection Water, and Resolutions Nos. 2005–15 and 2006–22, extending the temporary amendment approved by Resolution No. 2005–2, are available on the Commission's Web site at <http://www.drbc.net> or upon request from the Delaware River Basin Commission, P.O. Box 7360, West Trenton, NJ 08628–0360. Maps depicting the designated area are also available on the Web site.

Dated: August 16, 2007.

**Pamela M. Bush,**

*Commission Secretary.*

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## DEPARTMENT OF THE TREASURY

### 26 CFR Part 1

[REG–143397–05]

RIN 1545–BE99

#### Partner's Distributive Share

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

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

**SUMMARY:** This document contains regulations that provide rules concerning the application of sections 704(c)(1)(B) and 737 to distributions of property after two partnerships engage in an assets-over merger. The proposed regulations affect partnerships and their partners. This document also provides a notice of public hearing on these proposed regulations.

**DATES:** Written or electronic comments must be received by November 20, 2007. Outlines of the topic to be discussed at the public hearing scheduled for

December 5, 2007 at 10 a.m. must be received by November 21, 2007.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG–143397–05), 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–143397–05), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG–143397–05). 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, Jason Smyczek or Laura Fields (202) 622–3050, concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Richard Hurst, [Richard.A.Hurst@irscounsel.treas.gov](mailto:Richard.A.Hurst@irscounsel.treas.gov), (202) 622–7180 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 704(c)(1)(B) provides that a partner that contributes section 704(c) property to a partnership must recognize gain or loss on the distribution of such property to another partner within seven years of its contribution to the partnership in an amount equal to the gain or loss that would have been allocated to such partner under section 704(c) if the distributed property had been sold by the partnership to the distributee partner for its fair market value at the time of the distribution.

Section 737(a) provides that a partner that contributes section 704(c) property to the partnership and then receives a distribution of property (other than money) within seven years of its contribution must recognize gain in an amount equal to the lesser of (1) The excess (if any) of (A) the fair market value of property (other than money) received in the distribution over (B) the adjusted basis of the partner's interest in the partnership immediately before the distribution reduced (but not below zero) by the amount of money received in the distribution, or (2) the net pre-contribution gain of the partner.

Section 737(b) provides that for purposes of section 737, the term "net pre-contribution gain" means the net gain (if any) which would have been recognized by the distributee partner under section 704(c)(1)(B) if all property

which (1) Had been contributed to the partnership by the distributee partner within seven years of the distribution, and (2) is held by the partnership immediately before the distribution, had been distributed by the partnership to another partner.

Rev. Rul. 2004–43, 2004–1 CB 842, (see § 601.601(d)(2) of this chapter) issued on April 12, 2004, addressed the application of sections 704(c)(1)(B) and 737 in an assets-over partnership merger described in § 1.708–1(c)(3). Rev. Rul. 2004–43 held that section 704(c)(1)(B) applies to newly created section 704(c) gain or loss in property contributed by the transferor partnership to the transferee partnership in an assets-over partnership merger. The revenue ruling also held that for purposes of section 737(b), net pre-contribution gain includes newly created section 704(c) gain or loss in property contributed by the transferor partnership to the transferee partnership in an assets-over partnership merger. In addition, the revenue ruling held that section 704(c)(1)(B) will not apply to, and, for purposes of section 737, net pre-contribution gain will not include, reverse section 704(c) gain or loss resulting from a revaluation of property of the transferee partnership.

Some commentators argued that Rev. Rul. 2004–43 was not consistent with the existing regulations under sections 704(c)(1)(B) and 737, and that the conclusions contained in the ruling should not be applied retroactively. In response to these comments, the Treasury Department and the IRS issued Notice 2005–15, 2005–7 IRB 527, (see § 601.601(d)(2) of this chapter) indicating their intent to issue regulations under sections 704(c)(1)(B) and 737 implementing the principles of the ruling, and issued Rev. Rul. 2005–10, 2005–7 IRB 492 (see § 601.601(d)(2) of this chapter) officially revoking Rev. Rul. 2004–43. The Notice provided that any such regulations would be effective for distributions made after January 19, 2005.

#### Explanation of Provisions

##### A. Assets-Over Partnership Mergers

These proposed regulations implement the principles articulated in Rev. Rul. 2004–43. The proposed regulations under § 1.704–4(c)(4) and § 1.737–2(b) provide that in an assets-over merger, sections 704(c)(1)(B) and 737 do not apply to the transfer by a partnership (the transferor partnership) of all of its assets and liabilities to another partnership (the transferee partnership), followed by a distribution of the interests in the transferee

partnership in liquidation of the transferor partnership as part of the same plan or arrangement.

The proposed regulations, however, provide that section 704(c)(1)(B) applies to a subsequent distribution by the transferee partnership of section 704(c) property contributed in the assets-over merger by the transferor partnership to the transferee partnership. The proposed regulations also provide that section 737 applies when a partner of the transferor partnership receives a subsequent distribution of property (other than money) from the transferee partnership.

The proposed regulations provide that for property contributed to the transferor partnership (original contribution), the amount of original section 704(c) gain or loss is the difference between the property's fair market value and the contributing partner's adjusted basis at the time of contribution to the extent such difference has not been eliminated by section 704(c) allocations, prior revaluations, or in connection with the merger. In the case of property contributed with original section 704(c) loss, section 704(c)(1)(C) which was added by the American Jobs Creation Act of 2004 provides special rules for determining the basis of the property contributed. The Treasury Department and IRS are currently developing guidance that will implement the provisions of section 704(c)(1)(C). Thus, the proposed regulations do not address the impact of section 704(c)(1)(C) in applying these rules. However, when finalized, these regulations will clarify the application of section 704(c)(1)(C) to these rules.

The proposed regulations provide that the seven year period will not restart with respect to the original section 704(c) gain or loss as a result of the merger. Accordingly, a subsequent distribution by the transferee partnership of property with original section 704(c) gain or loss is subject to sections 704(c)(1)(B) and 737 if the distribution occurs within seven years of the contribution of the property to the transferor partnership (original contribution). However, with respect to new section 704(c) gain or loss, the regulations provide that the seven-year period in sections 704(c)(1)(B) and 737 begins on the date of merger. Thus, a subsequent distribution by the transferee partnership of property with new section 704(c) gain or loss is subject to sections 704(c)(1)(B) and 737 if the distribution occurs within seven years of the merger.

The regulations further provide that no original section 704(c) gain or loss

will be recognized under section 704(c)(1)(B) or section 737 if property that was originally contributed to the transferor partnership is distributed to the original contributor. If property has new section 704(c) gain or loss, then a subsequent distribution of such property within seven years of the merger to one of the former partners of the transferor partnership (former partner) is subject to section 704(c)(1)(B) only to the extent of the other former partners' shares of such gain or loss.

New section 704(c) gain or loss shall be allocated among the partners of the transferor partnership in a manner consistent with the principles of §§ 1.704-3(a)(7) and newly designated 1.704-3(a)(10) (previously § 1.704-3(a)(9)). In addition, the partners of the transferor partnership are deemed to have contributed an undivided interest in the assets of the partnership. The proposed regulations provide that the determination of the partners' undivided interest for this purpose shall be made by the transferor partnership using any reasonable method. The Treasury Department and the IRS request comments on methods that should be considered reasonable for this purpose.

The proposed regulations also provide that if less than all of a section 704(c) property is distributed, then a proportionate amount of original and new section 704(c) gain or loss must be recognized under section 704(c)(1)(B). Similarly, if gain is required to be recognized under section 737, a proportionate amount of original and new section 704(c) gain must be recognized under section 737. Each partner must recognize its respective proportionate share of gain or loss required to be recognized.

The proposed regulations further provide a subsequent merger rule. This rule provides that if the transferee partnership is subsequently merged (a subsequent merger) the new section 704(c) gain or loss that resulted from the original merger shall be subject to section 704(c)(1)(B) for seven years from the time of the original merger and the new section 704(c) gain or loss that resulted from the subsequent merger will be subject to section 704(c)(1)(B) for seven years from the time of the subsequent merger.

In addition, the proposed regulations provide an identical ownership and a de minimis change in ownership exception to sections 704(c)(1)(B) and 737 with regard to assets-over partnership mergers. Under the identical ownership exception, section 704(c)(1)(B) will not apply to, and section 737 net pre-contribution gain will not include,

new section 704(c) gain or loss in any property contributed in an assets-over partnership merger where the ownership of both partnerships is identical. In order for merging partnerships to qualify for the identical ownership exception, each partner must own identical interests in book capital and in each item of income, gain, loss, deductions and credit, and identical shares of distributions and liabilities in each of the transferor and transferee partnerships. Where ownership of both partnerships is identical, the merger more accurately represents a change in form, and should have no substantive tax consequences. The same principles apply where the change in ownership is de minimis. For purposes of the de minimis exception, a difference in ownership is de minimis if ninety seven percent of the interests in book capital, items of income, gain, loss, deduction and credit and share of distributions and liabilities of the transferor partnership and transferee partnership are owned by the same owners in the same proportions.

Proposed regulations under § 1.704-3(c)(4)(iii) provide that taxpayers may distinguish between the original and new portions of section 704(c) gain or loss. The proposed regulations provide that the transferee partnership may continue to use the section 704(c) allocation method adopted by the transferor partnership with respect to original section 704(c) property, or it may adopt another reasonable section 704(c) method. In addition, the transferee partnership may adopt any reasonable section 704(c) method with respect to new section 704(c) gain or loss. With respect to both the original and the new section 704(c) gain or loss, the transferee partnership must use a reasonable method that is consistent with the purpose of sections 704(b) and 704(c).

#### *B. Miscellaneous Provisions*

As part of this proposed regulation, the Treasury Department and the IRS are also making certain regulatory changes to reflect statutory changes that occurred as part of the Taxpayer Relief Act of 1997 (Public Law 105-34). Effective June 8, 1997, Congress lengthened the period of time from five years to seven for accounting for section 704(c) gain or loss with respect to distributions. Consistent with the statutory changes, various provisions in § 1.704-4 and § 1.737-1 have been amended.

#### **Effective Dates**

Except as otherwise provided, these proposed regulations will be effective

for any distributions of property after January 19, 2005, if such property was contributed in an assets-over merger after May 3, 2004. Provisions relating to the change in the regulations in § 1.704-4 and § 1.737-1 from the previous five-year rule to the seven-year rule will be effective August 22, 2007.

### 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 has also 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 regulation does 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 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. The Treasury Department and IRS request comments on the clarity of the proposed rules and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for December 5, 2007, 10 a.m. in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. 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. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. 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 written or electronic comments by November 20, 2007 and an outline of the topics to be discussed and time to be devoted to each topic (a signed original and eight (8) copies) by

November 21, 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 authors of these proposed regulations are Jason Smyczek and Laura Fields, Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and the 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 \* \* \*

Section 1.704-3 also issued under 26 U.S.C. 704. \* \* \*

**Par. 2.** Section 1.704-3 is amended as follows:

1. Paragraphs (a)(9) through (a)(12) are redesignated as paragraphs (a)(10) through (a)(13) respectively.

2. New paragraph (a)(9) is added.

3. Paragraph (f) is amended by revising the paragraph heading and adding one additional sentence at the end of the paragraph.

The revisions and additions read as follows:

### § 1.704-3 Contributed Property.

(a) \* \* \*

(9) *Section 704(c) property transferred in an assets-over merger.* Assets transferred to a transferee partnership from the transferor partnership in an assets-over merger as defined in § 1.708-1(c)(3) (the transferor partnership being the partnership considered to have been terminated under § 1.708-1(c)(1) and the transferee partnership being the partnership considered to be the resulting partnership under § 1.708-1(c)(1)) may have both original section 704(c) gain or loss (see § 1.704-4(c)(4)(ii)(A) for the definition of original section 704(c) gain or loss) and new section 704(c) gain or loss. The transferee partnership may continue to use the section 704(c)

allocation method adopted by the transferor partnership with respect to section 704(c) property originally contributed to the transferor partnership or it may adopt another reasonable section 704(c) method. Also, the transferee partnership may continue to use the section 704(c) allocation method adopted by the transferor partnership with respect to new section 704(c) gain or loss to account for differences between book value and adjusted tax basis as a result of a prior revaluation. In addition, the transferee partnership may adopt any reasonable section 704(c) method with respect to new section 704(c) gain or loss in excess of the amount of new section 704(c) gain or loss described in the prior sentence. With respect to both original and new section 704(c) gain or loss, the transferee partnership must use a reasonable method that is consistent with the purpose of sections 704(b) and 704(c).

\* \* \* \* \*

(f) *Effective/applicability date.* \* \* \* Paragraph (a)(9) is effective for any distribution of property after January 19, 2005, if such property was contributed in a merger using the assets-over form after May 3, 2004.

**Par. 3.** Section 1.704-4 is amended as follows:

1. Paragraph (a)(1) is amended by removing the phrase “five years” and adding in its place the phrase “seven years.”

2. Paragraph (a)(4)(i) is amended by removing the phrase “five-year” and adding in its place “seven-year.”

3. Paragraph (a)(4)(ii) is amended by removing the phrase “five-year” and adding in its place the phrase “seven-year.”

4. Paragraphs (c)(4)(i) and (c)(4)(ii) are added.

5. Paragraph (c)(7) is redesignated as paragraph (c)(8).

6. A new paragraph (c)(7) is added.

7. Paragraphs (f)(2), Examples (1) and (2) are amended by removing the language “five-year” and replacing it with the language “seven-year” wherever it appears throughout both examples.

8. Paragraph (g) is amended by revising the paragraph heading and adding two sentences at the end of the paragraph.

The revisions and additions read as follows:

### § 1.704-4 Distribution of contributed property.

\* \* \* \* \*

(c) \* \* \*

(4) *Complete transfer to another partnership (Assets-Over Merger).*— (i) *In general.* Section 704(c)(1)(B) and this

section do not apply to the transfer in an assets-over merger as defined in § 1.708-1(c)(3) by a partnership (the transferor partnership, which is considered to be the terminated partnership as a result of the merger) of all of its assets and liabilities to another partnership (the transferee partnership, which is considered to be the resulting partnership after the merger), followed by a distribution of the interest in the transferee partnership in liquidation of the transferor partnership as part of the same plan or arrangement.

(ii) *Subsequent distributions.* Except as provided in paragraph (c)(4)(E) below, section 704(c)(1)(B) and this section apply to the subsequent distribution by the transferee partnership of section 704(c) property contributed by the transferor partnership to the transferee partnership in an assets-over merger, as provided in paragraphs (c)(4)(ii)(A) through (D) of this section.

(A) *Original section 704(c) gain or loss.* The seven-year period in section 704(c)(1)(B) does not restart with respect to original section 704(c) gain or loss as a result of the transfer of the section 704(c) property to the transferee partnership. For purposes of this paragraph (c)(4)(ii)(A), the amount of original section 704(c) gain or loss is the difference between the property's fair market value and the contributing partner's adjusted tax basis, at the time of contribution, to the extent such difference has not been eliminated by section 704(c) allocations, prior revaluations, or in connection with the merger. See §§ 1.704-4(a) and (b) for post-merger distributions of property contributed to the transferee partnership prior to the merger. A subsequent distribution by the transferee partnership of property with original section 704(c) gain or loss to a partner other than the partner that contributed such property to the transferor partnership is subject to section 704(c)(1)(B) if the distribution occurs within seven years of the contribution of the property to the transferor partnership. See § 1.704-4(c)(4)(ii)(B) for rules relating to the distribution of property with new section 704(c) gain or loss. See § 1.737-2(b)(1)(ii)(A) for a similar rule in the context of section 737.

(B) *New section 704(c) gain or loss.* A subsequent distribution of property with new section 704(c) gain or loss by the transferee partnership to a partner other than the contributing partner is subject to section 704(c)(1)(B) if the distribution occurs within seven years of the contribution of the property to the transferee partnership by the transferor

partnership. For these purposes, a partner of the transferor partnership is deemed to have contributed to the transferee partnership an undivided interest in the property of the transferor partnership. The determination of the partners' undivided interest for this purpose shall be determined by the transferor partnership using any reasonable method. New section 704(c) gain or loss shall be allocated among the partners of the transferor partnership in a manner consistent with the principles of §§ 1.704-3(a)(7) and 1.704-3(a)(10). See § 1.737-2(d)(4) for a similar rule in the context of section 737.

(C) *Ordering Rule.*— (1) *Post-merger partial recognition.* For purposes of this section, if less than all of a section 704(c) property is distributed, then a proportionate amount of original and new section 704(c) gain or loss must be recognized.

(2) *Post-merger revaluation.* Revaluations after a merger that reflect a reduction in the amount of built-in gain or loss inherent in property will reduce new section 704(c) gain or loss prior to reducing original section 704(c) gain or loss.

(D) *Subsequent Mergers.* If the transferee partnership (first transferee partnership) is subsequently merged into another partnership (new transferee partnership) the new section 704(c) gain or loss that resulted from the merger of the transferor partnership into the first transferee partnership shall be subject to section 704(c)(1)(B) for seven years from the time of the contribution by the transferor partnership to the first transferee partnership (original merger) and new section 704(c) gain or loss that resulted from the merger of the first transferee into the new transferee (subsequent merger) shall be subject to section 704(c)(1)(B) for seven years from the time of the subsequent merger. See § 1.737-2(b)(1)(ii)(D) for a similar rule in the context of section 737.

(E) *Identical Ownership or De Minimis Change in Ownership Exception.* Section 704(c)(1)(B) and this section do not apply to new section 704(c) gain or loss in property transferred by the transferor partnership to the transferee partnership if both the transferor partnership and the transferee partnership are owned by the same owners in the same proportions or the difference in ownership is *de minimis*. The transferor partnership and the transferee partnership are owned by the same owners in the same proportions if each partner owns identical interests in book capital and in each item of income, gain, loss, deduction, and credit, and identical shares of distributions and liabilities in each of the transferor and

transferee partnerships. A difference in ownership is *de minimis* if ninety seven percent of the interests in book capital and in each item of income, gain, loss, deduction and credit and shares of distributions, and liabilities of the transferor partnership and transferee partnership are owned by the same owners in the same proportions.

(F) *Examples.* The following examples illustrate the rules of paragraph (c)(4)(ii) of this section.

*Example (1).* New section 704(c) gain. (i) *Facts.* On January 1, 2005, A contributes Asset 1, with a basis of \$200x and a fair market value of \$300x, to partnership PRS1 in exchange for a 50 percent interest. On the same date, B contributes \$300x of cash to PRS1 in exchange for a 50 percent interest. Also on January 1, 2005, C contributes Asset 2, with a basis of \$100x and a fair market value of \$200x, to partnership PRS2 in exchange for a 50 percent interest. D contributes \$200x of cash to PRS2 in exchange for a 50 percent interest. On January 1, 2008, PRS1 and PRS2 undertake an assets-over partnership merger in which PRS1 is the continuing partnership and PRS2 is the terminating partnership for both state law and federal tax purposes. At the time of the merger, PRS1's only assets are Asset 1, with a fair market value of \$900x, and \$300x in cash. PRS2's only assets are Asset 2, with a fair market value of \$600x, and \$200x in cash. After the merger, the partners have book capital and profits interests in PRS1 as follows: A, 30 percent; B, 30 percent; C, 20 percent; and D, 20 percent. PRS1 and PRS2 both have provisions in their respective partnership agreements requiring the revaluation of partnership property upon entry of a new partner. PRS1 would not be treated as an investment company (within the meaning of section 351) if it were incorporated. Neither partnership holds any unrealized receivables or inventory for purposes of section 751. In addition, neither partnership has a section 754 election in place. Asset 1 and Asset 2 are nondepreciable capital assets. On January 1, 2013, PRS1 has the same assets that it had after the merger. Each asset has the same value that it had at the time of the merger. On this date, PRS1 distributes Asset 2 to A in liquidation of A's interest.

(ii) *Analysis.* On the date of the merger of PRS2 into PRS1, the fair market value of Asset 2 (\$600x) exceeded its adjusted tax basis (\$100x). Thus, pursuant to § 1.704-4(c)(4)(ii)(A), when Asset 2 was contributed to PRS1 in the merger, it was section 704(c) gain property. The total amount of the section 704(c) gain was \$500x (\$600x (fair market value) - \$100x (adjusted basis)). The amount of original section 704(c) gain attributable to Asset 2 equals \$100x, the difference between its fair market value (\$200x) and adjusted tax basis (\$100x) upon contribution to PRS2 by C. The amount of new section 704(c) gain attributable to Asset 2 equals \$400x, the total amount of section 704(c) gain (\$500x) less the amount of the original section 704(c) gain (\$100x). The distribution of Asset 2 to A occurs more than seven years after the contribution by C of

Asset 2 to PRS2. Therefore, pursuant to § 1.704-4(c)(4)(ii)(A), section 704(c)(1)(B) does not apply to the \$100x of original section 704(c) gain. The distribution of Asset 2 to A, however, occurs within seven years of the contribution in the merger of Asset 2 to PRS1 by PRS2. Pursuant to § 1.704-4(c)(4)(ii)(B), section 704(c)(1)(B) applies to the new section 704(c) gain. As the transferees of PRS2's partnership interest in PRS1, C and D succeed to one-half of the \$400x of the new section 704(c) gain created by the merger. Thus, as a result of the distribution of Asset 2 to A within seven years of the merger, C and D are required to recognize \$200x of gain each. See § 1.737-2(b)(1)(ii)(F), *Example (1)* for analysis of a similar example under section 737.

*Example (2).* Revaluation gain and merger gain. (i) *Facts.* The facts are the same as *Example (1)*, except that during 2005, PRS2 admitted E as a new partner in PRS2 at a time when the fair market value of Asset 2 was \$300x and PRS2's only other asset was cash of \$200x. In exchange for a contribution of cash of \$250x, E was admitted as a one-third partner in PRS2. In accordance with the terms of PRS2's partnership agreement, the partnership revalued its assets pursuant to § 1.704-1(b)(2)(iv)(f) upon admission of E so that the unrealized gain of \$100x attributable to Asset 2 was allocated equally between C and D, or \$50x each. On January 1, 2008, PRS2 merges into PRS1. At the time of the merger, PRS1's only assets are Asset 1, with a fair market value of \$550x, and \$300x in cash. PRS2's only assets are Asset 2, with a fair market value of \$400x, and \$450x in cash. After the merger, the partners have book capital and profits and loss interests in PRS1 as follows: A, 25%; B, 25%; C, 16.67%; D, 16.67% and E, 16.67%. On January 1, 2011, Asset 2 is distributed to A when its value is still \$400x.

(ii) *Analysis.* On the date of the merger of PRS2 into PRS1, the fair market value of Asset 2 (\$400x) exceeded its adjusted tax basis (\$100x). Thus, when Asset 2 was contributed to PRS1 in the merger, it was section 704(c) gain property. The total amount of the section 704(c) gain was \$300x (\$400x (fair market value) - \$100x (adjusted basis)). The amount of the original section 704(c) gain attributable to Asset 2 equals \$100x, the difference between its fair market value of \$200x and adjusted tax basis \$100x upon contribution to PRS2 by C. The amount of the new section 704(c) gain attributable to Asset 2 equals \$200x, the total section 704(c) gain (\$300x) less the amount of the original section 704(c) gain (\$100x). The distribution of Asset 2 to A occurs within seven years after the contribution by C to PRS2. Therefore, pursuant to § 1.704-4(c)(4)(ii)(A), section 704(c)(1)(B) applies to the original section 704(c) gain. The distribution of Asset 2 to A also occurs within seven years of the contribution of Asset 2 to PRS1 by PRS2. Pursuant to § 1.704-4(c)(4)(ii)(B), section 704(c)(1)(B) applies to the new section 704(c) gain. As the transferees of PRS2's partnership interest in PRS1, C and D each succeed to \$50x of new section 704(c) gain as a result of the revaluation of Asset 2 upon admission of E as a partner. Moreover, C, D and E each succeed to \$33.33x of new section 704(c) gain

as a result of the merger. C also has \$100 of original section 704(c) gain as a result of the original contribution of Asset 2 to PRS2. Thus, as a result of the distribution of Asset 2 to A within seven years of the merger, C, D and E are each required to recognize gain. C will recognize a total of \$183.33x of gain (\$100x of original section 704(c) gain and \$83.33x of new section 704(c) gain). D will recognize a total of \$83.33x of gain (all new section 704(c) gain) and E will recognize \$33.33x of gain (all new section 704(c) gain). See § 1.737-2(b)(1)(ii)(F), *Example (2)* for a similar example under section 737.

*Example (3).* Revaluation loss and merger gain. (i) *Facts.* The facts are the same as *Example (1)* except that during 2005, PRS2 admitted E as a new partner in PRS2 at a time when the fair market value of Asset 2 was \$150x and PRS2's only other asset was cash of \$200x. In exchange for a contribution of cash of \$175x, E was admitted as a one-third partner in PRS2. In accordance with the terms of PRS2's partnership agreement, the partnership revalued its assets upon admission of E so that the unrealized loss of \$50x attributable to Asset 2 was allocated equally between C and D, or \$25x each. On January 1, 2008, PRS2 merges into PRS1. At the time of the merger, PRS1's only assets are Asset 1, with a fair market value of \$900x, and \$300x in cash. PRS2's only assets are Asset 2, with a fair market value of \$600x, and \$375x in cash. After the merger, the partners have book capital and profits and loss interests in PRS1 as follows: A, 27.5%; B, 27.5%; C, 15%; D, 15% and E, 15%. On January 1, 2013, Asset 2 is distributed to A when its value is still \$600.

(ii) *Analysis.* On the date of the merger of PRS2 into PRS1, the fair market value of Asset 2 (\$600x) exceeded its adjusted tax basis (\$100x). Thus, when Asset 2 was contributed to PRS1 in the merger, it was section 704(c) gain property. The total amount of the section 704(c) gain was \$500x (\$600x (fair market value) - 100x (adjusted basis)). The amount of the original section 704(c) gain attributable to Asset 2 equals \$50x, the difference between its fair market value (\$200x) and adjusted tax basis (\$100x) upon contribution to PRS2 by C, less the unrealized loss (\$50x) attributable to the revaluation of PRS2 on the admission of E as a partner in PRS2. The amount of the new section 704(c) gain attributable to Asset 2 equals \$450x, the total section 704(c) gain (\$500x) less the amount of the original section 704(c) gain (\$50x). The distribution of Asset 2 to A occurs more than seven years after the contribution by C to PRS2. Therefore, pursuant to § 1.704-4(c)(4)(ii)(A), section 704(c)(1)(B) does not apply to the original section 704(c) gain. The distribution of Asset 2 to A, however, occurs within seven years of the contribution of Asset 2 to PRS1 and PRS2. Pursuant to § 1.704-4(c)(4)(ii)(B), section 704(c)(1)(B) applies to the new section 704(c) gain. As the transferees of PRS2's partnership interest in PRS1, C, D and E each succeed to \$150 of new section 704(c) gain. Thus, as a result of the distribution of Asset 2 to A within seven years of the merger, C, D and E are each required to recognize \$150 of gain.

*Example (4).* Reverse section 704(c) gain. (i) *Facts.* The facts are the same as *Example*

(1), except that on January 1, 2013, PRS1 distributes Asset 1 to C in liquidation of C's interest in PRS1.

(ii) *Analysis.* The distribution of Asset 1 to C occurs more than seven years after the contribution of Asset 1 to PRS1. Thus, pursuant to § 1.704-4(c)(4)(ii)(A), section 704(c)(1)(B) does not apply to the original section 704(c) gain. Pursuant to § 1.704-4(c)(7), section 704(c)(1)(B) does not apply to reverse section 704(c) gain in Asset 1 resulting from a revaluation of PRS1's partnership property at the time of the merger. Accordingly, neither A nor B will recognize gain under section 704(c)(1)(B) as a result of the distribution of Asset 1 to C. See § 1.737-2(b)(1)(ii)(F), *Example (4)* for a similar example under section 737.

*Example (5).* Identical ownership exception. (i) *Facts.* In 1990, A, an individual, and B, a subchapter C corporation, formed PRS1, a partnership. A owned 75 percent of the interests in the book capital (as determined for purposes of § 1.704-1(b)(2)(iv)), profits, losses, distributions, and liabilities (under section 752) of PRS1. B owned the remaining 25 percent interest in the book capital, profits, losses, distributions, and liabilities of PRS1. In the same year, A and B also formed another partnership, PRS2, with A owning 75 percent of the interests in the book capital, profits, losses, distributions, and liabilities of PRS2 and B owning the remaining 25 percent of the book capital, profits, losses, distributions, and liabilities. Upon formation of the partnerships, A contributed the Asset X to PRS1 and Asset Y to PRS2 and B contributed cash. Both Assets X and Y had section 704(c) built-in gain at the time of contribution to the partnerships.

(ii) In January 2005, PRS1 is merged into PRS2 in an assets-over merger in which PRS1 is the terminating partnership and PRS2 as the continuing partnership for both state law and federal income tax purposes. At the time of the merger, both Asset X and Y had increased in value from the time they were contributed to PRS1 and PRS2, respectively. As a result, a new layer of section 704(c) gain was created with respect to Asset X in PRS1, and reverse section 704(c) gain was created with respect to Asset Y in PRS2. After the merger, A had a 75 percent interest in PRS2's capital, profits, losses, distributions, liabilities, and all other items. B held the remaining 25 percent interest in PRS2's capital, profits, losses, distributions, liabilities, and all other items. In 2006, PRS2 distributes all of Asset X to A.

(iii) *Analysis.* The 2006 distribution of Asset X occurs more than seven years after the formation of the partnerships and the original contribution of both Assets X and Y to the partnerships. Therefore, the original layer of built-in gain created on the original contribution of Asset X to PRS1 is not taken into account in applying section 704(c)(1)(B) to the proposed distribution. In addition, paragraph (c)(4)(ii)(E) of this section provides that section 704(c)(1)(B) and paragraph (c)(4)(ii)(B) of this section do not apply to new section 704(c) gain or loss in property transferred by the transferor partnership to the transferee partnership if both the transferor partnership and the transferee

partnership are owned by the same owners in the same proportions. The transferor partnership and the transferee partnership are owned by the same owners in the same proportions if each partner's percentage interest in the transferor partnership's book capital, profits, losses, distributions, and liabilities, is the same as the partner's percentage interest in those items of the transferee partnership. In this case, A owned 75 percent and B owned 25 percent of the interests in the book capital, and in each item of income, gain, loss and credit, and share of distributions and liabilities of PRS1 and PRS2 prior to the merger and 75 percent and 25 percent, respectively, of PRS2 after the merger. As a result, the requirements of the identical ownership exception of paragraph (c)(4)(ii)(E) of this section are satisfied. Thus, the new built-in gain created upon contribution of Asset X in connection with the partnership merger will not be taken into account in applying section 704(c)(1)(B) to the proposed distribution. See § 1.737-2(b)(1)(ii)(F), *Example (5)* for a similar example under section 737.

\* \* \* \* \*

(7) *Reverse section 704(c) gain or loss.* Section 704(c)(1)(B) and this section do not apply to reverse section 704(c) gain or loss as described in § 1.704-3(a)(6)(i).

\* \* \* \* \*

(g) *Effective/applicability date.* \* \* \* Paragraphs (a)(1), (a)(4)(i), (a)(4)(ii), and (f)(2), *Examples (1) and (2)* are effective August 22, 2007. Paragraphs (c)(4)(i), (c)(4)(ii), (c)(4)(ii)(A), (c)(4)(ii)(B), (c)(4)(ii)(C), (c)(4)(ii)(D), (c)(4)(ii)(E), (c)(4)(ii)(F), and (c)(7) are effective for any distributions of property after January 19, 2005, if such property was contributed in a merger using the assets-over form after May 3, 2004.

**Par. 4.** Section 1.737-1(c)(1) is amended by removing the phrase "five years" and adding in its place the phrase "seven years".

**Par. 5.** Section 1.737-2 is amended as follows:

1. Paragraph (b) is revised.
2. Paragraph (f) is added.

The additions and revisions read as follows:

**§ 1.737-2 Exceptions and special rules.**

\* \* \* \* \*

(b) *Transfers to another partnership.*—(1) *Complete transfer to another partnership (Assets-over merger).*—(i) *In General.* Section 737 and this section do not apply to a transfer in an assets-over merger as defined in § 1.708-1(c)(3) by a partnership (the transferor partnership, which is considered to be the terminated partnership as a result of the merger) of all of its assets and liabilities to another partnership (the transferee partnership, which is considered to be the resulting partnership after the merger) followed by a distribution of the

interest in the transferee partnership in liquidation of the transferor partnership as part of the same plan or arrangement.

(ii) *Subsequent distributions.*—(A) *Original section 704(c) gain.* If, immediately before the assets-over merger, the transferor partnership holds property that has original built-in gain (as defined in § 1.704-4(c)(4)(ii)(A)), the seven year period in section 737(b) does not restart with respect to such gain as a result of the transfer of such section 704(c) property to the transferee partnership. A subsequent distribution of other property by the transferee partnership to the partner who contributed the original section 704(c) gain property to the transferor partnership is only subject to section 737 with respect to the original section 704(c) gain if the distribution occurs within seven years of the time such property was contributed to the transferor partnership. See § 1.704-4(c)(4)(ii)(A) for a similar provision in the context of section 704. See § 1.737-1 for post-merger distribution of property contributed to the transferee partnership prior to the merger.

(B) *New section 704(c) gain.* Except as provided in paragraph (b)(1)(ii)(E) of this section, if new built-in gain is created upon the contribution of assets by the transferor partnership to the transferee partnership, a subsequent distribution by the transferee partnership of property to a partner of the transferee partnership (other than property deemed contributed by such partner) is subject to section 737, if such distribution occurs within seven years of the contribution by the transferor partnership to the transferee partnership. For these purposes, a partner of the transferor partnership is deemed to have contributed to the transferee partnership an undivided interest in the property of the transferor partnership. The determination of the partner's undivided interest for this purpose shall be determined by the transferor partnership using any reasonable method. See § 1.704-4(c)(4)(ii)(B) for a similar provision in the context of section 704.

(C) *Ordering Rule.* For purposes of this section, if a partner is required to recognize gain under this section, the partner shall recognize a proportionate amount of original and new section 704(c) gain.

(D) *Subsequent Mergers.* If the transferee partnership (first transferee partnership) is subsequently merged into another partnership (new transferee partnership) the section 704(c) gain that resulted from the merger of the transferor partnership into the first transferee partnership shall be subject to

section 737 for seven years from the time of the contribution by the transferor partnership to the first transferee partnership (original merger) and section 704(c) gain that resulted from the merger of the first transferee partnership into the new transferee partnership shall be subject to section 737 for seven years from the time of the contribution by the first transferee partnership to the new transferee partnership (subsequent merger). See § 1.704-4(c)(4)(ii)(D) for a similar rule in the context of section 704.

(E) *Identical Ownership or De Minimis Change in Ownership.*

For purposes of section 737(b) and this section, net precontribution gain does not include new section 704(c) gain in property transferred by the transferor partnership to the transferee partnership if both the transferor partnership and the transferee partnership are owned by the same owners in the same proportions or if the difference in ownership is de minimis. The transferor partnership and the transferee partnership are owned by the same owners in the same proportions if each partner owns identical interests in book capital and each item of income, gain, loss, deduction, and credit, and identical shares of distributions and liabilities in each of the transferor and transferee partnerships. A difference in ownership is de minimis if ninety-seven percent of interests in book capital and each item of income, gain, loss, deduction and credit and shares in distributions and liabilities of the transferor partnership and transferee partnership are owned by the same owners in the same proportions. See § 1.704-4(c)(4)(ii)(E) for a similar provision in the context of section 704.

(F) *Examples.* The following examples illustrate the rules of paragraph (b)(3) of this section.

*Example (1).* No net precontribution gain. (i) *Facts.* On January 1, 2005, A contributes Asset 1, with a basis of \$200x and a fair market value of \$300x, to partnership PRS1 in exchange for a 50 percent interest. On the same date, B contributes \$300x of cash to PRS1 in exchange for a 50 percent interest. Also on January 1, 2005, C contributes Asset 2, with a basis of \$100x and a fair market value of \$200x, to partnership PRS2 in exchange for a 50 percent interest. D contributes \$200x of cash to PRS2 in exchange for a 50 percent interest. On January 1, 2008, PRS1 and PRS2 undertake an assets-over partnership merger in which PRS1 is the continuing partnership and PRS2 is the terminating partnership for both state law and federal tax purposes. At the time of the merger, PRS1's only assets are Asset 1, with a fair market value of \$900x, and \$300x in cash. PRS2's only assets are Asset 2, with a fair market value of \$600x and \$200x in

cash. After the merger, the partners have capital and profits interests in PRS1 as follows: A, 30 percent; B, 30 percent; C, 20 percent; and D, 20 percent. PRS1 and PRS2 both have provisions in their respective partnership agreements requiring the revaluation of partnership property upon entry of a new partner. PRS1 would not be treated as an investment company (within the meaning of section 351) if it were incorporated. Neither partnership holds any unrealized receivables or inventory for purposes of section 751. In addition, neither partnership has a section 754 election in place. Asset 1 and Asset 2 are nondepreciable capital assets. On January 1, 2013, PRS1 has the same assets that it had after the merger. Each asset has the same value that it had at the time of the merger. On this date, PRS1 distributes Asset 2 to A in liquidation of A's interest.

(ii) *Analysis.* Section 737(a) requires A to recognize gain when it receives a distribution of property in an amount equal to the lesser of the excess distribution or the partner's net precontribution gain. The distribution of Asset 2 to A results in an excess distribution of \$400x (\$600x fair market value of Asset 2 – \$200x adjusted basis in A's partnership interest). However, the distribution of Asset 2 to A occurs more than seven years after the contribution by A of Asset 1 to PRS1 and A made no subsequent contributions to PRS1. Therefore, A's net precontribution gain for purposes of section 737(b) at the time of the distribution is zero. The \$600x of reverse section 704(c) gain in Asset 1, resulting from a revaluation of PRS1's partnership property at the time of the merger, is not net precontribution gain (see § 1.737-2(e)). Accordingly, A will not recognize gain under section 737 as a result of the distribution of Asset 2. See § 1.704-4(c)(4)(ii)(F), *Example (1)* for a similar example under section 704.

*Example (2).* Revaluation gain and merger gain. (i) *Facts.* The facts are the same as *Example (1)*, except that on January 1, 2007, E joins PRS2 as a one-third partner for \$250x in cash. At the time E joins the partnership, Asset 2 has a fair market value of \$300x. On January 1, 2008, PRS2 merges into PRS1. At the time of the merger, Asset 1 and Asset 2 both have a fair market value of \$400x. On January 1, 2011, Asset 1 is distributed to C when its value is \$275x.

(ii) *Analysis.* Section 737(a) requires A to recognize gain when it receives a distribution of property in an amount equal to the lesser of the excess distribution or the partner's net precontribution gain. The distribution of Asset 1 to C results in an excess distribution of \$175x (\$275x fair market value of Asset 1 – \$100x adjusted basis in C's partnership interest). The distribution of Asset 1 to C occurs within seven years of the original contribution of Asset 2 by C to PRS2. Therefore, C's net precontribution gain at the time of the distribution is \$183.33x, which includes C's original section 704(c) gain from the contribution of Asset 2 to PRS2 of \$100x plus C's share of new section 704(c) gain of \$83.33x (\$50x of reverse section 704(c) gain upon the admission of E, plus \$33.33x of additional section 704(c) gain upon merger). C's excess distribution is less than C's net precontribution gain. Thus, C will recognize

\$175x of gain upon receipt of Asset 1 in accordance with section 737(a). See § 1.704-4(c)(4)(ii)(F), *Example (2)* for a similar example under section 704.

*Example (3).* Fluctuations in the value of an asset. (i) *Facts.* The facts are the same as *Example (1)*, except that on January 1, 2011, Asset 1 is distributed to C when its fair market value is \$300x. Immediately prior to the distribution, PRS1 revalues its property in accordance with § 1.704-1(b)(2)(iv)(f).

(ii) *Analysis.* The distribution of Asset 1 to C occurs within seven years of the original contribution of Asset 2 by C to PRS2 and within seven years of the date of the merger. Therefore, C's net precontribution gain at the time of the distribution equals \$300x (\$100x of original section 704(c) gain from the contribution of Asset 2 to PRS2 and \$200x of new section 704(c) gain). The distribution of Asset 1 to C results in an excess distribution of \$200x (\$300x fair market value of Asset 1 – \$100x adjusted basis in C's partnership interest). Accordingly, in accordance with section 737(a), C will recognize gain of \$200x upon receipt of Asset 1.

*Example (4).* Reverse section 704(c) gain.

(i) *Facts.* The facts are the same as *Example (1)*, except that on January 1, 2011, PRS1 distributes Asset 2 to A in liquidation of A's interest in PRS1. At the time of the distribution, Asset 2 has a value of \$600x.

(ii) *Analysis.* Section 737(a) requires A to recognize gain when it receives a distribution of property in an amount equal to the lesser of the excess distribution or the partner's net precontribution gain. The distribution of Asset 2 to A results in an excess distribution of \$400x (\$600x fair market value – \$200x adjusted basis in A's partnership interest). The distribution of Asset 2 to A occurs within seven years after the contribution of Asset 1 to PRS1 by A. Thus, A's net precontribution gain for purposes of section 737(b) at the time of the distribution is \$100x (A's original section 704(c) gain from the contribution of Asset 1 to PRS1). Under § 1.737-2(e), A's net precontribution gain does not include A's reverse section 704(c) gain upon the revaluation of the Assets of PRS1 prior to the merger. Accordingly, A will recognize \$100x of gain (the lesser of the excess distribution or net precontribution gain) under section 737 as a result of the distribution of Asset 2. See § 1.704-4(c)(4)(ii)(F), *Example (4)* for a similar example under section 704.

*Example (5).* Identical ownership exception. (i) *Facts.* In 1990, A, an individual, and B, a subchapter C corporation, formed PRS1, a partnership. A owned 75 percent of the interests in the book capital, profits, losses, distributions, and liabilities of PRS1. B owned the remaining 25 percent interest in the book capital, profits, losses, distributions, and liabilities of PRS1. In the same year, A and B also formed another partnership, PRS2, with A owning 75 percent of the interests in PRS2 and B owning the remaining 25 percent. Upon formation of the partnerships, A contributed Asset X to PRS1 and Asset Y to PRS2 and B contributed cash. Both Assets X and Y had section 704(c) built-in gain at the time of contribution to the partnerships.

(ii) In January 2005, PRS1 is merged into PRS2 in an assets-over merger in which PRS1

is the terminating partnership and PRS2 is the continuing partnership for both state law and federal income tax purposes. At the time of the merger, both Assets X and Y had increased in value from the time they were contributed to PRS1 and PRS2, respectively. As a result, a new layer of section 704(c) gain was created with respect to Asset X in PRS1. After the merger, A had a 75 percent interest in PRS2's book capital, profits, losses, distributions, and liabilities. B held the remaining 25 percent interest in PRS2's book capital, profits, losses, distributions, and liabilities. In 2006, PRS2 distributes all of Asset X to A.

(iii) *Analysis.* The 2006 distribution by PRS2 occurs more than seven years after the formation of the partnerships and the original contribution of Asset X to the partnerships. Therefore, the original layer of built-in gain created on the original contribution of Asset X to the partnerships should not be taken into account in applying section 737 to the proposed liquidation. In addition, paragraph (b)(1)(ii)(E) of this section provides that section 737(a) does not apply to newly created section 704(c) gain in property transferred by the transferor partnership to the transferee partnership if both the transferor partnership and the transferee partnership are owned by the same owners in the same proportions. The transferor partnership and the transferee partnership are owned by the same owners in the same proportions if each partner's percentage interest in the transferor partnership's book capital, profits, losses, distributions, and liabilities is the same as the partner's percentage interest in those items of the transferee partnership. In this case, A owned 75 percent and B owned 25 percent of the interests in the book capital, profits, losses, distributions, and liabilities of PRS1 and PRS2 prior to the merger and 75 percent and 25 percent, respectively, of PRS2 after the merger. As a result, the requirements of the identical ownership exception of paragraph (b)(1)(ii)(E) of this section are satisfied. Thus, the new built-in gain created upon contribution of Asset X in connection with the partnership merger will not be taken into account in applying section 737 to the proposed distribution. See § 1.704-4(c)(4)(ii)(F), *Example (5)* for a similar example under section 704.

(2) *Certain divisive transactions.*—(i) *In general.* Section 737 and this section do not apply to a transfer by a partnership (transferor partnership) of all of the section 704(c) property contributed by a partner to a second partnership (transferee partnership) in an exchange described in section 721, followed by a distribution as part of the same plan or arrangement of an interest in the transferee partnership (and no other property) in complete liquidation of the interest of the partner that originally contributed the section 704(c) property to the transferor partnership (divisive transactions).

(ii) *Subsequent distributions.* After a divisive transaction referred to in paragraph (b)(2)(i) of this section, a

subsequent distribution of property by the transferee partnership to a partner of the transferee partnership that was formerly a partner of the transferor partnership is subject to section 737 to the same extent that a distribution from the transferor partnership would have been subject to section 737.

\* \* \* \* \*

(f) *Reverse section 704(c) gain.* For purposes of section 737(b), net pre-contribution gain does not include reverse section 704(c) gain as described in § 1.704-3(a)(6)(i).

**Par. 6.** Section 1.737-5 is amended by revising the section heading and adding two additional sentences at the end of the paragraph to read as follows:

**§ 1.737-5 Effective/applicability date.**

\* \* \* Section 1.737-1(c) is effective as of August 22, 2007. Section 1.737-2(b)(1) is effective for any distribution of property after January 19, 2005, if such property was contributed in a merger using the assets-over form after May 3, 2004.

**Kevin M. Brown,**

*Deputy Commissioner for Service and Enforcement.*

[FR Doc. E7-16189 Filed 8-21-07; 8:45 am]

BILLING CODE 4830-01-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2004-SC-0004-200706 (b); FRL-8457-1]

#### Approval and Promulgation of Implementation Plans South Carolina: Revisions to Ambient Air Quality Standards

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve the State Implementation Plan (SIP) revisions submitted by the South Carolina Department of Health and Environmental Control (SC DHEC) on November 19, 2004, for the purpose of incorporating EPA's July 18, 1997, revisions to the National Ambient Air Quality Standards and to ensure consistency between state and Federal regulations. The proposed revisions consist of the amendments published in the South Carolina State Register on September 24, 2004, revising Regulation 61-62.5, Standard Number 2, Ambient Air Quality Standards. In the Final Rules Section of this **Federal Register**, EPA is approving the State's SIP

revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

**DATES:** Written comments must be received on or before September 21, 2007.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2004-SC-0004, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail:* ward.nacosta@epa.gov.
3. *Fax:* 404-562-9019.
4. *Mail:* "EPA-R04-OAR-2004-SC-0004", Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960.
5. *Hand Delivery or Courier.* Deliver your comments to: Nacosta C. Ward, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

**FOR FURTHER INFORMATION CONTACT:**

Nacosta C. Ward, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9140. Ms. Ward can also be reached via electronic mail at ward.nacosta@epa.gov.

**SUPPLEMENTARY INFORMATION:** For additional information see the direct final rule which is published in the Rules Section of this **Federal Register**.

Dated: July 31, 2007.

**J.I. Palmer, Jr.,**

*Regional Administrator, Region 4.*

[FR Doc. E7-16315 Filed 8-21-07; 8:45 am]

BILLING CODE 6560-50-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 2 and 25

[IB Docket No. 06-123; FCC 07-76]

#### Establishment of Policies and Service Rules for the Broadcasting-Satellite Service

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rules.

**SUMMARY:** The Federal Communications Commission initiates a Further Notice of Proposed Rulemaking (FNPRM) to address technical issues related to potential interference unique to the "reverse band" operating environment in the 17/24 GHz BSS. In the *NPRM* in this proceeding, the Commission sought comment on what measures were needed to address issues concerning reverse band operations. These included measures to mitigate against space-path interference between DBS and 17/24 GHz BSS satellites (space-path interference) and to protect 17/24 GHz BSS subscribers from DBS feeder links (ground-path interference). The record on these issues is insufficient to develop requirements. While most commenters advocate certain general approaches, we need more information to build on the generalities and derive specific requirements. Thus, we seek further comment on the issues concerning reverse band operations.

**DATES:** Comments are due on or before November 5, 2007 and reply comments are due on or before December 5, 2007. Public and agency comments on the Initial Paperwork Reduction Act of 1995 (IFRA) analysis are due October 22, 2007.

**ADDRESSES:** You may submit comments, identified by IB Docket No. 06-123, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site:* <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.