

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 205

[Doc. AMS–NOP–10–0048; NOP–10–05]

#### National Organic Program: Notice of Final Guidance for Accredited Certifying Agents and Certified Operations

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice of availability of final guidance.

**SUMMARY:** The National Organic Program (NOP) is announcing the availability of four final guidance documents intended for use by accredited certifying agents and certified operations. The four final guidance documents are entitled as follows: “Compost and Vermicompost in Organic Crop Production (NOP 5021); Wild Crop Harvesting (NOP 5022); “Commingling and Contamination Prevention in Organic Production and Handling (NOP 5025);” and “The Use of Chlorine Materials in Organic Production and Handling (NOP 5026)”. These final guidance documents are intended to inform the public of NOP’s current thinking on these topics. These final guidance documents are now available from the NOP through “The Program Handbook: Guidance and Instructions for Accredited Certifying Agents (ACAs) and Certified Operations”. The current edition of the Program Handbook is available online at <http://www.ams.usda.gov/NopProgramHandbook>, or in print upon request.

**DATES:** The final guidance documents announced by this notice are effective on May 9, 2011.

**FOR FURTHER INFORMATION CONTACT:** Melissa Bailey, Ph.D., Director, Standards Division, National Organic

Program, USDA–AMS–NOP, 1400 Independence Ave., SW., Room 2646–So., Ag Stop 0268, Washington, DC 20250, *E-mail:* [Melissa.bailey@ams.usda.gov](mailto:Melissa.bailey@ams.usda.gov); *Telephone:* (202) 720–3252; *Fax:* (202) 205–7808.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On October 13, 2010, the National Organic Program (NOP) published in the **Federal Register** a notice of availability with request for public comment on five draft guidance documents (75 FR 62693). The topics covered in the draft documents addressed recommendations issued by the National Organic Standards Board (NOSB) and the USDA Office of Inspector General (OIG) in a March 2010 audit report of the NOP. The five draft guidance topics included compost and vermicompost, wild crop harvesting, outdoor access for poultry, commingling and contamination prevention, and the use of chlorine materials. The five draft guidances can be viewed on-line at <http://www.ams.usda.gov/NopDraftGuidance>. The 60-day comment period closed on December 13, 2010.

The NOP received a total of 69 individual comments and 22,096 form letter responses on the five draft guidance documents. “NOP Notice 11–7” provides a complete discussion of the comments received and the rationale behind any changes made to the guidance documents as well as any changes proposed, but not made to the guidance documents. “NOP Notice 11–7” can be found at <http://www.ams.usda.gov/NOPCorrespondance>.

Based upon the comments received, the NOP revised and is publishing four of the five guidance documents as final: “NOP 5021—Compost and Vermicompost in Organic Crop Production”; “NOP 5022—Wild Crop Harvesting”; “NOP 5025—Commingling and Contamination Prevention in Organic Production and Handling”; and “NOP 5026—The Use of Chlorine Materials in Organic Production and Handling”. Based upon the comments received, the NOP is not finalizing the draft guidance, “NOP 5024—Outdoor Access for Poultry”. The NOP intends to initiate a separate rulemaking on the outdoor access requirements for poultry in 2011.

The four final guidance documents are now available from the NOP through “The Program Handbook: Guidance and Instructions for Accredited Certifying Agents (ACAs) and Certified Operations”. This Handbook provides those who own, manage, or certify organic operations with guidance and instructions that can assist them in complying with the NOP regulations. The current edition of the Program Handbook is available online at <http://www.ams.usda.gov/NopProgramHandbook>.

##### II. Significance of Guidance

These final guidance documents are being issued in accordance with the Office of Management and Budget (OMB) Bulletin on Agency Good Guidance Practices (GGPs) (January 25, 2007, 72 FR 3432–3440). The purpose of GGPs is to ensure that program guidance documents are developed with adequate public participation, are readily available to the public, and are not applied as binding requirements. Final guidance represents the NOP’s current thinking on these topics. It does not create or confer any rights for, or on, any person and does not operate to bind the NOP or the public. Guidance documents are intended to provide a uniform method for operations to comply that can reduce the burden of developing their own methods and simplify audits and inspections. Alternative approaches that can demonstrate compliance with the Organic Foods Production Act (OFPA), as amended (7 U.S.C. 6501–6522), and its implementing regulations are also acceptable. As with any alternative compliance approach, the NOP strongly encourages industry to discuss alternative approaches with the NOP before implementing them to avoid unnecessary or wasteful expenditures of resources and to ensure the proposed alternative approach complies with the Act and its implementing regulations.

##### III. Electronic Access

Persons with access to Internet may obtain a copy of final guidance in the “Program Handbook” along with the “NOP Notice 11–7” at NOP’s Web site at <http://www.ams.usda.gov/nop>.

Dated: May 2, 2011.

**Rayne Pegg,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 2011-11115 Filed 5-5-11; 8:45 am]

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[TD 9525]

RIN 1545-BG98

#### Modifications to Treatment of Aircraft and Vessel Leasing Income

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

**ACTION:** Final regulations and removal of temporary regulations.

**SUMMARY:** This document contains final regulations addressing the treatment of certain income and assets related to the leasing of aircraft or vessels in foreign commerce. The regulations reflect statutory changes made by the American Jobs Creation Act of 2004. In general, the regulations will affect United States shareholders of controlled foreign corporations that derive income from the leasing of aircraft or vessels in foreign commerce and U.S. persons that transfer property subject to these leases to a foreign corporation.

**DATES:** *Effective Date:* These regulations are effective on May 6, 2011.

*Applicability Dates:* For dates of applicability, see §§ 1.367(a)-2(e)(2), 1.367(a)-4(i), 1.367(a)-5(f)(3)(ii), 1.954-2(i) and 1.956-2(e).

**FOR FURTHER INFORMATION CONTACT:** Concerning the final regulations under section 367, Ronald M. Gootzeit at (202) 622-3860; concerning the final regulations under section 954 or 956, Kristine A. Crabtree at (202) 622-3840; (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### Background

###### *In General*

This document contains amendments to 26 CFR Part 1 under sections 367, 954 and 956 of the Internal Revenue Code (Code). Final and temporary regulations (TD 9406, 73 FR 38113) (the temporary regulations) and a cross-reference notice of proposed rulemaking (REG-138355-07, 73 FR 38162) were published in the **Federal Register** on July 3, 2008 (the proposed regulations). On July 29, 2008, corrections to the final regulations (73 FR 43863) were published in the

**Federal Register.** No public hearing was requested or held with respect to the proposed regulations. After consideration of the comments received, the proposed regulations are adopted, as amended by this Treasury decision.

#### Explanation of Provisions

Section 415(a) of the American Jobs Creation Act of 2004, Public Law 108-357 (118 Stat. 1418) (Jobs Act), repealed section 954(a)(4) and (f), the foreign base company shipping income provisions of subpart F. As a result of the repeal of these provisions, rents derived from leasing an aircraft or vessel in foreign commerce are included in subpart F income only if the rents are described in another category of subpart F income, such as foreign personal holding company income (FPHCI) as defined in section 954(c). Rents are generally included in FPHCI under section 954(c)(1)(A), subject to certain exceptions. One such exception is for rents received from unrelated persons and derived in the active conduct of a trade or business. See section 954(c)(2)(A).

For this purpose, rents derived by a controlled foreign corporation (CFC) are considered derived in the active conduct of a trade or business in certain circumstances, including circumstances whereby the rents are derived as a result of the performance of marketing functions by the lessor CFC with respect to the leased property (the marketing exception). § 1.954-2(c)(1)(iv). Specifically, a lessor satisfies the marketing exception if the lessor, through its own officers or staff of employees located in a foreign country, maintains and operates an organization in the foreign country that is regularly engaged in the business of marketing, or of marketing and servicing, the leased property and that is substantial in relation to the amount of rents derived from leasing the property. For this purpose, whether an organization in a foreign country is substantial in relation to the amount of rents is determined based on all facts and circumstances; however, such an organization will be considered substantial if active leasing expenses equal or exceed 25 percent of the adjusted leasing profit (as defined in § 1.954-2(c)(2)(iv)). § 1.954-2T(c)(2)(ii).

The Jobs Act amended section 954(c)(2)(A) to expand the marketing exception with respect to rents derived from leasing an aircraft or vessel in foreign commerce. In particular, section 954(c)(2)(A) now provides that “rents derived from leasing an aircraft or vessel in foreign commerce shall not fail to be treated as derived in the active conduct of a trade or business if, as determined

under regulations prescribed by the Secretary, the active leasing expenses are not less than 10 percent of the profit on the lease.” In addition, the legislative history to this provision states that the Secretary of the Treasury will make “conforming changes to existing regulations, including guidance that aircraft or vessel leasing activity that satisfies the requirements of section 954(c)(2)(A) shall also satisfy the requirements for avoiding income inclusion under section 956 and section 367(a).” H.R. Conf. Rep. No. 755, 108th Cong., 2d Sess. 402 (2004).

On July 3, 2008, the Treasury Department and the IRS published the proposed regulations providing guidance with respect to the treatment of certain income and assets related to the leasing of aircraft or vessels in foreign commerce under sections 367, 954, and 956 of the Code in light of the Jobs Act changes. These final regulations adopt the proposed regulations with the modifications described herein.

#### *Section 954 Regulations*

Under current regulations, to satisfy the marketing exception, the lessor must, among other things, maintain an organization that is regularly engaged in the business of marketing, or of marketing and servicing, the leased property and that is “substantial in relation to the rents derived.” § 1.954-2(c)(1)(iv). The proposed regulations added a new marketing safe harbor for purposes of determining whether an organization is substantial in relation to rents derived from leasing aircraft or vessels (including component parts, such as engines, that are leased separately from an aircraft or vessel) in foreign commerce. This safe harbor provides that an organization will be considered substantial for purposes of § 1.954-2(c)(1)(iv) if active leasing expenses equal or exceed 10 percent of the adjusted leasing profit. For this purpose, the rules in the current regulations for computing active leasing expense and adjusted leasing profit continue to apply. The proposed regulations also included a definition of when an aircraft or vessel is leased in foreign commerce, including defining when property is used predominantly outside the United States, that is consistent with the legislative history to the Jobs Act. See H.R. Rep. No. 108-548, pt. 1, at 210 (2004); H.R. Conf. Rep. No. 108-755, at 402 (2004). Finally, the proposed regulations also clarified that rents derived from certain finance leases and acquired leases are eligible for the active rents exclusion.