(iv) If there is any corrosion, replace the M/R blade with an airworthy M/R blade or repair the M/R blade if the damage is within the maximum repair damage limits.

(v) If there is a crack in any grip plate or doubler, replace the M/R blade with an airworthy M/R blade.

(vi) If there is a crack in the M/R blade skin, replace the M/R blade with an airworthy M/R blade, or repair the M/R blade if the damage is within the maximum repair damage limits.

(f) Special Flight Permits

Special flight permits will be permitted for flights to an authorized inspection and repair facility provided the one-time ferry flight does not exceed 5 hours TIS and is for the accomplishment of an inspection only.

(g) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Rotorcraft Certification Office, FAA, may approve AMOCs for this AD. Send your proposal to: Michael Kohner, Aviation Safety Engineer, Rotorcraft Certification Office, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 222–5170; email *7-avs-asw-170@faa.gov*.

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

(h) Additional Information

Bell Helicopter Alert Service Bulletin (ASB) No. 205B–08–51 Revision B, dated January 11, 2011, for Model 205B helicopters, ASB No. 210–08–03 Revision B, dated January 10, 2011 for the Model 210 helicopters, and ASB No. 212–08–130 Revision B, dated January 11, 2011, for Model 212 helicopters, which are not incorporated by reference, contain additional information about the subject of this AD. For service information identified in this AD, contact Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, TX 76101; telephone (817) 280–3391; fax (817) 280–6466; or at *http://www.bellcustomer.com/files/*. You may review a copy of this service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

(i) Subject

Joint Aircraft Service Component (JASC) Code: 6210: Main Rotor Blades.

Issued in Fort Worth, Texas, on August 21, 2012.

Lance T. Gant,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2012–22564 Filed 9–12–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9599]

RIN 1545–BJ71

Property Traded on an Established Market

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that apply to determine when property is traded on an established market (that is, publicly traded) for purposes of determining the issue price of a debt instrument. The regulations amend the current regulations to clarify the circumstances that cause property to be publicly traded. The regulations also amend the current regulations for reopenings of debt instruments, potentially abusive situations, and the definition of qualified stated interest. The regulations provide guidance to issuers and holders of debt instruments.

DATES: *Effective Date:* These regulations are effective on September 13, 2012.

Applicability Dates: For the applicability dates, see §§ 1.1273–1(c)(6)(ii), 1.1273–2(f)(10), 1.1274–3(b)(4)(ii), and 1.1275–2(k)(5).

FOR FURTHER INFORMATION CONTACT: William E. Blanchard at (202) 622–3950 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these regulations relating to the furnishing of information under § 1.1273–2 to determine the issue price of a debt instrument was previously reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under control number 1545–1353. The collection of information in these final regulations is in § 1.1273–2(f)(9) and is an increase in the total annual burden in the current regulations under § 1.1273–2. Under § 1.1273–2(f)(9), the issuer of a debt instrument is required to make the fair market value of property (which can be stated as the issue price of the debt instrument) available to holders in a commercially reasonable fashion within 90 days of the date that the debt instruments are issued, including by electronic publication. The issuer's determinations are binding on all holders of the debt instrument unless the holder explicitly discloses that its determinations are different from the issuer's determinations on a timely filed Federal income tax return for the taxable year that includes the acquisition date of the debt instrument. The disclosure must include how the holder determined the value or issue price that it is using. This information is required by the IRS to ensure consistent treatment between the issuer and the holders or to alert the IRS when inconsistent positions are being taken by the issuer and one or more holders. This information will be used for audit and examination purposes. The likely respondents are businesses or other for-profit institutions.

Estimated total annual reporting burden is 10,000 hours.

Estimated average annual burden per respondent is .5 hours.

Estimated average burden per response is 5 minutes.

Estimated number of respondents is 20,000.

Estimated total frequency of responses is 20,000.

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 return information are confidential, as required by 26 U.S.C. 6103.

Background

The issue price of a debt instrument is determined under section 1273(b) of the Internal Revenue Code (Code) or, in the case of certain debt instruments issued for property, under section 1274. Section 1273(b)(3) generally provides that in the case of a debt instrument issued for property and part of an issue some or all of which is traded on an established securities market (often referred to as ''publicly traded''), the issue price of the debt instrument is the fair market value of the debt instrument. Similarly, if a debt instrument is issued for stock or securities (or other property) that are publicly traded, the issue price of the debt instrument is the fair market value of the stock, securities, or other property. If a debt instrument issued for property is not publicly traded or is not issued for property that is publicly traded, the issue price of the debt instrument is usually determined under section 1274, which generally results in an issue price equal to the stated

principal amount of the debt instrument if the debt instrument provides for adequate stated interest.

Section 1.1273–2 of the Income Tax Regulations (the ''current regulations'') contains the rules that generally apply to determine the issue price of a debt instrument that is publicly traded or is issued for publicly traded property and when property (including a debt instrument issued for property) is publicly traded. In general, under § 1.1273–2(f) of the current regulations, property is traded on an established market (that is, publicly traded for purposes of section 1273(b)(3) and § 1.1273–2) if the property is exchange listed property, market traded property, property appearing on a quotation medium, or readily quotable property in the 60-day period ending 30 days after the issue date of the debt instrument.

The issue price of a debt instrument has important income tax consequences. As an initial matter, the difference between the issue price of a debt instrument and its stated redemption price at maturity measures whether there is any original issue discount (OID) associated with the instrument. A debt-for-debt exchange (including a significant modification of existing debt) in the context of a workout may result in a reduced issue price for the new debt, which generally would produce cancellation of indebtedness income for the issuer, a loss to the holder whose basis is greater than the issue price of the new debt, and OID that generally must be accounted for by both the issuer and the holder of the new debt. These consequences, exacerbated by the effects of the credit crisis on the debt markets in recent years, have focused attention on the definition of when property is traded on an established market for purposes of § 1.1273–2(f).

A notice of proposed rulemaking (REG–131947–10, 76 FR 1101) (proposed regulations) was published in the **Federal Register** on January 7, 2011. No public hearing was requested or held. However, written comments responding to the notice of proposed rulemaking were received from the public. These comments were considered and are available for public inspection at *http://www.regulations.gov* or upon request. After consideration of the comments, the proposed regulations are adopted as amended by this Treasury decision. The comments and the revisions are discussed in this preamble.

Summary of Comments and Explanation of Provisions

The increased liquidity and transparency of the debt markets in recent years has largely eliminated concerns about reliable information on sales and pricing being unavailable. The proposed regulations acknowledge this fact by updating and streamlining the ''publicly traded'' standard under the current regulations to reflect current market practice. To the extent that objective pricing information exists, the proposed regulations use that information to determine issue price for purposes of section 1273.

Although the final regulations substantially follow the framework established in the proposed regulations, comments received on the proposed regulations prompted several changes. The final regulations dispense with the category of exchange listed property because the small amount of debt that is listed rarely actually trades over the exchange. Moreover, although stock, commodities, and similar property are commonly listed on and traded over a board or exchange, such property typically will be the subject of frequent sales or quotes and would be covered in a separate category of publicly traded property. A debt instrument that is issued for stock, commodities, or similar exchange traded property is therefore tested under the rule for property where there is a sales price or quote within the 31-day period ending 15 days after the issue date of the debt instrument. Eliminating the category of property listed on an exchange also eliminates the need for the de minimis trading exception in the proposed regulations, which was intended to exclude property that is listed on an exchange but trades in a negligible quantity.

In response to commenters, the final regulations also expand and clarify the $50 million exception for small debt issues in the proposed regulations. Participants in the debt trading markets indicated that liquidity begins to noticeably diminish when an issue falls below $100 million. The final regulations therefore expand the small debt issue exception from $50 million to $100 million, which creates an automatic exclusion for debt that is the least likely to be publicly traded. The final regulations also clarify that the exception applies based on the outstanding stated principal amount of the debt instruments in an issue when the determination is made.

The other significant change made in the final regulations is to require that issue price be reported consistently by issuers and holders. In response to comments, the final regulations provide that an issuer's determination as to whether property is traded on an established market and, if it is, the fair market value of the property generally is binding on the holders of the debt instrument. Information on pricing and recent sales generally is easily accessible by the issuer of a debt instrument, making the issuer the logical person to determine issue price. The final regulations also require the issuer to make the fair market value of the property (which can be stated as the issue price of the debt instrument) available to holders in a commercially reasonable fashion, which can be a posting to a Web site or similar electronic publication, within 90 days of the date that the debt instruments are issued. If a holder makes a contrary determination that the property is or is not traded on an established market, or uses a fair market value that is different from the value determined by the issuer, the holder must file a statement with its income tax return that explicitly states that it is using a different determination, the reasons for the different determination and, if applicable, describes how fair market value was determined.

There also was a comment urging that the final regulations be accompanied by additional regulations, possibly under section 446(b), that would require a matching of the cancellation of debt income that often accompanies a debt-for-debt exchange (with the issue price of the new debt instrument determined under these rules) with the OID deductions that accrue subsequently on the new debt instrument. As an alternative, commenters suggested that the Treasury Department and IRS provide a special rule that treats the issue price of the new debt instrument in a debt-for-debt exchange as being equal to the lesser of the issue price determined under the principles of section 1274 and the adjusted issue price of the old debt instrument, whether or not the old debt instrument or the new debt instrument is publicly traded. The same commenters recommended that the suspension of the application of the applicable high yield discount obligation rules in section 163(e)(5) be extended, as they were in Notice 2010–11, [2010–4 IRB 326, January 25, 2010], or that similar relief be provided for all debt instruments issued in an exchange that meets certain conditions. These suggestions were not adopted because they are outside the scope of these regulations.

The remaining comments relate to specific aspects of the proposed regulations. For example, one commenter recommended that the final regulations specify that property falls within the de minimis trading exception if no actual sales of the property occur during the 31-day period ending 15 days

after the issue date. As previously noted, because the de minimis trading exception was not adopted in the final regulations and the existence of price quotations can be used to accurately determine the fair market value of a debt instrument, this comment was not adopted in the final regulations.

Several comments pertain to the rules for sales and price quotations. One commenter recommended that the final regulations provide that a sales price or quote for property must provide a reasonable basis to determine fair market value for the property to be treated as publicly traded. Another commenter recommended that if an available actual sales price or quote is from a date different than the issue date and the taxpayer has a reasonable basis to conclude that the fair market value as of the issue date is different from such sales price or quote, the taxpayer may use reasonable methods to modify such price or quote to arrive at the fair market value as of the issue date. Commenters also recommended that the final regulations clarify that a price quote must be a bona fide price quote to a third party to buy and sell, must be available to the issuer or the holder who is determining the issue price of the debt instrument in question, and must exist independently of any inquiry the issuer or the holder makes in connection with the issue price determination. The final regulations rely on sales information and price quotations from brokers, dealers, and pricing services, which are widely available to market participants that trade debt instruments. Recent financial information, whether in the form of sales or price quotes, is the most reliable objective information available on fair market value, and such information is readily available to participants in the debt trading markets. The final regulations are therefore responsive to the concerns expressed by commenters. Moreover, as discussed earlier in the preamble, the final regulations require the issuer to disclose the fair market value of property to the holders, which will ensure that the issue price is available to holders in most situations.

In addressing the provision in the proposed regulations that permits taxpayers to use any reasonable method, consistently applied, to determine the fair market value when there is more than one sales price or price quotation, commenters requested that the final regulations describe various factors that taxpayers may consider in establishing fair market value. In response to this comment, the final regulations provide a non-exclusive list of factors a taxpayer may consider to establish fair market value. However, a method that may be reasonable in one situation may not be so in another situation. In addition, in response to another comment on this provision in the proposed regulations, the final regulations provide that a method will be regarded as consistently applied as long as it is consistently applied to the same or substantially similar facts to determine the fair market value.

One commenter recommended that the final regulations clarify that a sales price exists within the meaning of proposed § 1.1273–2(f)(3)(i) only if the purchase and sale of the property occurs, and the sales price is reasonably available, during the testing period. The final regulations accept part of this suggestion by explicitly incorporating the 31-day time period in the description of when a sales price exists, but the suggestion that the sales price must be available in that same time period would be needlessly restrictive and is not adopted. The final regulations specifically provide that taxpayers are only required to search for executed sales for a reasonable period of time after the issue date (including a significant modification), but that time need not be within the 31 days surrounding the issue date. Here, too, the addition of the issuer-holder consistency rule described earlier in the preamble will considerably alleviate the burden of determining when a sale has occurred because the issuer is usually in the best position to know when its debt has been sold or modified.

In response to a comment, the final regulations add a second anti-abuse rule providing that if there is any sale or price quote a principal purpose of which is to cause the property to be traded on an established market or to materially misrepresent the value of property for federal income tax purposes, then the sale or price quote is disregarded.

Finally, a commenter recommended that the effective date of the final regulations be modified to provide that the new rules do not apply to any debt instrument issued or exchanged pursuant to a written binding agreement entered into by the taxpayer before the date that the final regulations are published in the **Federal Register**. The final regulations do not adopt this comment. However, to minimize their effect on pending transactions, the final regulations under § 1.1273–2(f) apply only to debt instruments issued on or after 60 days after the publication date of the final regulations.

Other Provisions

The proposed regulations expanded the definition of a qualified reopening under § 1.1275–2(k) to debt instruments that are issued for cash to unrelated persons, provided that the other requirements of the regulations are satisfied. Commenters requested that the qualified reopening rules in § 1.1275–2(k) be further liberalized. In response to these comments, the final regulations expand the definition of a qualified reopening to include an issuance that satisfies a 100 percent yield test for a reopening after six months. This change is consistent with the intent of the reopening rules, which prevent taxpayers from converting OID into market discount. In response to comments, the final regulations also make slight revisions to the rules used to determine the testing date for a qualified reopening.

Comments also were received on the proposed amendment to the regulations under section 1274 that address potentially abusive situations. One commenter suggested that the change to § 1.1274–3 be deferred and considered as part of a larger project addressing distorted gains from modifications, or, alternatively, that the proposed change be limited so that the recent sale rule continues to apply to a debt modification if all sales that are part of the recent sales transaction involve, in the aggregate, a large portion of the modified debt (for example, more than 50 percent by principal amount). Another commenter requested that the final regulations not apply if either a recent sale occurs or a binding contract providing for the recent sale is entered into prior to publication because investors may commit to buy pools of discount debt in reliance on existing law. Potential distortions created by distressed debt situations are the subject of a separate guidance project. In the meantime, the Treasury Department and the IRS believe that the proposed regulations reach the correct result in determining issue price under section 1274, and the final regulations do not adopt these suggestions. However, to minimize their effect on pending transactions, the final regulations under § 1.1274–3(b)(4) apply only to a debt instrument issued on or after 60 days after the publication date of the final regulations.

Effective/Applicability Date

The regulations generally apply to a debt instrument issued on or after November 13, 2012.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. 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. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the collection of information imposed on a taxpayer generally only applies if the outstanding stated principal amount of the debt is more than $100 million, which is anticipated to affect only a small number of small entities. Moreover, any economic impact is expected to be minimal because it should take a taxpayer no more than one-half hour to satisfy the information-sharing requirement in these regulations. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, the proposed regulations preceding these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

Drafting Information

These regulations were drafted by personnel in the Office of Associate Chief Counsel (Financial Institutions and Products) and the Treasury Department.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are 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 1.1271–0 is amended as follows:

■ 1. The introductory text for paragraph (b) is revised.

■ 2. Adding the entry for § 1.1273–1(c)(6).

■ 3. Revising the entries for § 1.1273–2(f)(2) through (7).

■ 4. Adding the entries for § 1.1273–2(f)(8) through (10).

■ 5. Adding the entry for § 1.1274–3(b)(4).

■ 6. Revising the entry for § 1.1275–2(k)(5).

The revisions and additions read as follows:

§ 1.1271–0 Original issue discount; effective date; table of contents.

* * * * *

(b) *Table of contents.* This section lists captioned paragraphs contained in §§ 1.1271–1 through 1.1275–7.

* * * * *

§ 1.1273–1 Definition of OID.

* * * * *

(c) * * *

(6) Business day convention.

* * * * *

§ 1.1273–2 Determination of issue price and issue date.

* * * * *

(f) * * *

(2) Sales price.

(3) Firm quote.

(4) Indicative quote.

(5) Presumption that price or quote is equal to fair market value.

(6) Exception for small debt issues.

(7) Anti-abuse rules.

(8) Convertible debt instruments.

(9) Issuer-holder consistency requirement.

(10) Effective/applicability dates.

* * * * *

§ 1.1274–3 Potentially abusive situations defined.

* * * * *

(b) * * *

(4) Debt-for-debt exchange.

* * * * *

§ 1.1275–2 Special rules relating to debt instruments.

* * * * *

(k) * * *

(5) Effective/applicability dates.

* * * * *

■ **Par. 3.** Section 1.1273–1 is amended by adding a new paragraph (c)(6) to read as follows:

§ 1.1273–1 Definition of OID.

* * * * *

(c) * * *

(6) *Business day convention*—(i) *Rule.* For purposes of this paragraph (c), if a scheduled payment date for stated interest falls on a Saturday, Sunday, or Federal holiday (within the meaning of 5 U.S.C. 6103) but, under the terms of the debt instrument, the stated interest is payable on the first business day that immediately follows the scheduled payment date, the stated interest is treated as payable on the scheduled payment date, provided no additional interest is payable as a result of the deferral.

(ii) *Effective/applicability date.* Paragraph (c)(6)(i) of this section applies to a debt instrument issued on or after September 13, 2012. A taxpayer, however, may rely on paragraph (c)(6)(i) of this section for a debt instrument issued before that date.

* * * * *

■ **Par. 4.** Section 1.1273–2 is amended by adding a sentence at the end of paragraphs (b)(1) and (c)(1) and revising paragraph (f) to read as follows:

§ 1.1273–2 Determination of issue price and issue date.

* * * * *

(b) * * *

(1) * * * See paragraph (f) of this section for rules to determine the fair market value of a debt instrument for purposes of this section.

* * * * *

(c) * * *

(1) * * * See paragraph (f) of this section for rules to determine the fair market value of property for purposes of this section.

* * * * *

(f) *Traded on an established market (publicly traded)*—(1) *In general.* Except as provided in paragraph (f)(6) of this section, property (including a debt instrument described in paragraph (b)(1) of this section) is traded on an established market for purposes of this section if, at any time during the 31-day period ending 15 days after the issue date—

(i) There is a sales price for the property as described in paragraph (f)(2) of this section;

(ii) There are one or more firm quotes for the property as described in paragraph (f)(3) of this section; or

(iii) There are one or more indicative quotes for the property as described in paragraph (f)(4) of this section.

(2) *Sales price*—(i) *In general.* A sales price exists if the price for an executed purchase or sale of the property within the 31-day period described in paragraph (f)(1) of this section is reasonably available within a reasonable period of time after the sale.

(ii) *Pricing information for a debt instrument.* For purposes of paragraph (f)(2)(i) of this section, the price of a debt instrument is considered

reasonably available if the sales price (or information sufficient to calculate the sales price) appears in a medium that is made available to issuers of debt instruments, persons that regularly purchase or sell debt instruments (including a price provided only to certain customers or to subscribers), or persons that broker purchases or sales of debt instruments.

(3) *Firm quote.* A firm quote is considered to exist when a price quote is available from at least one broker, dealer, or pricing service (including a price provided only to certain customers or to subscribers) for property and the quoted price is substantially the same as the price for which the person receiving the quoted price could purchase or sell the property. A price quote is considered to be available whether the quote is initiated by a person providing the quote or provided at the request of the person receiving the quote. The identity of the person providing the quote must be reasonably ascertainable for a quote to be considered a firm quote for purposes of this paragraph (f)(3). A quote will be considered a firm quote if the quote is designated as a firm quote by the person providing the quote or if market participants typically purchase or sell, as the case may be, at the quoted price, even if the party providing the quote is not legally obligated to purchase or sell at that price.

(4) *Indicative quote.* An indicative quote is considered to exist when a price quote is available from at least one broker, dealer, or pricing service (including a price provided only to certain customers or to subscribers) for property and the price quote is not a firm quote described in paragraph (f)(3) of this section.

(5) *Presumption that price or quote is equal to fair market value*—(i) *In general.* For purposes of this section, the fair market value of property will be presumed to be equal to its sales price or quoted price determined under paragraphs (f)(2) through (f)(4) of this section. If there is more than one sales price under paragraph (f)(2) of this section, more than one quoted price under paragraph (f)(3) or (f)(4) of this section, or both one or more sales prices under paragraph (f)(2) of this section and quoted prices under paragraph (f)(3) or (f)(4) of this section, a taxpayer may use any reasonable method, consistently applied to the same or substantially similar facts, to determine the fair market value. For example, to determine the fair market value under a reasonable method, a taxpayer may consider factors such as (but not necessarily limited to) the timing of each relevant sale or quote in relation to the issue date; whether the price is derived from a sale, a firm quote, or an indicative quote; the size of each relevant sale or quote; or whether the sales price or quote corresponds to pricing information provided by an independent bond or loan pricing service.

(ii) *Special rule for property for which there is only an indicative quote.* If property is described only in paragraph (f)(4) of this section, and the taxpayer determines that the quote (or an average of the quotes) materially misrepresents the fair market value of the property, the taxpayer can use any method that provides a reasonable basis to determine the fair market value of the property. A taxpayer must establish that the method chosen more accurately reflects the value of the property than the quote or quotes for the property to use the method provided in this paragraph (f)(5)(ii). For an equity or debt instrument, a volume discount or control premium will not be considered to create a material misrepresentation of value for purposes of this paragraph (f)(5)(ii).

(6) *Exception for small debt issues.* Notwithstanding any other provision in paragraph (f) of this section, a debt instrument will not be treated as traded on an established market if at the time the determination is made the outstanding stated principal amount of the issue that includes the debt instrument does not exceed US$100 million (or, for a debt instrument denominated in a currency other than the U.S. dollar, the equivalent amount in the currency in which the debt instrument is denominated).

(7) *Anti-abuse rules*—(i) *Effect of certain temporary restrictions on trading.* If there is any temporary restriction on trading a purpose of which is to avoid the characterization of the property as one that is traded on an established market for Federal income tax purposes, then the property is treated as traded on an established market. For purposes of the preceding sentence, a temporary restriction on trading need not be imposed by the issuer.

(ii) *Artificial pricing information.* If a principal purpose for the existence of any sale or price quotation is to cause the property to be traded on an established market or to materially misrepresent the value of property, that sale or price quotation is disregarded.

(8) *Convertible debt instruments.* A debt instrument is not treated as traded on an established market solely because the debt instrument is convertible into property that is so traded.

(9) *Issuer-holder consistency requirement*—(i) *General rule.* For purposes of this section, an issuer must determine whether property is traded on an established market and, if so, the fair market value of the property. An issuer is required to exercise reasonable diligence to determine whether purchases or sales have taken place, the quantity of purchases and sales, the price at which purchases or sales occurred, the existence of firm or indicative quotes, and any other relevant information using the rules provided in paragraph (f) of this section to determine the fair market value of the property. If an issuer determines that property is traded on an established market, the issuer is required to make that determination as well as the fair market value of the property (which can be stated as the issue price of the debt instrument) available to holders in a commercially reasonable fashion, including by electronic publication, within 90 days of the date that the debt instrument is issued. Each determination by an issuer is binding on a holder of the debt instrument unless the holder explicitly discloses that its determination is different from the issuer's determination (for example, the holder determines a different fair market value for the property or determines that the property is not traded on an established market). A holder must describe in the disclosure the reasons for its different determination and, if applicable, how the holder determined the fair market value. A holder's disclosure must be filed on a timely filed Federal income tax return for the taxable year that includes the acquisition date of the debt instrument. If an issuer for any reason does not make the fair market value or issue price of a debt instrument reasonably available to a holder, the holder must determine the fair market value of the property and issue price of the debt instrument using the rules provided in paragraph (f) of this section.

(ii) *Co-obligors.* If a debt instrument has more than one obligor, the obligors must designate one obligor (issuer) to determine whether property is traded on an established market and, if so, the fair market value of the property and issue price of the debt instrument and make the price available to holders using the rules provided in paragraph (f)(9)(i) of this section.

(10) *Effective/applicability dates*—(i) This paragraph (f) applies to a debt instrument issued on or after November 13, 2012.

(ii) For rules applying to a debt instrument issued before November 13, 2012, see paragraph (f) of this section as

contained in 26 CFR part 1, revised April 1, 2011.

* * * * *

■ **Par. 5.** Section 1.1274–3 is amended by adding a new paragraph (b)(4) to read as follows:

§ 1.1274–3 Potentially abusive situations defined.

* * * * *

(b) * * *

(4) *Debt-for-debt exchange*—(i) *Rule.* A debt instrument issued in a debt-for-debt exchange, including a deemed exchange under § 1.1001–3, will not be treated as the subject of a recent sales transaction for purposes of section 1274(b)(3)(B)(ii)(I) even if the debt instrument exchanged for the newly issued debt instrument was recently acquired prior to the exchange. Therefore, the issue price of the debt instrument will not be determined under section 1274(b)(3). However, if the debt instrument or the property for which the debt instrument is issued is publicly traded within the meaning of § 1.1273–2(f), the rules of § 1.1273–2 will apply to determine the issue price of the debt instrument.

(ii) *Effective/applicability date.* Paragraph (b)(4)(i) of this section applies to a debt instrument issued on or after November 13, 2012.

* * * * *

■ **Par. 6.** Section 1.1275–2 is amended by:

■ 1. Adding a sentence at the end of paragraph (d)(2)(ii)(C).

■ 2. Revising the first sentence of paragraph (k)(3)(i).

■ 3. Revising paragraphs (k)(3)(ii)(A), (k)(3)(iii)(A) and (k)(5).

■ 4. Redesignating paragraph (k)(3)(iv) as newly designated paragraph (k)(3)(vi).

■ 5. Adding new paragraphs (k)(3)(iv) and (k)(3)(v).

The revisions and additions read as follows:

§ 1.1275–2 Special rules relating to debt instruments.

* * * * *

(d) * * *

(2) * * *

(ii) * * *

(C) * * * For a reopening of Treasury securities that occurs on or after September 13, 2012, a qualified reopening also is a reopening of Treasury securities that is described in paragraph (k)(3)(v) of this section.

* * * * *

(k) * * *

(3) * * *

(i) * * * A qualified reopening is a reopening of original debt instruments that is described in paragraph (k)(3)(ii), (k)(3)(iii), (k)(3)(iv), or (k)(3)(v) of this section. * * *

(ii) * * *

(A) The original debt instruments are publicly traded (within the meaning of § 1.1273–2(f)) as of the date on which the price of the additional debt instruments is established (or, if earlier, the announcement date);

* * * * *

(iii) * * *

(A) The original debt instruments are publicly traded (within the meaning of § 1.1273–2(f)) as of the date on which the price of the additional debt instruments is established (or, if earlier, the announcement date); and

* * * * *

(iv) *Non-publicly traded debt issued for cash.* A reopening is described in this paragraph (k)(3)(iv) if the additional debt instruments are issued for cash to persons unrelated to the issuer (as determined under section 267(b) or 707(b)) for an arm's length price and either the requirements in paragraphs (k)(3)(ii)(B) and (k)(3)(ii)(C) of this section for a reopening within six months are satisfied or the requirements in paragraph (k)(3)(iii)(B) of this section for a reopening with de minimis OID are satisfied. For purposes of paragraph (k)(3)(ii)(C) of this section, the yield test is satisfied if, on the date on which the price of the additional debt instruments is established (or, if earlier, the announcement date), the yield of the additional debt instruments (based on their cash purchase price) is not more than 110 percent of the yield of the original debt instruments on their issue date (or, if the original debt instruments were issued with no more than a de minimis amount of OID, the coupon rate).

(v) *100 Percent yield test for reopening after six months.* A reopening is described in this paragraph (k)(3)(v) if the additional debt instruments are issued more than six months after the issue date of the original debt instruments and either the requirements in paragraphs (k)(3)(ii)(A) and (k)(3)(ii)(C) of this section are satisfied or the additional debt instruments are issued for cash to persons unrelated to the issuer (as determined under section 267(b) or 707(b)) for an arm's length price and the requirements in paragraph (k)(3)(ii)(C) of this section are satisfied. For purposes of the preceding sentence, the yield test in paragraph (k)(3)(ii)(C) of this section is satisfied if, on the date on which the price of the additional debt instruments is established (or, if earlier, the announcement date), the yield of the additional debt instruments (based on their fair market value or cash purchase price, whichever is applicable) is not more than 100 percent of the yield of the original debt instruments on their issue date (or, if the original debt instruments were issued with no more than a de minimis amount of OID, the coupon rate).

* * * * *

(5) *Effective/applicability dates*—(i) Except as provided in paragraph (k)(5)(ii) of this section, this paragraph (k) applies to debt instruments that are part of a reopening if the reopening date is on or after March 13, 2001.

(ii) Paragraphs (k)(3)(ii)(A), (k)(3)(iii)(A), (k)(3)(iv) and (k)(3)(v) of this section apply to debt instruments that are part of a reopening if the reopening date is on or after September 13, 2012.

■ **Par. 7.** Section 1.1275–4 is amended by revising the first sentence in paragraph (b)(9)(i)(E) to read as follows:

§ 1.1275–4 Contingent payment debt instruments.

* * * * *

(b) * * *

(9) * * *

(i) * * *

(E) * * * If the debt instrument is exchange listed property (within the meaning of § 1.1273–2(f)(2) as contained in 26 CFR part 1, revised April 1, 2011), it is reasonable for the holder to allocate any difference between the holder's basis and the adjusted issue price of the debt instrument pro-rata to daily portions of interest (as determined under paragraph (b)(3)(iii) of this section) over the remaining term of the debt instrument.

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 8.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 9.** In § 602.101, paragraph (b) is amended by adding the following entry in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.1273–2(f)(9)	1545–1353
* * * * *	

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

Approved: August 17, 2012.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2012–22526 Filed 9–12–12; 8:45 am]

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DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 4

[Docket No. TTB–2011–0008; T.D. TTB–105; Re: Notice No. 122]

RIN 1513–AB84

Revision to Vintage Date Requirements

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: This document adopts, as a final rule, a proposal to amend the Alcohol and Tobacco Tax and Trade Bureau wine labeling regulations to allow a vintage date to appear on a wine that is labeled with a country as an appellation of origin. This amendment will provide greater grape sourcing and wine labeling flexibility to winemakers, both domestic and foreign, while still ensuring that consumers are provided with adequate information as to the identity and quality of the wines they purchase.

DATES: *Effective Date:* This final rule is effective November 13, 2012.

FOR FURTHER INFORMATION CONTACT: Jennifer Berry, Alcohol and Tobacco Tax and Trade Bureau, Regulations and Rulings Division; telephone 202–453–1039, ext. 275.

SUPPLEMENTARY INFORMATION:

Background on Wine Labeling

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act requires that these regulations, among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated various authorities through Treasury Department Order 120–01 (Revised), dated January 21, 2003, to the TTB Administrator to perform the functions and duties in the administration and enforcement of this law.

Current Vintage Date Requirements

Part 4 of the TTB regulations (27 CFR part 4) sets forth the standards promulgated under the FAA Act for the labeling and advertising of wine. Section 4.27 of the TTB regulations (27 CFR 4.27) sets forth rules regarding the use of a vintage date on wine labels. Section 4.27(a) provides that vintage wine is wine labeled with the year of harvest of the grapes and that the wine ''must be labeled with an appellation of origin other than a country (which does not qualify for vintage labeling).'' Rules regarding appellation of origin labeling are contained in § 4.25 of the TTB regulations (27 CFR 4.25).

In addition, § 4.27(a)(1) provides that for American or imported wines labeled with a viticultural area appellation of origin (or its foreign equivalent), at least 95 percent of the wine must have been derived from grapes harvested in the labeled calendar year. For American or imported wines labeled with an appellation of origin other than a country or viticultural area (or its foreign equivalent), § 4.27(a)(2) provides that at least 85 percent of the wine must have been derived from grapes harvested in the labeled calendar year.

The requirement that vintage wine must be labeled with an appellation of origin other than a country derives from T.D. ATF–53, published in the **Federal Register** (43 FR 37672) by TTB's predecessor agency, the Bureau of Alcohol, Tobacco and Firearms (ATF), on August 23, 1978. Prior to that time the applicable regulations required that grapes used to make vintage wine must have been grown in the same ''viticultural area,'' a term then undefined by the regulations.

In amended Notice No. 304, a notice of proposed rulemaking preceding T.D. ATF–53 and published in the **Federal Register** (42 FR 30517) on June 15, 1977, ATF noted that the wine industry advocated that the then current requirement that 95 percent of the grapes used to make vintage wine be grown in the labeled appellation area be reduced to 75 percent. This mirrored the requirement that to bear an appellation of origin, at least 75 percent of the grapes used to make a wine must be grown in the appellation area indicated on the label. The industry position, according to ATF, was that ''vintage means only that the grapes were grown in the specified year, and that the place in which the grapes were grown is unimportant.'' ATF stated in that notice that it did not agree, commenting as follows:

> A good year in one part of California, for example, does not necessarily mean a good year in another part, any more than a good year in Burgundy means a good year in Bordeaux. For a vintage to be meaningful to consumers, they must have assurance that the grapes were grown in the place stated on the label. We believe that a 95 percent requirement provides greater assurance than a 75 percent requirement.

However, in T.D. ATF–53, the agency modified its position somewhat stating that it concurred with the industry position that a vintage date should refer only to the year of harvest. Accordingly, a new regulatory provision regarding appellations of origin, also adopted in T.D. ATF–53, required that the percentage of grapes required to come from the labeled appellation area depended upon whether the appellation was a viticultural area (85 percent), a State, county or foreign equivalent (75 percent), or a multicounty or multistate appellation (100 percent), but in each case without reference to vintage date usage. The rulemaking record for T.D. ATF–53 does not explain why ATF decided that vintage wine must be labeled with an appellation other than a country, but it does indicate that the agency believed that a vintage date should provide consumers information about harvest conditions.

In its most recent rulemaking action regarding vintage dating, TTB liberalized the requirements by reducing the percentage of wine derived from grapes required to be harvested in the labeled calendar year from 95 percent to 85 percent for wine labeled with an appellation of origin other than a country or a viticultural area (or its foreign equivalent). See T.D. TTB–45, published in the **Federal Register** (71 FR 25748) on May 2, 2006. The percentage remained at 95 for wines bearing a viticultural area (or its foreign equivalent) as an appellation of origin. Blending wine from different vintages could result in a more consistent product and provide a better value for consumers, according to the proponents of the earlier liberalization of vintage date labeling.

European Commission Petition

The European Commission submitted a petition requesting TTB to amend § 4.27(a) to allow the use of a country appellation for vintage labeling. The