

**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 1.368-1T is added to read as follows:

**§ 1.368-1T Purpose and scope of exception of reorganization exchanges (temporary).**

(a) through (e)(1)(i) [Reserved] For further guidance see § 1.368-1(a) through (e)(1)(i).

(e)(1)(ii)(A) *General rule.* A proprietary interest in the target corporation (other than one held by the acquiring corporation) is not preserved if, prior to and in connection with a potential reorganization, it is redeemed or to the extent that, prior to and in connection with a potential reorganization, an extraordinary distribution is made with respect to it. The determination of whether a distribution with respect to stock of the target corporation is an extraordinary distribution for purposes of this paragraph (e)(1)(ii) will be made on the basis of all of the facts and circumstances, but the treatment of the distribution under section 1059 (relating to extraordinary dividends) will not be taken into account.

(B) *Exception.* Paragraph (e)(1)(ii)(A) of this section does not apply to a distribution of stock by the target corporation to which section 355(a) (or so much of section 356 as relates to section 355) applies, except to the extent that—

(1) The target corporation shareholders receive other property or money to which section 356(a) applies; or

(2) The distribution is extraordinary in amount and is a distribution of property or money to which section 356(b) applies.

(2)(i) [Reserved] For further guidance, see § 1.368-1(e)(2)(i).

(ii) A proprietary interest in the target corporation is not preserved if, prior to and in connection with a potential reorganization, a person related (as defined in § 1.368-1(e)(3) determined without regard to § 1.368-1(e)(3)(i)(A)) to the target corporation acquires stock of the target corporation, with consideration other than stock of either the target corporation or the issuing corporation.

(e)(3) through (e)(6) *Example 9.* [Reserved] For further guidance, see § 1.368-1(e)(3) through (e)(6) *Example 9.*

(e)(6) *Example 10. Acquisition of target corporation stock before merger.* (i)

*Redemption by target corporation.* A owns 85 percent and B owns 15 percent of the stock of T. The fair market value of T is \$100x. Neither A nor B own stock of P. Prior to and in connection with the merger of T into P, T redeems A's T stock for \$85x and issues to A its promissory note in exchange for the stock. At the time of the merger T has a value of \$15x, after giving effect to the redemption of its stock. In the merger, B receives solely P stock. The continuity of interest requirement is not satisfied because T redeemed A's stock, and a substantial part of the value of the proprietary interest in T is not preserved. See paragraph (e)(1)(ii)(A) of this section.

(ii) *Purchase by person related to target corporation.* The facts are the same as paragraph (i) of this *Example 10*, except that X, T's wholly owned subsidiary, acquires A's T stock prior to and in connection with the merger for cash of \$85x. Under paragraph (e)(2)(ii) of this section and § 1.368-1(e)(3)(i)(B), X's acquisition of A's T stock is an acquisition by a related person. The continuity of interest requirement is not satisfied, because X acquired T stock, for consideration other than P stock, and a substantial part of the value of the proprietary interest in T is not preserved. See paragraph (e)(2)(ii) of this section.

*Example 11. Extraordinary distribution before merger.* A owns all of the stock of T. The fair market value of T is \$100x. Prior to and in connection with the merger of T into P, T pays A an extraordinary distribution of an \$85x note. T merges into P, and A receives solely P stock. P assumes T's obligation on the note. The continuity of interest requirement is not satisfied, because T paid A an extraordinary distribution, and a substantial part of the value of the proprietary interest in T is not preserved. See paragraph (e)(1)(ii)(A) of this section.

(f) *Effective date.* This section applies to transactions occurring after January 28, 1998, except that it does not apply to any transaction occurring pursuant to a written agreement which is (subject to customary conditions) binding on January 28, 1998, and at all times thereafter.

**Michael P. Dolan,**

*Deputy Commissioner of Internal Revenue.*

Approved: January 12, 1998.

**Donald C. Lubick,**

*Acting Assistant Secretary of the Treasury.*

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**DEPARTMENT OF THE TREASURY****Fiscal Service****31 CFR Part 356**

**Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds (Department of the Treasury Circular, Public Debt Series No. 1-93)**

**AGENCY:** Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Treasury ("Treasury" or "Department") is issuing in final form an amendment to 31 CFR Part 356 (Uniform Offering Circular for the Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds). This final rule incorporates a change in the timeframe for certain restrictions pertaining to bidders that bid noncompetitively in Treasury auctions. The amendment states that between the date of the offering announcement and the time of the official announcement by the Department of the auction results, a noncompetitive bidder may not hold, at any time, a position for its own account in when-issued trading or in futures or forward contracts in the security being auctioned or enter into any agreement to purchase or sell or otherwise dispose of the securities it is acquiring in the auction.

**EFFECTIVE DATE:** January 28, 1998.

**ADDRESSES:** This final rule is available for downloading from the Bureau of the Public Debt's Internet site at the following address:

[www.publicdebt.treas.gov](http://www.publicdebt.treas.gov). It is also available for public inspection and copying at the Treasury Department Library, FOIA Collection, Room 5030, Main Treasury Building, 1500 Pennsylvania Avenue, N.W., Washington, D.C., 20220. Persons wishing to visit the library should call (202) 622-0990 for an appointment.

**FOR FURTHER INFORMATION CONTACT:**

Kerry Lanham (Acting Director) or Lee Grandy (Government Securities Specialist), Bureau of the Public Debt, Government Securities Regulations Staff, (202) 219-3632.

**SUPPLEMENTARY INFORMATION:** 31 CFR Part 356, also referred to as the uniform offering circular, sets out the terms and conditions for the sale and issuance by the Department of the Treasury to the public of marketable Treasury bills, notes, and bonds. The uniform offering circular, in conjunction with offering announcements, represents a comprehensive statement of those terms

and conditions.<sup>1</sup> This final rule amends paragraph 356.12(b)(2), "Additional restrictions," and is applicable to bidders bidding noncompetitively for their own account in Treasury security auctions.

The current rule under paragraph 356.12(b)(2) provides that a bidder may not bid noncompetitively for its own account if, in the security being auctioned, it holds or has held a position in when-issued trading or in futures or forward contracts at any time between the date of the offering announcement and the designated closing time for the receipt of competitive tenders in the auction. Further, the paragraph provides that prior to the designated closing time for receipt of competitive bids a noncompetitive bidder may not enter into any agreement to purchase or sell or otherwise dispose of the securities it is acquiring in the auction.

The noncompetitive bidding option's objective is to achieve a broader distribution of Treasury securities by allowing relatively small investors, who may not have current market information, to participate successfully in Treasury auctions by providing assurance that they can obtain a limited amount of securities without competition. As stated in the January 1992 *Joint Report on the Government Securities Market* ("Joint Report"), noncompetitive bidding allows the small investor to purchase securities at a current market yield by eliminating the risk that a prospective investor might bid a yield that is too high and not obtain the securities desired or might bid a yield that is too low and pay too much for the securities.<sup>2</sup> The restriction on noncompetitive bidders under current paragraph 356.12(b)(2), which is discussed above, is directed at limiting the noncompetitive bidding option to small, less sophisticated bidders.

The noncompetitive bidding option is not intended to be used as a substitute for competitive bidding, which is available to all investors. The Joint Report referenced several instances of investors using noncompetitive awards for what appeared to be arbitrage purposes that went against the spirit of the noncompetitive award system.<sup>3</sup>

The Department has reexamined the situation where bidders bid noncompetitively for their own accounts in an auction and also enter into positions in the security being auctioned in the when-issued, futures, or forward markets, and has determined that further tightening of the noncompetitive bidding restriction is necessary. The Department views a bidder in an auction who enters into a position in the when-issued or futures or forward markets in the same security being auctioned, prior to the time of Treasury's announcement of the auction results as a sophisticated bidder who should be bidding competitively, not noncompetitively.

Accordingly, paragraph 356.12(b)(2) of the uniform offering circular is amended to state that between the date of the offering announcement and the time of the official announcement by the Department of the auction results, a noncompetitive bidder may not hold, at any time, a position for its own account in when-issued trading or in futures or forward contracts in the security being auctioned or enter into any agreement to purchase or sell or otherwise dispose of the securities it is acquiring in the auction. The amended paragraph now also states that, for purposes of this paragraph, futures contracts include those: (i) that require delivery of the specific security being auctioned; (ii) for which the security being auctioned is one of several securities that may be delivered; or (iii) that are cash-settled.

The Department notes that for the purposes of amended paragraph 356.12(b)(2), the meaning of "futures contracts" is different, and significantly broader, than it is for the net long position calculation purposes pursuant to paragraph 356.13(b) of this part. For net long position reporting purposes, "futures contracts" encompass only those contracts that require delivery of the specific security being auctioned. The different meanings of "futures contracts" in paragraphs 356.12(b) and 356.13(b) reflect the different objectives of the two provisions. The net long position reporting requirement in section 356.13 is used to enforce Treasury's policy that no bidder in an auction of a particular security will have acquired more than 35 percent of the amount awarded to the public and, accordingly, the focus is on control of the specific security being auctioned. This results in a narrower approach by excluding futures contracts that are cash-settled and those requiring delivery of securities other than the specific security being auctioned, since these two types of contracts do not constitute control of the specific

security being auctioned. In contrast, the restrictions on noncompetitive bidders at paragraph 356.12(b)(2) are intended to limit the noncompetitive bidding option to small, less sophisticated bidders, and therefore, the restrictions encompass a broader range of positions in futures contracts.

The modifications to paragraph 356.12(b)(2) extend the applicable deadline for this noncompetitive bidding restriction to the time of the announcement of the auction results, which is later than the designated closing time for receipt of competitive tenders in an auction. After the conclusion of an auction, the Department makes an official announcement of the auction results through a press release. Once Treasury announces the auction results, the various electronic financial wire services (e.g., Dow Jones, Reuters, Bloomberg, Bridge News, Associated Press) quickly disseminate this information, as do other major news and financial publications. Thus, a noncompetitive bidder that wants to know if the auction results have been announced can check for the results over various electronic wire services. Once the official announcement by the Department of the auction results is released, noncompetitive bidders in that particular auction may enter into positions in when-issued trading or in futures or forward contracts for the security just auctioned or may enter into agreements to purchase or sell or otherwise dispose of the securities acquired in the auction.

The Department also notes that paragraph 356.15(b) of the uniform offering circular, which sets out the terms of bidding through investment advisers, provides that regardless of whether the bid for a controlled account is in the name of the investment adviser or in the name of the controlled account, the account is subject to the noncompetitive bidding restrictions contained in paragraph 356.12(b). This means that the changes contained in this amendment to the uniform offering circular apply to bidders in an auction that are bidding noncompetitively through an investment adviser, as well as all other noncompetitive bidders in the auction.

#### Procedural Requirements

This final rule does not meet the criteria for a "significant regulatory action" pursuant to Executive Order 12866.

Because this rule relates to public contracts and procedures for United States securities, the notice, public comment, and delayed effective date

<sup>1</sup> The uniform offering circular was published as a final rule on January 5, 1993 (58 FR 412). The circular, as amended, is codified at 31 CFR Part 356.

<sup>2</sup> Department of the Treasury, Securities and Exchange Commission, and Board of Governors of the Federal Reserve System, *Joint Report on the Government Securities Market*, (January 1992), p. A-2.

<sup>3</sup> See *supra* note 2, at p. B-50.

provisions of the Administrative Procedure Act are inapplicable, pursuant to 5 U.S.C. 553(a)(2).

As no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) do not apply.

There is no new collection of information contained in this final rule, and, therefore, the Paperwork Reduction Act does not apply. The collections of information of 31 CFR Part 356 have been previously approved by the Office of Management and Budget under section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) under control number 1535-0112. Under this Act, 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 OMB control number.

#### List of Subjects in 31 CFR Part 356

Bonds, Federal Reserve System, Government securities, Securities.

For the reasons set forth in the preamble, 31 CFR chapter II, subchapter B, part 356, is amended as follows:

#### PART 356—SALE AND ISSUE OF MARKETABLE BOOK-ENTRY TREASURY BILLS, NOTES, AND BONDS (DEPARTMENT OF THE TREASURY CIRCULAR, PUBLIC DEBT SERIES NO. 1-93)

1. The authority citation for part 356 continues to read as follows:

**Authority:** 5 U.S.C. 301; 31 U.S.C. 3102, *et seq.*; 12 U.S.C. 391.

2. Section 356.12 is amended by revising paragraph (b)(2) to read as follows:

#### § 356.12 Noncompetitive and competitive bidding.

\* \* \* \* \*

(b) \* \* \*

(2) *Additional restrictions.* Between the date of the offering announcement and the time of the official announcement by the Department of the auction results, a noncompetitive bidder may not hold, at any time, a position for its own account in when-issued trading or in futures or forward contracts in the security being auctioned or enter into any agreement to purchase or sell or otherwise dispose of the securities it is acquiring in the auction. For purposes of this paragraph, futures contracts include those:

- (i) That require delivery of the specific security being auctioned;
- (ii) For which the security being auctioned is one of several securities that may be delivered; or

(iii) That are cash-settled.

\* \* \* \* \*

Dated: January 21, 1998.

**Donald V. Hammond,**

*Acting Fiscal Assistant Secretary.*

[FR Doc. 98-1958 Filed 1-27-98; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Forest Service

#### 36 CFR Part 215

#### Notice, Comment, and Appeal Procedures for National Forest System Projects and Activities

**AGENCY:** Forest Service, USDA.

**ACTION:** Interim final rule; request for comment.

**SUMMARY:** The Department is amending the rules governing who can participate in administrative appeals of decisions authorizing National Forest System projects and activities, by removing a prohibition on appeals by Forest Service employees. This regulatory change results from a reassessment of this provision in response to a recent legal challenge. Public comment is invited on this interim rule and will be considered in promulgating a final rule.

**DATES:** This interim rule is effective January 28, 1998. Comments on this rulemaking must be received by March 30, 1998.

**ADDRESSES:** Written comments on this rule must be sent to Susan Yonts-Shepard, Appeals Coordinator, National Forest Systems Deputy Area, MAIL STOP 1106, Forest Service, USDA P.O. Box 96090, Washington, DC 20090-9060. All comments, including names and addresses, when provided, will be placed in the record and are made available for public inspection and copying.

**FOR FURTHER INFORMATION CONTACT:** Susan Yonts-Shepard, Forest Service, telephone, (202) 202-1519.

#### SUPPLEMENTARY INFORMATION:

#### Background

Section 322 of the 1993 Interior and Related Agencies Appropriations Act directed the Department to establish a process by which persons or organizations receive notice and the opportunity to comment on proposed actions affecting the National Forest System. The Act also required the establishment of procedures by which persons or organizations may appeal decisions subsequently made on proposed actions. Following the

publication of a proposed rule with a request for public comment (58 FR 19369), the Forest Service received over 9,000 comments on certain aspects of this rulemaking. However, no comment was submitted on the proposed provision prohibiting agency employees from participating in the appeal process as appellants or as interested parties at § 215.11(c). Having concluded that there was no concern with this provision, the Department adopted paragraph (c) in § 215.11, without change from the proposed rule, November 4, 1993 (58 FR 58904).

A recent lawsuit brought by a Forest Service employee challenging this regulation (*Dalton v. Forest Service*, Civil Act Number 97-0774, U.S.D.C., D.D.C.) has led to a reassessment of the employee appeal limitation in 36 CFR 215.11(c) and has raised issues not considered at the time of the earlier rulemaking. Moreover, the rulemaking record does not speak directly to the § 215.11(c) provision. Therefore, the Deputy Under Secretary, in a declaration to the court, indicated that the Department would cease immediately to enforce the employee appeal prohibition and would repeal the employee prohibition provision at § 215.11(c). The declaration also indicated that, at a later date, after additional consideration of relevant factors, the Forest Service may decide to publish a new proposed rule to address the matter of appeals by employees. If so, public comment would be requested at that time.

Employees appealing a National Forest System project may violate 18 U.S.C. 208 if their appeal is based upon an imputed financial interest and their official duties involve the appeal. Also, representation of others in the appeal process may be prohibited under 18 U.S.C. 203 and 205. Assuming that an employee appealing a National Forest System project would file the appeal as a private citizen, in accordance with Office of Government Ethics regulations at 5 CFR part 2635, subpart G, Misuse of position, the employee may not be on official duty or use government property or equipment in the preparation or transmittal of an appeal. Also, in preparing the appeal, the employee must not use official information not yet released to the public. A new paragraph (d) has been added to § 215.11 to address the standards of ethical conduct for employees filing an appeal.

Agencies are not required by the Administrative Procedure Act to give notice and opportunity to comment prior to adoption of this interim final rule because the decision to repeal § 215.11(c) involves a matter relating to