

Section 301.7701-3(c) describes the time and place for filing an entity classification election. Section 301.7701-3(c)(1)(i) provides that an eligible entity may elect to be classified as other than its default classification or to change its classification by filing Form 8832, "Entity Classification Election", with the service center designated on the form.

A taxpayer whose default classification is a partnership or a disregarded entity may seek to be classified as an S corporation. In these cases, the taxpayer must elect to be classified as an association under § 301.7701-3(c)(1)(i) by filing Form 8832 and must elect to be an S corporation under section 1362(a) by filing Form 2553, "Election by a Small Business Corporation." In some cases, an entity may timely file the Form 2553 but fail to file the Form 8832. The entity must then submit a letter ruling request for an extension of time under § 301.9100 to file a late entity classification election. The temporary regulation provides relief for these entities. In other cases, the Form 2553 and the Form 8832 are filed late, and the entity must submit a ruling request under § 301.9100 to file a late entity classification election and under section 1362(b)(5) to file a late S corporation election. Rev. Proc. 2004-48, I.R.B. 2004-32, provides relief for these entities.

Explanation of Provisions

Requiring eligible entities to file two elections in order to be classified as S corporations creates a burden on those entities and on the Internal Revenue Service (IRS). The temporary regulation simplifies these paperwork requirements by eliminating, in certain cases, the requirement that the entity elect to be classified as an association. Instead, an eligible entity that makes a timely and valid election to be classified as an S corporation will be deemed to have elected to be classified as an association taxable as a corporation.

The temporary regulation amends § 301.7701-3(c)(1)(v) to provide that, if an eligible entity makes a timely and valid election to be an S corporation under section 1362(a)(1), it is treated as having made an election to be classified as an association under § 301.7701-3. However, if the eligible entity's election is not timely and valid, the default classification rules provided in § 301.7701-3(b) will apply to the entity unless the Service provides late S corporation election relief or inadvertent invalid election relief. If the late or invalid election is not perfected, the default rules will maintain the

passthrough taxation treatment by classifying the entity as a partnership or a disregarded entity.

Effective Date

The regulations apply to elections to be an S corporation filed on or after July 20, 2004. However, eligible entities that timely filed S elections before July 20, 2004, may also rely on the provisions of the regulation.

Special Analysis

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore a regulatory assessment is not required. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), refer to the Special Analysis section of the preamble to the Notice of proposed rulemaking on this subject published elsewhere in this issue of the **Federal Register**.

Drafting Information

The principal author of this regulation is Rebekah A. Myers, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate and excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 1.** The authority citation for part 301 continues to read, in part, as follows:

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

■ **Par. 2.** Section 301.7701-3 is amended by adding paragraphs (c)(1)(v)(C) and (h)(3) to read as follows:

§ 301.7701-3 Classification of certain business entities.

(c) * * *

(1) * * *

(v) * * *

(C) *S corporations.* [Reserved] For further guidance, see § 301.7701-3T(c)(1)(v)(C).

* * * * *

(h) * * *

(3) *Deemed elections for S corporations.* [Reserved] For further guidance, see § 301.7701-3T(h)(3).

■ **Par. 3.** Section 301.7701-3T is revised to read as follows:

§ 301.7701-3T Classification of certain business entities (temporary).

(a) through (c)(1)(v)(B) [Reserved] For further guidance, see § 301.7701-3(a) through (c)(1)(v)(B).

(c)(1)(v) (C) *S corporations.* An eligible entity that timely elects to be an S corporation under section 1362(a)(1) is treated as having made an election under this section to be classified as an association, provided that (as of the effective date of the election under section 1362(a)(1)) the entity meets all other requirements to qualify as a small business corporation under section 1361(b). Subject to § 301.7701-3(c)(1)(iv), the deemed election to be classified as an association will apply as of the effective date of the S corporation election and will remain in effect until the entity makes a valid election, under § 301.7701-3(c)(1)(i), to be classified as other than an association.

(c)(2) through (h)(2)(iii) [Reserved] For further guidance, see § 301.7701-3(c)(2) through (h)(2)(iii).

(3) *Deemed elections for S corporations.* Paragraph (c)(1)(v)(C) of this section applies to timely S corporation elections under section 1362(a) filed on or after July 20, 2004. Eligible entities that filed timely S elections before July 20, 2004, may also rely on the provisions of the regulation.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: July 6, 2004.

Gregory F. Jenner,

Acting Assistant Secretary of the Treasury (Tax Policy).

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 61

[DoD Directive 6000.6]

Medical Malpractice Claims Against Military and Civilian Personnel of the Armed Forces

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This document removes information in Title 32 of the Code of Federal Regulations concerning Medical Malpractice Claims Against Military and Civilian Personnel of the Armed Forces. This part has served the purpose for

which it was intended in the CFR and is no longer necessary.

DATES: *Effective Date:* July 20, 2004.

FOR FURTHER INFORMATION CONTACT: L.M. Bynum (703) 601-4722.

SUPPLEMENTARY INFORMATION: The revised DoD Directive 6000.6 is available at <http://www.dtic.mil/whs/directives/corres/dir2.html>.

List of Subjects in 32 CFR Part 61

Government employees, health professions, Military personnel.

PART 61—[REMOVED]

■ Accordingly, by the authority of 10 U.S.C. 301, 32 CFR part 61 is removed.

Dated: July 13, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04-16396 Filed 7-19-04; 8:45 am]

BILLING CODE 5001-06-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R05-OAR-2004-OH-0001; FRL-7789-2]

Approval and Promulgation of Maintenance Plan Revisions; Ohio

AGENCY: Environmental Protection Agency (EPA)

ACTION: Direct final rule.

SUMMARY: The EPA is approving Ohio's submittal of a revision to the Ohio portion of the Cincinnati 1-Hour ozone maintenance plan. Ohio held a public hearing on the submittal on March 30, 2004. This maintenance plan revision establishes a new transportation conformity motor vehicle emissions budget (MVEB) for the year 2010. EPA is approving the allocation of a portion of the safety margin for oxides of nitrogen (NO_x) to the area's 2010 MVEB for transportation conformity purposes. This allocation will still maintain the total emissions for the area at or below the attainment level required by the transportation conformity regulations. The transportation conformity budget for volatile organic compounds will remain the same as previously approved in the maintenance plan. EPA is not at this time addressing any request to redesignate the Ohio portion of the Cincinnati area to attainment for the 1-Hour ozone National Ambient Air Quality Standard (NAAQS). The rationale for the approval and other information are provided in this rulemaking action.

DATES: This "direct final" rule is effective on September 20, 2004, unless EPA receives adverse written comments by August 19, 2004. If adverse comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit comments, identified by Docket ID No. R05-OAR-2004-OH-0001 by one of the following methods: Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

E-mail: bortzer.jay@epa.gov.

Fax: (312) 886-5824.

Mail: You may send written comments to: J. Elmer Bortzer, Chief, Air Programs Branch, (AR-18J), Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Hand delivery: Deliver your comments to: J. Elmer Bortzer, Chief, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604.

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.

Instructions: Direct your comments to Docket ID No. R05-OAR-1994-OH-0001. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [regulations.gov](http://www.regulations.gov), or e-mail. The federal [regulations.gov](http://www.regulations.gov) Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be

able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of the related proposed rule which is published in the Proposed Rules section of this **Federal Register**.

Docket: All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (We recommend that you telephone Patricia Morris, Environmental Scientist, at (312) 353-8656 before visiting the Region 5 office.) This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Patricia Morris, Environmental Scientist, Criteria Pollutant Section, Air Programs Branch (AR-18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312)353-8656. morris.patricia@epa.gov.

SUPPLEMENTARY INFORMATION:

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I. General Information

A. Does This Action Apply to Me?

This action is rulemaking on a non-regulatory planning document intended to ensure the maintenance of air quality in the Cincinnati Area.