By Authority of the Board.

R. F. Butler,

Secretary of the Board.

[FR Doc. 80-26616 Filed 8-28-80; 8:45 am]

BILLING CODE 7905-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 80F-0121]

Antioxidants and/or Stabilizers for Polymers; Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) amends the food additive regulations to provide for the safe use of 1,3,5-tris (4-*tert*-butyl-3-hydroxy-2,6-dimethylbenzyl)-1,3,5-triazine-2,4,6-(1H,3H,5H)-trione as an antioxidant and/or stabilizer in polystyrene and rubber-modified polystyrene. This is in response to a food additive petition from American Cyanamid Co.

DATES: Effective August 29, 1980; objections by September 29, 1980.

ADDRESS: Written objections to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: John L. Herrman, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: A notice published in the **Federal Register** of May 6, 1980 (45 FR 29892) announced that a food additive petition (FAP 9B3471) had been filed by American Cyanamid Co., Wayne, NJ 07470, proposing that § 178.2010 *Antioxidants and/or stabilizers for polymers* be amended to provide for the use of 1,3,5-tris(4-*tert*-butyl-3-hydroxy-2,6-dimethylbenzyl)-1,3,5-triazine-2,4,6-(1H,3H,5H)-trione as an antioxidant in polystyrene and rubber-modified polystyrene.

FDA has evaluated data in the petition and other relevant material and concludes that § 178.2010 should be amended as set forth in this document.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Part 178 is amended in § 178.2010(b) by revising the item "1,3,5-Tris(4-*tert*-butyl-3-hydroxy-2,6-dimethyl-benzyl)-1,3,5-triazine-2,4,6-(1H,3H,5H)-trione" to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
* * * * * * *	
1,3,5-Tris(4-*tert*-butyl-3-hydroxy-2,6-dimethylbenzyl)-1,3,5-triazine-2,4,6-(1H,3H,5H)-trione. [CAS Reg. No. 40601-76-1].	For use only: 1. At levels not to exceed 0.1 percent by weight of polypropylene and polyethylene that comply with § 177.1520 of this chapter, provided that the finished polypropylene and polyethylene contact food only under the conditions described in § 176.170(c) of this chapter, table 2, under conditions of use E through G. 2. At levels not to exceed 0.1 percent by weight of polystyrene and rubber-modified polystyrene that comply with § 177.1640 of this chapter, provided that the finished polystyrene and rubber-modified polystyrene contact food only under the conditions described in § 176.170(c) of this chapter, table 2, under conditions of use E through G.
* * * * * * *	

Any person who will be adversely affected by the foregoing regulation may at any time on or before September 29, 1980, submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Four copies of all documents shall be submitted and shall be identified with the Hearing Clerk docket number found in brackets in the heading of this regulation. Received objections may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall become effective August 29, 1980.

(Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s) 348))

Dated: August 21, 1980.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-26165 Filed 8-28-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 522

Oxytetracycline Hydrochloride Injection; Implantation or Injectable Dosage Form New Animal Drugs Not Subject to Certification

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The animal drug regulations are amended to reflect approval of a supplemental new animal drug application (NADA) filed by Philips Roxane, Inc., providing for intramuscular use of a 100-milligram-per-milliliter (mg/mL) oxytetracycline hydrochloride injection for treating certain infections of swine.

EFFECTIVE DATE: August 29, 1980.

FOR FURTHER INFORMATION CONTACT: Richard A. Carnevale, Bureau of Veterinary Medicine (HFV-125), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1788.

SUPPLEMENTARY INFORMATION: Philips Roxane, Inc., 2621 North Belt Highway, St. Joseph, MO 64502, filed a supplemental NADA (95-642) providing for intramuscular use of a 100-milligram-per-milliliter (mg/mL) oxytetracycline hydrochloride (OTC HCl injection in swine for treating bacterial enteritis, pneumonia, and leptospirosis; and in sows as an aid in controlling infectious enteritis in suckling pigs). Philips Roxane currently holds approvals for

intramuscular use of 100 mg/mL injection in cattle, for intramuscular or intravenous use of a 50 mg/mL injection in cattle, and for intramuscular use of a 50 mg/mL injection in swine and sows. Philips Roxane's 100 mg/mL OTC HCl injection has been shown, through crossover blood level studies, to be biocomparable to Pfizer's Terramycin (50-milligrams-per-milliliter OTC injection). Terramycin has been reviewed by the National Academy of Sciences/National Research Council, Drug Efficacy Study Group, and declared by the agency to be effective for swine use. Accordingly, the regulation is amended in § 522.1662a(b) (21 CFR 522.1662a(b)) to reflect this approval and to revise editorially certain portions of the text.

Approval of this supplemental application poses no increased human risk from exposure to residues of oxytetracycline because the approval concerns using a 100 mg/mL oxytetracycline injectable in the same manner as currently provided for the 50 mg/mL injectable. Therefore, under the Bureau of Veterinary Medicine's supplemental approval policy (42 FR 64367; December 23, 1977), this approval did not require reevaluation of the safety and effectiveness data in the parent application.

In accordance with the provisions of Part 20 (21 CFR Part 20) promulgated under the Freedom of Information Act (5 U.S.C. 552) and the freedom of information regulations in § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety data and information supporting approval of this application is available for public examination at the office of the Hearing Clerk (HFA–305), Rm. 4–62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

Therefore, under the Federal Food, Drug, and Cosmetic Act (Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 522 is amended in § 522.1662a by revising paragraph (b), to read as follows:

§ 522.1662a Oxytetracycline hydrochloride injection.

* * * * *

(b)(1) *Specifications.* Each milliliter of sterile solution contains 50 or 100 milligrams of oxytetracycline (as oxytetracycline hydrochloride).

(2) *Sponsor.* See 000010 in § 510.600(c) of this chapter.

(3) *Conditions of use*—(i) *Beef cattle and nonlactating dairy cattle—(a) Amount.* Three to 5 milligrams of oxytetracycline per pound of body weight per day; 5 milligrams per pound of body weight per day for the treatment of anaplasmosis, severe foot-rot, and severe cases of other indicated diseases.

(b) Indications for use. Treatment of diseases due to oxytetracycline-susceptible organisms as follows: Pneumonia and shipping fever complex associated with *Pasteurella spp., Hemophilus spp.,* and *Klebsiella spp.,* foot-rot and diphtheria caused by *Spherophorus necrophorus,* bacterial enteritis (scours) caused by *Escherichia coli,* wooden tongue caused by *Actinobacillus lignieresi,* leptospirosis caused by *Leptospira pomona,* and wound infections and acute metritis caused by *Staphylococcus spp.* and *Streptococcus spp.* If labeled for use by or on the order of a licensed veterinarian, it may be used for the treatment of anaplasmosis caused by *Anaplasma marginale.*

(c) Limitations. For 50-milligram-per-milliliter solution, administer intramuscularly or intravenously; for 100-milligram-per-milliliter solution, administer intramuscularly only. Treatment of all diseases should be instituted early and continue for 24 to 48 hours beyond remission of disease symptoms, but not to exceed a total of 4 consecutive days. Consult your veterinarian if no improvement is noted within 48 hours. Do not inject more than 10 milliliters per site in adult cattle, reducing the volume according to age and body size to 0.5 to 2 milliliters in small calves. Exceeding the highest recommended dose of 5 milligrams per pound of body weight, administering at recommended levels for more than 4 consecutive days, and/or exceeding 10 milliliters intramuscularly per injection site may result in antibiotic residues beyond the withdrawal time. Discontinue treatment at least 18 days prior to slaughter. Not for use in lactating dairy cattle.

(ii) *Swine*—*(a) Amount.* Three to 5 milligrams of oxytetracycline per pound of body weight per day. Sows: 3 milligrams of oxytetracycline per pound of body weight, approximately 8 hours before farrowing or immediately after completion of farrowing.

(b) Indications for use. For treatment of bacterial enteritis (scours, colibacillosis) caused by *Escherichia coli,* pneumonia caused by *Pasteurella multocida,* and leptospirosis caused by *Leptospira pomona.* Sows: as an aid in control of infectious enteritis (baby pig scours, colibacillosis) in suckling pigs caused by *Escherichia coli.*

(c) Limitations. Administer intramuscularly. Do not inject more than 5 milliliters per site. Do not use for more than 4 consecutive days. Discontinue treatment at least 26 days before slaughter.

* * * * *

Effective date. This regulation is effective August 29, 1980.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: August 21, 1980.

Terence Harvey,

Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 80-26416 Filed 8-28-80; 8:45 am]

BILLING CODE 4110-03-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 7717]

Income Tax; Taxable Years Beginning After Dec. 31, 1953; Residential Energy Credit

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations relating to the residential energy credit. Changes to the applicable tax law were made by the Energy Tax Act of 1978. These regulations provide the public with guidance needed for determining whether a residential energy credit is available with respect to certain expenditures.

DATE: The amendments are effective with respect to expenditures made after April 19, 1977, and before January 1, 1986.

FOR FURTHER INFORMATION CONTACT: Walter H. Woo of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C., 20224 (Attention: CC:LR:T) (202–566–3297).

SUPPLEMENTARY INFORMATION:

Background

On May 23, 1979, the Federal Register published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 44C and 1016 of the Internal Revenue Code of 1954 and to the Statement of Procedural Rules (26 CFR Part 601). The amendments were proposed to conform the regulations to section 101 of the Energy Tax Act of 1978 (92 Stat. 3175). A public hearing was held on September 12, 1979. After consideration of all comments regarding the proposed amendments, those amendments are adopted as revised by

this Treasury decision. A new § 1.44C–6 is added to deal with the procedure and criteria for additions to the list of energy-conserving components or renewable energy sources which was previously the subject of § 1.44C–5. Section 1.44C–6 is reserved in this Treasury decision and will be dealt with in another regulation project. It should be noted that this Treasury decision does not reflect any of the amendments to section 44C made by the Crude Oil Windfall Profit Tax Act of 1980.

The effectiveness of these regulations will be evaluated on the basis of comments and information received from the public, other Government agencies, and offices within the Treasury Department and Internal Revenue Service. Under the regulations, no additional reporting or filing requirements have been imposed on taxpayers.

In General

The Energy Tax Act of 1978 provides a residential energy credit for insulation, certain other energy-conserving components, and certain renewable energy source property expenditures made in connection with the taxpayer's principal residence. In the case of insulation and other energy-conserving components, the credit is 15 percent of the first $2,000 of expenditures, for a maximum credit of $300. In the case of solar, wind, and geothermal energy property, the credit provided by the 1978 Act is 30 percent of the first $2,000 of expenditures and 20 percent of the next $8,000 of expenditures, for a maximum credit of $2,200 for expenditures made after April 19, 1977 and before January 1, 1980. It should be noted that the Crude Oil Windfall Profit Tax Act of 1980 has increased the credit for solar, wind, and geothermal property to 40 percent of $10,000 for a maximum of $4,000 for expenditures made after December 31, 1979 and before January 1, 1986. The taxpayer must reduce the maximum amount of allowable expenditures with respect to the dwelling unit to be used in computing the credit by the prior expenditures which were made by the taxpayer, and which were taken into account in computing the credit for prior taxable years.

The credit applies only to expenditures made on or after April 20, 1977, and before January 1, 1986. A credit with respect to expenditures made during 1977 (*i.e.*, on or after April 20) is to be claimed on the taxpayer's 1978 tax return. In the case of insulation and other energy-conserving component expenditures, the credit is available only with respect to a taxpayer's principal residence the construction (including reconstruction) of which was substantially completed before April 20, 1977. To the extent that the credit exceeds the taxpayer's tax liability, the taxpayer is allowed to carry over the unused credit to subsequent taxable years beginning before before January 1, 1988.

Definitions of Qualified Items

A number of comments requested that the definitions of various items qualifying for the credit be expanded, *e.g.*, that the definition of insulation be expanded to include awnings and shades; that the definition of a storm or thermal window be revised to include window films; and that the definition of solar energy property be made to include woodburning stoves or heat pumps. The regulations have not been expanded to include these items because we believe that Congress did not intend their inclusion. In the case of insulation, the regulations have been clarified to provide that an item must be installed between a conditioned area (*i.e.*, heated or cooled by conventional or renewable energy source means) and a nonconditioned area to qualify as insulation (except when installed on a water heater, water pipe, or heating/cooling duct).

It was suggested that the definition of a storm or thermal window should be in terms of R-values, rather than inches of insulating material. The regulations have been amended to reflect this suggestion.

Several comments suggested that the rule excluding materials and components having a dual purpose from the definition of solar energy property be deleted. It was argued that this rule would disqualify most expenditures for passive solar construction or for modifications to an existing structure. Additional comments requested that the regulations be revised to allow a partial credit for materials and components that serve a dual purpose. The dual purpose rule was not deleted or modified to allow a partial credit in view of the support for the exclusion found in the House and Senate reports to the Act which clearly require the exclusion of property with a significant structural function.

However, the regulations have been revised to include a more comprehensive definition of a passive solar system. The final regulations provide that a qualifying passive solar system used for heating purposes must be composed of the following components: a solar collection area, an absorber, a storage mass, a heat distribution method, and heat regulation devices.

In response to inquiries, the definition of wind energy property has been revised to make it clear that devices that use wind merely to ventilate do not qualify as wind energy property.

The residential energy credit applies to property which transmits or uses energy derived from a geothermal deposit to heat or cool a dwelling or provide hot water for use within the dwelling. Several comments suggested that the definition of geothermal deposit be revised either by deleting the 60° Celsius temperature limitation or by lowering the temperature limitation. The temperature limitation has been lowered to 50° Celsius. It has been concluded that 50° Celsius is an appropriate measure for determining whether heat is derived from geothermal reservoirs (heated by the earth's magma) or is derived from heat associated with ground water that is affected by atmospheric temperatures.

Definition of Construction

One comment objected to defining reconstruction as construction for purposes of the April 20, 1977, cut-off date for new construction. This objection was rejected on the ground that a house that is reconstructed is basically a new house. Therefore, the cut-off date pertaining to new construction should also be applicable to reconstruction.

Certification Procedure

One comment suggested that the regulations be revised to allow request from any source for certification of items as qualifying for the credit. This suggestion was not adopted because the statute only authorizes the manufacturer to seek certification of an item.

It should be noted that the certification procedure is the subject of Rev. Proc. 80–36.

Drafting Information

The principal author of this regulation is Walter H. Woo of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

Adoption of Amendments to the Regulations

Accordingly, the amendments to 26 CFR Parts 1 and 601 published as a notice of proposed rulemaking in the **Federal Register** for May 23, 1979 (44 FR 29923), are hereby adopted as proposed, subject to the following changes:

Paragraph 1. Section 1.44C–2, as set forth in paragraph 1 of the notice, is amended by revising paragraph (c)(1) and (4), by revising so much of paragraph (c) as follows subparagraph (3) thereof, by revising paragraph (d)(3), by revising subdivisions (i), (iii), (iv)(B)(*3*) and (viii) of paragraph (d)(4), by adding a sentence at the end of paragraph (d)(4)(iv), and by revising paragraphs (e)(2), (f), (g) and (h), to read as follows:

§ *1.44C–2 Definitions.*

* * * * *

(c) *Insulation.* * * *

(1) The item is specifically and primarily designed to reduce, when installed in or on a dwelling or on a water heater, the heat loss or gain of such dwelling or water heater. To qualify as insulation the item must be installed between a conditioned area and a nonconditioned area (except when installed on a water heater, water pipe, or heating/cooling duct). Thus for example, awnings do not qualify as insulation. For purposes of this section the term "conditioned area" means an area that has been heated or cooled by conventional or renewable energy source means. Insulation includes materials made of fiberglass, rock wool, cellulose, urea based foam, urethane, vermiculite, perlite, polystyrene, and extruded polystyrene foam.

* * * * *

(4) The item meets the applicable performance and quality standards prescribed in § 1.44C–4 (if any) that are in effect at the time the taxpayer acquires the item.

The term "insulation" shall not include items whose primary purpose is not insulation (*e.g.*, whose function is primarily structural, decorative, or safety-related). For example, carpeting, drapes (including linings), shades, wood paneling, fireplace screens (including those made of glass), new or replacement walls (except for qualifying insulation therein) and exterior siding do not qualify although they may have been designed in part to have an insulating effect.

(d) *Other energy-conserving components.* * * *

(3) The item meets the applicable performance and quality standards prescribed in § 1.44C–4 (if any) that are in effect at the time of the taxpayer's acquisition of the item.

(4) * * *

(i) *A furnace replacement burner.* The term "furnace replacement burner" means a device (for oil and gas-fired furnaces or boilers) that is designed to achieve a reduction in the amount of fuel consumed as a result of increased combustion efficiency. The burner must replace an existing burner. It does not qualify if it is acquired as a component of, or for use in, a new furnace or boiler.

* * * * *

(iii) *A furnace ignition system.* The term "furnace ignition system" means an electrical or mechanical device, designed for installation in a gas-fired furnace or boiler that automatically ignites the gas burner. In order to qualify, the device must replace a gas pilot light. Furthermore, it does not qualify if it is acquired as a component of, or for use in, a new furnace or boiler.

(iv) *A storm or thermal window or door.*

* * *

(B) * * *

(*3*) A prime exterior door that has an R-value (a measurement of the ability of insulation to resist the flow of heat) of at least 2 throughout.

* * * For purposes of this subdivision, a storm or thermal window or door does not include any film applied on or over the surface of a window or door.

* * * * *

(viii) *Components specified by the Secretary.* The Secretary (or his delegate) may, in his discretion, after consultation with the Secretary of Energy and the Secretary of Housing and Urban Development (or their delegates), and any other appropriate Federal officers, specify by regulation other energy-conserving components for addition to the list of qualified items. See § 1.44C–6 for the procedures and criteria to be used in determining whether an item will be considered for addition to the list of qualified items by the Secretary.

* * * * *

(e) *Renewable energy source property.*

* * *

(2) *Renewable energy source specified by the Secretary.* In addition to solar, wind, and geothermal energy property, renewable energy source property includes property that transmits or uses another renewable energy source that the Secretary (or his delegate) specifies by regulations, after consultation with the Secretary of Energy and the Secretary of Housing and Urban Development (or their delegates), and any other appropriate Federal officers, to be of a kind that is appropriate for the purpose of heating or cooling the dwelling or providing hot water for use within the dwelling. For purposes of this section, references to the transmission or use of energy includes its collection and storage. See § 1.44C–6 for the procedures and criteria to be used in determining when another energy source will be considered for addition to the list of qualified renewable energy sources.

(f) *Solar energy property*—(1) *In general.* The term "solar energy property" means equipment and materials of a solar energy system as defined in this paragraph (and parts solely related to the functioning of such equipment) which, when installed in connection with a dwelling, transmits or uses solar energy to heat or cool the dwelling or to provide hot water for use within the dwelling. For this purpose, solar energy is energy derived directly from sunlight (solar radiation). Property which uses, as an energy source, fuel or energy which is indirectly derived from sunlight (solar radiation), such as fossil fuel or wood or heated underground water is not considered solar energy property. Materials and components of "passive solar systems" as well as "active solar systems", or a combination of both types of systems may qualify as solar energy property.

(2) *Active solar system.* An active solar system is based on the use of mechanically forced energy transfer, such as the use of fans or pumps to circulate solar generated energy, or thermal energy transfer, such as systems utilizing thermal siphon principles. Generally, this is accomplished through the use of equipment such as collectors (to absorb sunlight and create hot liquids or air), storage tanks (to store hot liquids), rockbeds (to store hot air), thermostats (to activate pumps or fans which circulate the hot liquids or air), and heat exchangers (to utilize hot liquids or air to heat air or water).

(3) *Passive solar system.* A passive solar system is based on the use of conductive, convective, or radiant energy transfer. In order to qualify as a passive solar system, a solar system used for heating purposes must contain all of the following: a solar collection area, an absorber, a storage mass, a heat distribution method, and heat regulation devices. The term "solar collective area" means an expanse of transparent or translucent material, such as glass which is positioned in such a manner that the rays of the sun directly strike an absorber. The term "absorber" means a surface, such as a floor, that is exposed to the rays of the sun admitted through the solar collection area, which converts solar radiation into heat, and then transfers the heat to a storage mass. The term "storage mass" means material, such as masonry, that receives and holds heat from the absorber and later releases the heat to the interior of the dwelling. The storage mass must be of sufficient volume, depth, and thermal energy capacity to store and deliver adequate amounts of solar heat for the relative size of the dwelling. In addition, the storage mass must be located so that it is capable of distributing the stored heat directly to the habitable areas of the dwelling through a heat distribution method. The term "heat distribution method" means the release of radiant heating from the storage mass within the habitable areas of the dwelling, or convective heating from the storage mass through airflow paths provided by openings or by ducts in the storage mass, to habitable areas of the dwelling. The term "heat regulation devices" means shading or venting mechanisms (such as awnings or insulated drapes) to control the amount of solar heat admitted through the solar collection areas and nighttime insulation or its equivalent to control the amount of heat permitted to escape from the interior of the dwelling.

(4) *Components with dual function.* To the extent that a passive or active solar system utilizes portions of the structure of a residence, only the materials and components whose sole purpose is to transmit or use solar radiation (and labor costs associated with installing such materials and components) are included within the term "solar energy property". Accordingly, materials and components that serve a dual purpose, *e.g.*, they have a significant structural function or are structural components of the dwelling (and labor costs associated with installing such materials and components) are not included within the term "solar energy property". For example, solar collectors and roof ponds that form part of a roof (including additional structural components to support the roof), windows (including clerestories and skylights), and greenhouses do not qualify as

solar energy property. In the case of a trombe wall (a south facing wall composed of a mass wall and exterior glazing), the mass wall (and labor costs associated with installing the mass wall) will not qualify. However, the exterior (non-window) glazing will qualify. Any shading, venting and heat distribution mechanisms or storage systems that do not have a dual function will also qualify.

(g) *Wind energy property.* The term "wind energy property" includes equipment (and parts solely related to the functioning of such equipment) which, when installed in connection with a dwelling, transmits or uses wind energy to produce energy in a useful form for personal residential purposes. Examples of equipment using wind energy to produce energy in a useful form are windmills, wind-driven generators, power conditioning and storage devices that use wind to generate electricity or mechanical forms of energy. Devices that use wind merely to ventilate do not qualify as wind energy property.

(h) *Geothermal energy property.* The term "geothermal energy property" includes equipment (and parts solely related to the functioning of such equipment) necessary to transmit or use energy from a geothermal deposit to heat or cool a dwelling or provide hot water for use within the dwelling. Equipment such as a pipe that serves both a geothermal function (by transmitting hot geothermal water within a dwelling) and a non-geothermal function (by transmitting hot water from a water heater within a dwelling) does not qualify as geothermal property. A geothermal deposit is a geothermal reservoir consisting of natural heat which is from an underground source and is stored in rocks or in an aqueous liquid or vapor (whether or not under pressure), having a temperature exceeding 50 degrees Celsius as measured at the wellhead or, in the case of a natural hot spring (where no well is drilled), at the intake to the distribution system.

Par. 2. Section 1.44C–3, as set forth in paragraph 1 of the notice, is amended by revising paragraph (c) to read as follows:

§ 1.44C–3 Special rules.

* * * * *

(c) *Expenditures financed with Federal, etc., grants.* Qualified expenditures financed with Federal, State or other grants shall be taken into account for purposes of computing the residential energy credit only if such amounts are taxable as gross income under section 61 (relating to the definition of gross income) and the regulations thereunder.

* * * * *

Par. 3. Section 1.44C–5, as set forth in paragraph (1) of the notice, is amended by revising the heading thereto, by revising so much of paragraph (a) as precedes subparagraph (1) thereof, by deleting paragraphs (b) and (c), by redesignating paragraphs (d) and (e) as paragraphs (b) and (c) respectively, and by revising paragraphs (b) and (c) as redesignated, to read as follows:

§ 1.44C–5 Certification procedures.

(a) *Certification that an item meets the definition of an energy-conserving component or renewable energy source property.* Upon the request of a manufacturer of an item pursuant to paragraph (b) of this section which is supported by proof that the item is entitled to be certified, the Assistant Commissioner (Technical) shall certify (or shall notify the manufacturer that the request is denied) that:

* * * * *

(b) *Procedure*—(1) *In general.* A manufacturer of an item desiring to apply under paragraph (a) shall submit the application to the Commissioner of Internal Revenue, Attention: Assistant Commissioner (Technical), T:C:E, 1111 Constitution Avenue, N.W., Washington, D.C. 20224. Upon being advised by the National Office, orally or in writing, that an adverse decision is contemplated a manufacturer may request a conference. The conference must be held within 21 calendar days from the date of that advice. Procedures for requesting an extension of the 21-day period and notifying the manufacturer of the Service's decision on that request are the same as those applicable to conferences on ruling requests by taxpayers (see section 9.05 of Rev. Proc. 80–20).

(2) *Contents of application.* The application shall include a description of the item (including appropriate design drawings and specifications) and an explanation of the purpose and function of the item. There shall accompany the application a declaration in the following form: "Under penalties of perjury, I declare that I have examined this application, including accompanying documents and, to the best of my knowledge and belief, the facts presented in support of the application are true, correct, and complete." The statement must be signed by the person or persons making the application.

(c) *Effect of certification under paragraph (a).* Certifications granted under paragraph (a) (1), (2), or (3) will be applied retroactively to April 20, 1977. However, certifications granted under paragraph (a) (4) or (5) will be applied retroactively only to the date the applicable energy-conserving component or renewable energy source was added by Treasury decision to the list of qualifying components or sources. Certification of an item under this section means that the applicable definitional requirement of § 1.44C–2 is considered satisfied in the case of any person claiming a residential energy credit with respect to such item. However, it does not relieve manufacturers of the need to establish that their items conform to performance and quality standards (if any) provided under § 1.44C–4 and that their items can reasonably be expected to remain in operation at least 3 years, in the case of insulation and other energy-conserving components, or at least 5 years, in the case of renewable energy source property.

Par. 4. There is inserted after § 1.44C–5, as set forth in paragraph 1 of the notice, the following new section:

§ 1.44C–6 Procedure and criteria for additions to the approved list of energy-conserving components or renewable energy sources.

[*Reserved.*]

Par. 5. Paragraph 4 of the notice is deleted.

(This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805))

Jerome Kurtz,

Commissioner of Internal Revenue.

Approved: July 30, 1980.

Donald C. Lubick,

Assistant Secretary of the Treasury.

PART 1—INCOME TAX: TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

[26 CFR Part 1]

Paragraph 1. There are inserted immediately after § 1.44–5 the following new §§ 1.44C–1, 1.44C–2, 1.44C–3, 1.44C–4, 1.44C–5 and 1.44C–6:

§ 1.44C–1 Residential energy credit.

(a) *General rule.* Section 44C provides a residential energy credit against the tax imposed by chapter 1 of the Internal Revenue Code. The credit is an amount equal to the individual's qualified energy conservation expenditures (set out in paragraph (b)) plus the individual's qualified renewable energy source expenditures (set out in paragraph (c)) for the taxable year. However, the credit is subject to the limitations described in paragraph (d) and the special rules contained in § 1.44C–3. The credit is nonrefundable (that is, the credit may not exceed an individual's tax liability for the taxable year). However, any unused credit may be carried over to succeeding years to the extent permitted under paragraph (e). Renters as well as owners of a dwelling unit may qualify for the credit. See § 1.44C–3(h) for the rules relating to the allocation of the credit in the case of joint occupants of a dwelling unit.

(b) *Qualified energy conservation expenditures.* In the case of any dwelling unit, the qualified energy conservation expenditures are 15 percent of the energy conservation expenditures made by the taxpayer with respect to the dwelling unit during the taxable year, but not in excess of $2,000 of such expenditures. See § 1.44C–2(a) for the definition of energy conservation expenditures.

(c) *Qualified renewable energy source expenditures.* In the case of any dwelling unit, the qualified renewable energy source expenditures are the renewable energy source expenditures made by the taxpayer with respect to

the dwelling unit during the taxable year, but not in excess of—

(1) 30 percent of the expenditures up to $2,000, plus

(2) 20 percent of the expenditures over $2,000, but not more than $10,000.

See § 1.44C–2(b) for the definition of renewable energy source expenditures.

(d) *Limitations—(1) Minimum dollar amount.* No residential energy credit shall be allowed with respect to any return (whether joint or separate) for any taxable year if the amount of the credit otherwise allowable (determined without regard to the tax liability limitation imposed by paragraph (d)(3) of this section) is less than $10.

(2) *Prior expenditures taken into account*—(i) *In general.* For purposes of determining the credit for expenditures made during a taxable year, the taxpayer must reduce the maximum amount of allowable expenditures with respect to the dwelling until in computing qualified energy conservation expenditures (under paragraph (b)) or qualified renewable energy conservation expenditures (under paragraph (c)) by prior expenditures which were made by the taxpayer or by joint occupants (see § 1.44C–3(h)) with respect to the same dwelling unit, and which were taken into account in computing the credit for prior taxable years. The reduction of the maximum amount under paragraph (c) must first be made with respect to the first $2,000 of expenditures (to which a 30 percent rate applies) and then with respect to the next $8,000 of expenditures (to which a 20 percent rate applies). This reduction must be made if all or any part of the credit was allowed in or was carried over from a prior taxable year.

(ii) *Change of principal residence.* A taxpayer is eligible for the maximum credit for qualifying expenditures made with respect to a new principal residence notwithstanding the allowance of a credit for qualifying expenditures made with respect to the taxpayer's previous principal residence. Furthermore, except in certain cases involving joint occupancy (see § 1.44C–3(h)), a taxpayer is eligible for the maximum credit notwithstanding the allowance of a credit to a prior owner of the taxpayer's new principal residence.

(iii) *Example.* The rules with respect to the reduction for prior expenditures are illustrated by the following example:

Example. In 1978, A has $1,000 of energy conservation expenditures and $5,000 of renewable energy source expenditures in connection with A's principal residence. A's residential energy credit for 1978 is $1,350, made up of $150 of qualified energy conservation expenditures (15 percent of $1,000) plus $1,200 of qualified renewable energy source expenditures (30 percent of the first $2,000 plus 20 percent of the next $3,000). In 1979 A has an additional $2,000 of energy conservation expenditures and $3,000 of renewable energy source expenditures in connection with the same principal residence. A's residential energy credit for 1979 is $750, made up of $150 of qualified energy conservation expenditures (15 percent of the new maximum $1,000, which was reduced from $2,000 by $1,000 of energy conservation expenditures taken into account in 1978) plus $600 of qualified renewable energy source expenditures (20 percent of $3,000, which reflects the reduction of the maximum allowable expenditures by the $5,000 of renewable energy source expenditures taken into account in 1978). The maximum residential energy credit allowable to A with respect to the same principal residence in subsequent years in which the credit is allowable is $400 (20 percent of the new maximum of $2,000 for renewable energy source expenditures and none for energy conservation expenditures).

(3) *Tax liability limitation.* The credit allowed by this section shall not exceed the amount of the tax imposed by chapter 1 of the Internal Revenue Code of 1954 for the taxable year, reduced by the sum of the credits allowable under—

(i) Section 32 (relating to tax withheld at source on nonresident aliens and foreign corporations and on tax-free covenant bonds),

(ii) Section 33 (relating to the taxes of foreign countries and possessions of the United States),

(iii) Section 37 (relating to retirement income),

(iv) Section 38 (relating to investment in certain depreciable property),

(v) Section 40 (relating to expenses of work incentive programs),

(vi) Section 41 (relating to contributions to candidates for public office),

(vii) Section 42 (relating to the general tax credit),

(viii) Section 44 (relating to purchase of new personal residence),

(ix) Section 44A (relating to expenses for household and dependent care services), and

(x) Section 44B (relating to employment of certain new employees).

(e) *Carryover of unused credit.* If the credit allowable by this section exceeds the tax liability limitation imposed by section 44C(b)(5) and paragraph (d)(3) of this section, the excess credit shall be carried over to the succeeding taxable year and added to the credit allowable under this section for the succeeding taxable year. A carryover that is not used in the succeeding year because it exceeds the tax liability limitation shall be carried over to later taxable years until used, except that no excess credit may be carried over to any taxable year beginning after December 31, 1987.

§ 1.44C–2 Definitions.

For purposes of section 44C and regulations thereunder—

(a) *Energy conservation expenditures*—(1) *In general.* The term "energy conservation expenditure" means an expenditure made on or after April 20, 1977, and before January 1, 1986, by a taxpayer for insulation or any other energy-conserving component, or for labor costs allocable to the original installation of such insulation or other component, if all of the following conditions are satisfied:

(i) The insulation (as defined in paragraph (c)) or other energy-conserving component (as defined in paragraph (d)) is installed in or on a dwelling unit that is used as the taxpayer's principal residence when the installation is completed. See § 1.44C–3(e) for the definition of principal residence.

(ii) The dwelling unit is located in the United States (as defined in section 7701(a)(9)).

(iii) The construction of the dwelling unit was substantially completed before April 20, 1977. See § 1.44C–3(f) for the definition of the terms "construction" and "substantially completed". In the case of expenditures made with respect to the enlargement of a dwelling unit, the construction of the enlargement must have been substantially completed before April 20, 1977.

(2) *Examples.* The application of this paragraph may be illustrated by the following examples:

Example (1). In 1978, A spent $500 for the purchase and installation of new storm windows to replace old storm windows, $100 to reinstall old storm windows, and $150 to transfer a A's house insulation which had been installed in A's garage. Only the $500 spent for new storm windows qualifies as an energy conservation expenditure. The $100 spent to reinstall storm windows and the $150 spent to transfer insulation to A's house do not qualify since the only installation costs that qualify are those for the original installation of energy conservation property the original use of which commences with the taxpayer.

Example (2). In June 1977, B purchased for B's principal residence a new house that was substantially completed before April 20, 1977. Pursuant to B's request the builder installed storm windows on May 1, 1977, the cost of this option being included in the purchase price of the house. The portion of the purchase price of the residence allocable to the storm windows constitutes an energy conservation expenditure. However, no other part of the purchase price may be allocated to energy conservation property (insulation and other energy conserving components) installed before April 20, 1977. To qualify as an energy conservation expenditure, an expenditure must be made (*i.e.*, installation of the energy conservation property must be completed) on or after April 20, 1977.

(b) *Renewable energy source expenditures.* The term "renewable energy source expenditures" means an expenditure made on or after April 20, 1977, and before January 1, 1986, by a taxpayer for renewable energy source property (as defined in paragraph (e)), or for labor costs properly allocable to the on-site preparation, assembly, or original installation such property, if both of the following conditions are satisfied:

(1) The renewable energy source property is installed in connection with a dwelling unit that is used as the taxpayer's principal residence when the installation is completed. See § 1.44C–3(e).

(2) The dwelling unit is located in the United States (as defined in section 7701(a)(9)).

Eligibility as a renewable energy source expenditure does not depend on the date of construction of the dwelling unit. Thus, such an expenditure may be made in connection with either a new or an existing dwelling unit. Renewable energy source expenditures need only be made in connection with a dwelling, rather than in or on a dwelling unit. For example, a solar collector that otherwise constitutes renewable energy source property is not ineligible merely because it is installed separately from the dwelling unit. The term "renewable energy source expenditure" does not include any expenditure allocable to a swimming pool even when used as an energy storage medium or to any other energy storage medium whose primary function is other than the storage of energy. It also does not include the cost of maintenance of an installed system or the cost of leasing renewable energy source property.

(c) *Insulation.* The term "insulation" means any item that satisfies all of the following conditions:

(1) The item is specifically and primarily designed to reduce, when installed in or on a dwelling or on a water heater, the heat loss or gain of such dwelling or water heater. To qualify as insulation the item must be installed between a conditioned area and a nonconditioned area (except when installed on a water heater, water pipe, or heating/cooling duct). Thus for example, awnings do not qualify as insulation. For purposes of this section the term "conditioned area" means an area that has been heated or cooled by conventional or renewable energy source means. Insulation includes materials made of fiberglass, rock wool, cellulose, urea based foam, urethane, vermiculite, perlite, polystyrene, and extruded polystyrene foam.

(2) The original use of the item begins with the taxpayer.

(3) The item can reasonably be expected to remain in operation at least 3 years.

(4) The item meets the applicable performance and quality standards prescribed in § 1.44C–4 (if any) that are in effect at the time the taxpayer acquires the item. The term "insulation" shall not include items whose primary purpose is not insulation (e.g., whose function is primarily structural, decorative, or safety-related). For example, carpeting, drapes (including linings), shades, wood paneling, fireplace screens (including those made of glass), new or replacement walls (except for qualifying insulation therein) and exterior siding do not qualify although they may have been designed in part to have an insulating effect.

(d) *Other energy-conserving components.* The term "other energy-conserving component" means any item (other than insulation) that satisfies all of the following conditions:

(1) The original use of the item begins with the taxpayer.

(2) The item can reasonably be expected to remain in operation for at least 3 years.

(3) The item meets the applicable performance and quality standards prescribed in § 1.44C–4 (if any) that are in effect at the time of the taxpayer's acquisition of the item.

(4) The item is one of the following items:

(i) *A furnace replacement burner.* The term "furnace replacement burner" means a device (for oil and gas-fired furnaces or boilers) that is designed to achieve a reduction in the amount of fuel consumed as a result of increased combustion efficiency. The burner must replace an existing burner. It does not qualify if it is acquired as a component of, or for use in, a new furnace or boiler.

(ii) *A device for modifying flue openings.* The term "device for modifying flue openings" means an automatically operated damper that—

(A) Is designed for installation in the flue, between the barometric damper or draft hood and the chimney, of a furnace; and

(B) Conserves energy by substantially reducing the flow of conditioned air through the chimney when the furnace is not in operation. Conditioned air is air that has been heated or cooled by conventional or renewable energy source means.

(iii) *A furnace ignition system.* The term "furnace ignition system" means an electrical or mechanical device, designed for installation in a gas-fired furnace or boiler that automatically ignites the gas burner. In order to qualify, the device must replace a gas pilot light. Furthermore, it does not qualify if it is acquired as a component of, or for use in, a new furnace or boiler.

(iv) *A storm or thermal window or door.* The terms "storm or thermal window" and "storm or thermal door" include the following:

(A)(*1*) A window placed outside or inside an ordinary or prime window, creating an insulating air space.

(*2*) A window with enhanced resistance to heat flow through the glazed area by multi-glazing.

(*3*) A window that consists of glass or other glazing materials that have exceptional heat-absorbing or heat-reflecting properties. For purposes of this subdivision (iv), the term "glazing material" does not include films and coatings applied on the surface of a window.

(B)(*1*) A second door, installed outside or inside a prime exterior door, creating an insulating air space.

(*2*) A door with enhanced resistance to heat flow through the glazed area by multi-glazing.

(*3*) A prime exterior door that has an R-value (a measurement of the ability of insulation to resist the flow of heat) of at least 2 throughout.

For purposes of this subdivision, "multi-glazing" is an arrangement in which two or more sheets of glazing material are affixed in a window or door frame to create one or more insulating air spaces. Multi-glazing can be achieved by installing a preassembled, sealed insulating glass unit or by affixing one or more additional sheets of glazing onto an existing window (or sash) or door. For purposes of this subdivision, a storm or thermal window or door does not include any film applied on or over the surface of a window or door.

(v) *Automatic energy-saving setback thermostat.* The term "automatic energy-saving setback thermostat" means a device that is designed to reduce energy consumption by regulating the demand on the heating or cooling system in which it is installed, and uses—

(A) A temperature control device for interior spaces incorporating more than one temperature control level, and

(B) A clock or other automatic mechanism for switching from one control level to another.

(vi) *Caulking and weatherstripping.* The term "caulking" means pliable materials used to fill small gaps at fixed joints on buildings to reduce the passage of air and moisture. Caulking includes, but is not limited to, materials commonly known as "sealants", "putty", and "glazing compounds". The term

"weatherstripping" means narrow strips of material placed over or in movable joints of windows and doors to reduce the passage of air and moisture.

(vii) *Energy usage display meter.* The term "energy usage display meter" means a device the sole purpose of which is to display the cost (in money) of energy usage in the dwelling. It may show cost information for electricity usage, gas usage, oil usage, or any combination thereof. The device may measure energy usage of the whole dwelling, or individual appliances or systems on an instantaneous or cumulative basis.

(viii) *Components specified by the Secretary.* The Secretary (or his delegate) may, in his discretion, after consultation with the Secretary of Energy and the Secretary of Housing and Urban Development (or their delegates), and any other appropriate Federal officers, specify by regulation other energy-conserving components for addition to the list of qualified items. See § 1.44C–6 for the procedures and criteria to be used in determining whether an item will be considered for addition to the list of qualified items by the Secretary.

The term "other energy-conserving component" is limited to items in a category specifically listed in section 44C(c)(4)(A) (i) through (vii) or added by the Secretary.

(e) *Renewable energy source property*—(1) *In general.* The term "renewable energy source property" includes any solar energy property, wind energy property, geothermal energy property, or property referred to in subparagraph (2), which meets the following conditions:

(i) The original use of the property begins with the taxpayer.

(ii) The property can reasonably be expected to remain in operation for at least 5 years.

(iii) The property meets the applicable performance and quality standards prescribed in § 1.44C–4 (if any) that are in effect at the time of the taxpayer's acquisition of the property.

Renewable energy source property does not include heating and cooling systems which serve to supplement renewable energy source equipment in heating or cooling a dwelling unit, and which employ a form of energy (such as electricity, oil or gas) other than solar, wind, or geothermal energy (or other forms of renewable energy provided in subparagraph (2)). Thus, heat pumps or oil or gas furnaces, used in connection with renewable energy source property, are not eligible for the credit. In order to be eligible for the credit for renewable energy source property, the property (as well as labor costs properly allocable to onsite preparation, assembly or installation of equipment) must be clearly identifiable. See § 1.44C–3(l) for recordkeeping rules.

(2) *Renewable energy source specified by the Secretary.* In addition to solar, wind, and geothermal energy property, renewable energy source property includes property that transmits or uses another renewable energy source that the Secretary (or his delegate) specifies by regulations, after consultation with the Secretary of Energy and the Secretary of Housing and Urban Development (or their delegates), and any other appropriate Federal officers, to be of a kind that is appropriate for the purpose of heating or cooling the dwelling or providing hot water for use within the dwelling. For purposes of this section, references to the transmission or use of energy include its collection and storage. See § 1.44C–6 for the procedures and criteria to be used in determining when another energy source will be considered for addition to the list of qualified renewable energy sources.

(f) *Solar energy property*—(1) *In general.* The term "solar energy property" means equipment and materials of a solar energy system as defined in this paragraph (and parts solely related to the functioning of such equipment) which, when installed in connection with a dwelling, transmits or uses solar energy to heat or cool the dwelling or to provide hot water for use within the dwelling. For this purpose, solar energy is energy derived directly from sunlight (solar radiation). Property which uses, as an energy source, fuel or energy which is indirectly derived from sunlight (solar radiation), such as fossil fuel or wood or heated underground water is not considered solar energy property. Materials and components of "passive solar systems" as well as "active solar systems", or a combination of both types of systems may qualify as solar energy property.

(2) *Active solar system.* An active solar system is based on the use of mechanically forced energy transfer, such as the use of fans or pumps to circulate solar generated energy, or thermal energy transfer, such as systems utilizing thermal siphon principles. Generally, this is accomplished through the use of equipment such as collectors (to absorb sunlight and create hot liquids or air), storage tanks (to store hot liquids), rockbeds (to store hot air), thermostats (to activate pumps or fans which circulate the hot liquids or air), and heat exchangers (to utilize hot liquids or air to heat air or water).

(3) *Passive solar system.* A passive solar system is based on the use of conductive, convective, or radiant energy transfer. In order to qualify as a passive solar system, a solar system used for heating purposes must contain all of the following: a solar collection area, an absorber, a storage mass, a heat distribution method, and heat regulation devices. The term "solar collection area" means an expanse of transparent or translucent material, such as glass which is positioned in such a manner that the rays of the sun directly strike an absorber. The term "absorber" means a surface, such as a floor, that is exposed to the rays of the sun admitted through the solar collection area, which converts solar radiation into heat, and then transfers the heat to a storage mass. The term "storage mass" means material, such as masonry, that receives and holds heat from the absorber and later releases the heat to the interior of the dwelling. The storage mass must be of sufficient volume, depth, and thermal energy capacity to store and deliver adequate amounts of solar heat for the relative size of the dwelling. In addition, the storage mass must be located so that it is capable of distributing the stored heat directly to the habitable areas of the dwelling through a heat distribution method. The term "heat distribution method" means the release of radiant heating from the storage mass within the habitable areas of the dwelling, or convective heating from the storage mass through airflow paths provided by openings or by ducts in the storage mass, to habitable areas of the dwelling. The term "heat regulations devices" means shading or venting mechanisms (such as awnings or insulated drapes) to control the amount of solar heat admitted through the solar collection areas and nighttime insulation or its equivalent to control the amount of heat permitted to escape from the interior of the dwelling.

(4) *Components with dual function.* To the extent that a passive or active solar system utilizes portions of the structure of a residence, only the materials and components whose sole purpose is to transmit or use solar radiation (and labor costs associated with installing such materials and components) are included within the term "solar energy property". Accordingly, materials and components that serve a dual purpose, *e.g.*, they have a significant structural function or are structural components of the dwelling (and labor costs associated with installing such materials and components) are not included within the term "solar energy property". For example, solar collectors and roof ponds

that form part of a roof (including additional structural components to support the roof), windows (including clerestories and skylights), and greenhouses do not qualify as solar energy property. In the case of a trombe wall (a south facing wall composed of a mass wall and exterior glazing), the mass wall (and labor costs associated with installing the mass wall) will not qualify. However, the exterior (non-window) glazing will qualify. Any shading, venting and heat distribution mechanisms or storage systems that do not have a dual function will also qualify.

(g) *Wind energy property.* The term "wind energy property" includes equipment (and parts solely related to the functioning of such equipment) which, when installed in connection with a dwelling, transmits or uses wind energy to produce energy in a useful form for personal residential purposes. Examples of equipment using wind energy to produce energy in a useful form are windmills, wind-driven generators, power conditioning and storage devices that use wind to generate electricity or mechanical forms of energy. Devices that use wind merely to ventilate do not qualify as wind energy property.

(h) *Geothermal energy property.* The term "geothermal energy property" includes equipment (and parts solely related to the functioning of such equipment) necessary to transmit or use energy from a geothermal deposit to heat or cool a dwelling or provide hot water for use within the dwelling. Equipment such as a pipe that serves both a geothermal function (by transmitting hot geothermal water within a dwelling) and a non-geothermal function (by transmitting hot water from a water heater within a dwelling) does not qualify as geothermal property. A geothermal deposit is a geothermal reservoir consisting of natural heat which is from an underground source and is stored in rocks or in an aqueous liquid or vapor (whether or not under pressure), having a temperature exceeding 50 degrees Celsius as measured at the wellhead or, in the case of a natural hot spring (where no well is drilled), at the intake to the distribution system.

§ 1.44C-3 Special rules.

(a) *When expenditures are treated as made*—(1) *Timeliness of an expenditure for the energy credit.* In general, for the purpose of determining whether an expenditure qualifies as being timely for the residential energy credit under section 44C (*i.e.*, is made after April 19, 1977, and before January 1, 1986), the expenditure is treated as made when original installation of the item is completed. Thus, solely for that purpose, the time of payment or accrual is irrelevant.

(2) *Special rule for renewable energy source expenditures in the case of construction or reconstruction of a dwelling.* In the case of renewable energy source expenditures in connection with the construction or reconstruction of a dwelling that becomes the taxpayer's new principal residence, the expenditures are to be treated as made (for the purpose of determining the timeliness of an expenditure for the residential energy credit) when the taxpayer commences use of the dwelling as his or her principal residence following its construction or reconstruction. The term "reconstruction" means the replacement of most of a dwelling's major structural components such as floors, walls, and ceiling. When a taxpayer reoccupies a reconstructed dwelling that was the taxpayer's principal residence prior to reconstruction, a renewable energy source expenditure is considered made when the original installation of the renewable energy source property is completed.

(3) *Taxable year in which credit is allowable.* For the purpose of determining the taxable year in which the credit for an expenditure is allowable (once it has qualified as timely under subparagraph (1) or (2)), an expenditure is treated as made on the later of (i) the date on which it qualifies as timely; or (ii) the date on which it is paid or incurred by the taxpayer.

(b) *Expenditures in 1977.* No credit under section 44C shall be allowed for any taxable year beginning before 1978. However, the amount of any credit under section 44C for the taxpayer's first taxable year beginning after December 31, 1977, shall take into account qualified energy conservation expenditures and qualified renewable energy source expenditures made during the period beginning April 20, 1977, and ending on the last day of such first taxable year.

(c) *Expenditures financed with Federal, etc., grants.* Qualified expenditures financed with Federal, State or other grants shall be taken into account for purposes of computing the residential energy credit only if such amounts are taxable as gross income under section 61 (relating to the definition of gross income) and the regulations thereunder.

(d) *Expenditures qualifying both as energy conservation expenditures and renewable source expenditures.* In the case of an expenditure which meets both the definition of an energy conservation expenditure (as defined in § 1.44C-2(a)) and a renewable energy source expenditure (as defined in § 1.44C-2(b)), the taxpayer may claim either a credit under § 1.44C-1(b) (relating to qualified energy conservation expenditures) or § 1.44C-1(c) (relating to qualified renewable energy source expenditures) but may not claim both credits with respect to the same expenditure.

(e) *Principal residence.* For purposes of section 44C, the determination of whether a dwelling unit is the taxpayer's principal residence shall be made under principles similar to those applicable to section 1034 and the regulations thereunder (relating to sale or exchange of a principal residence) except that ownership of the dwelling unit is not required. In making this determination, the period for which a dwelling is treated as a taxpayer's principal residence includes the 30-day period ending on the first day on which the dwelling unit would (but for this sentence) be treated as being used as the taxpayer's principal residence under principles similar to those applicable to section 1034. Thus, installation that are completed within that 30-day period may be eligible for the credit although, in the absence of the 30-day rule, the date of habitation of the dwelling unit by the taxpayer would mark the beginning of the taxpayer's use of the unit as a principal residence.

(f) *Construction substantially completed.* Construction of a dwelling unit is substantially completed when construction has progressed to the point where the unit could be put to use as a personal residence, even though comparatively minor items remain to be finished or performed in order to conform to the plans or specifications of the completed building. For this purpose, construction includes reconstruction as defined in paragraph (a)(2). This rule may be illustrated by the following example:

Example. On January 1, 1979, A purchases a dwelling that is to become A's prinicpal residence. The dwelling unit was originally constructed in 1950. A spends $50,000 to reconstruct the dwelling by replacing most of the dwelling's major structural components such as floors, walls, and ceilings. Included in the cost is $3,000 attributable to energy-conserving components. Reconstruction is substantially completed on April 1, 1979, and A moves into the reconstructed residence on May 1, 1979. Since construction includes reconstruction, A's reconstructed residence is not considered substantially completed before April 20, 1977. Thus, amounts spent with respect to A's reconstructed residence for energy-conserving components do not qualify as energy conservation expenditures.

(g) *Residential use of property.* To be eligible for the residential energy credit, expenditures must be made for personal residential purposes. If at least 80 percent of the use of a component or item of property is for personal residential purposes, the entire amount of the energy conservation expenditure or the renewable energy source expenditure is taken into account in computing the credit under this section. If less than 80 percent of the use of a component or item of property is for personal residential purposes, the amount of an expenditure taken into account is the amount that bears the same ratio to the amount of the expenditure as the amount of personal residential use of the component or item bears to its total use. For purposes of this paragraph, use of a component or an item of property with respect to a swimming pool is not a use for a personal residential purpose. The rules with respect to residential use of property are illustrated by the following examples:

Example (1). In 1978 A makes an expenditure of $3,000 for the installation of storm windows of which 50 percent is on the portions of A's dwelling used as the principal family residence and 50 percent is on the portion of the dwelling used as an office. A has made no other energy conservation expenditures for the residence. The allowable energy conservation expenditure is $1,500 (50 percent of $3,000), the portion attributable to residential use. Therefore, the residential energy credit is $225 (the qualified conservation expenditure of 15 percent of $1,500).

Example (2). During 1979, B makes $10,000 of renewable energy source expenditures on solar energy property for B's principal residence. Approximately 60 percent of the use of the solar energy property will be for heating B's swimming pool; the other 40 percent will be for heating the dwelling unit. B had not previously made renewable energy source expenditures with respect to the residence. Since use for a swimming pool is not considered a residential use, less than 80 percent of the use of B's solar energy property is considered used for personal residential purposes. Therefore, only $4,000 (40 percent of $10,000), the proportionate part of B's expenditures representing personal residential use, is treated as a renewable energy source expenditure. B is allowed a $1,000 residential energy credit (30 percent of $2,000 plus 20 percent of $2,000) for 1979.

(h) *Joint occupancy*—(1) *In general.* If two or more individuals jointly occupied and used a dwelling unit as their principal residence during any portion of a calendar year—

(i) The amount of the credit allowable under section 44C by reason of energy conservation expenditures or by reason of renewable energy source expenditures shall be determined by treating all of the joint occupants as one taxpayer whose taxable year is such calendar year; and

(ii) The credit under section 44C allowable to each joint occupant for the taxable year with which or in which such calendar year ends shall be an amount which bears the same ratio to the amount determined under paragraph (h)(1)(i) of this section as the amount of energy conservation expenditures or renewable energy source expenditures made by that occupant bears to the total amount of each type of such expenditures made by all joint occupants during such calendar year.

The provisions of this subparagraph may be illustrated by the following example:

Example. A, a calendar year taxpayer, and B, a June 1 fiscal year taxpayer, make energy conservation exenditures of $2,000 (A making expenditures of $500 and B making expenditures of $1,500) on their principal and jointly occupied residence in 1978. A and B have not previously make energy conservation expenditures with respect to this residence. Of the $300 credit (15 percent of $2,000), $75 will be allocated to A ($500/$2,000 × $300) and $225 to B ($1,500/$2,000 × 300). A will claim the allocable share of the credit on A's 1978 tax return and B will claim the allocable share of the credit on B's tax return for the fiscal year ending May 31, 1979.

(2) *Minimum credit.* The fact that one joint occupant may be unable to claim all or part of the credit under section 44C because of insufficient tax liability or because that occupant's allowable credit does not exceed the $10 minimum credit (as set forth in paragraph (d)(1) of § 1.44C–1) shall have no effect upon the computation of the amount of the allowable credits for the other joint occupants.

(3) *Prior expenditures.* Because joint occupants are treated as one taxpayer for purposes of determining the residential energy credit, the maximum amount of energy conservation expenditures or renewable energy source expenditures must be reduced by the total amount of such expenditures made in connection with the dwelling unit during prior calendar years in which any one of the residents of the unit during the current calendar year was a resident (whether made by the current resident or by an individual previously occupying the dwelling with the current resident). However, the preceding sentence shall not apply to prior expenditures no part of which was taken into account in computing the credits under section 44C for such years. Prior years' expenditures are not to be allocated among joint occupants to take into account the specific expenditures of each of the occupants in prior years.

(4) The rules of this paragraph may be illustrated by the following examples:

Example (1). Assume A and B have together made prior years' energy conservation expenditures of $1,600 (A having made $1,200 of expenditures and B having made $400) on their principal and jointly occupied residence. In the current year, each makes energy conservation expenditures of $300 with respect to the same residence. The maximum qualified expenditure with respect to the residence is reduced by the $1,600 of prior expenditures made by A and B. Therefore, only $400 of the $600 current expenditures are eligible as energy conservation expenditures. The resulting residential energy credit is $60 (15 percent of $400) of which $30 apiece will be allocated to A and B ($300/$600 × $60). The fact that A had previously computed the credit in prior years with respect to $1,200 of the total $1,600 of expenditures is irrelevant to the apportionment of the credit in the current year.

Example (2). Spouses C and D make $10,000 of renewable energy source expenditures with respect to their principal residence, half of which is paid by each spouse. No prior renewable energy source expenditures have been taken into account with respect to that residence by either C or D. C and D file separate returns for the calendar year. Under the joint occupancy rule, the maximum allowable renewable energy source credit with respect to C and D's principal residence is $2,200 (30 percent of the first $2,000, and 20 percent of the next $8,000 of expenditures). Half of this amount or $1,100, will be allowed to each spouse. If either spouse makes renewable energy source expenditures with respect to the same principal residence in future years, none of those expenditures would be qualified renewable energy source expenditures for which a credit can be claimed. That is, not more than $2,200 may be taken in the aggregate by C and D as a renewable energy source credit with respect to their principal residence.

Example (3). In 1978, E and F make energy conservation expenditures of $1,500 on their principal and jointly occupied residence. In 1979, E moves away and G becomes the other joint occupant of the residence. F and G make energy conservation expenditures of $1,000 in 1979. In 1980 F moves away and H moves in with G. G and H make energy conservation expenditures of $500. The maximum qualified expenditure made by F and G with respect to the residence is reduced by the $1,500 of prior expenditures made in 1978 by E and F. The maximum qualified expenditures made by G and H with respect to the residence is reduced only by the expenditures in prior years in connection with the residence during which either G or H was a joint occupant. Accordingly, the maximum qualified expenditures made by G and H with respect to the residence is reduced only by the $1,000 of prior expenditures made in 1979 by F and G.

(i) *Condominiums and cooperative housing corporations.* An individual

who is a tenant stockholder in a cooperative housing corporation (as defined in section 216) or who is a member of a condominium management association with respect to a condominium which he or she owns shall be treated as having made a proportionate share of the energy conservation expenditures or renewable energy source expenditures of such corporation or association. The cooperative stockholder's allocable share of the expenditures is to be the same as his or her proportionate share of the cooperative's total outstanding stock (including any stock held by the corporation). However, in the case where only certain cooperative stockholders are assessed for the expenditures made by the cooperative housing corporation, only those cooperative stockholders that are assessed shall be treated as having made a share of the expenditures of such corporation. In such case, the cooperative stockholder's share of the expenditures is the amount that the stockholder is assessed. The allocable share of a condominium management association member's energy conservation of renewable energy source expenditures is the amount that the member is assessed (or would be assessed in the case where expenditures are from general funds) by the association as a result of such expenditures. The residential energy credit for a qualified expenditure is allowable for the year in which the association or corporation has completed original installation of the item (or has paid or incurred the expenditure, if later). For purposes of this paragraph, the term "condominium management association" means an organization meeting the requirements of section 528(c)(1) of the Code (other than subparagraph (E) of that section), with respect to a condominium project substantially all the units of which are used as residences.

(j) *Joint ownership of renewable energy source property*—(1) *In general.* Renewable energy source property includes property which is jointly owned by the taxpayer and another person (or persons). For example, the fact that a windmill, solar collector, or geothermal well and distribution system is owned by two or more individuals does not by itself preclude qualification as renewable energy property.

(2) *Example.* The application of this subparagraph may be illustrated by the following example:

Example. A, B, and C each has a separate principal residence. They agree to finance jointly the construction of a solar collector, each providing one-third of the costs and taking one-third of the output of the collector. Each will separately pay for the costs of connecting the solar collector with his or her principal residence. Provided the solar collector and connection equipment otherwise qualify as renewable energy source property, A, B, and C will each be considered to have made renewable energy source expenditures equal to one-third of the cost of the collector plus his or her separate connection costs. Such expenditures will be subject to the limitations and other rules separately applicable to A, B, and C with respect to each principal residence, such as those with respect to the $10 minimum (§ 1.44C-1(d)(1)), prior expenditures (§ 1.44C-1(d)(2)), residential use (paragraph (g) of this section), and joint occupancy (paragraph (h) of this section).

(k) *Basic adjustments.* If a credit is allowed under section 44C for any expenditure with respect to any property, the increase in the basis of that property which would (but for this paragraph) result from such expenditure shall be reduced by the amount of the credit allowed.

(l) *Recordkeeping*—(1) *In general.* No residential energy credit is allowable unless the taxpayer maintains the records described in paragraph (l)(2) of this section. The records shall be retained so long as the contents thereof may become material in the administration of any internal revenue law.

(2) *Records.* The taxpayer must maintain records that clearly identify the energy-conserving components and renewable energy source property with respect to which a residential energy credit is claimed, and substantiate their cost to the taxpayer, any labor costs properly allocable to them paid for by the taxpayer, and the method used for allocating such labor costs.

§ 1.44C-4 Performance and quality standards. [Reserved.]

§ 1.44C-5 Certification procedures.

(a) *Certification that an item meets the definition of an energy-conserving component or renewable energy source property.* Upon the request of a manufacturer of an item pursuant to paragraph (b) of this section which is supported by proof that the item is entitled to be certified, the Assistant Commissioner (Technical) shall certify (or shall notify the manufacturer that the request is denied) that:

(1) The item meets the definition of insulation (see § 1.44C-2(c)(1)).

(2) The item meets the definition of an other energy-conserving component specified in section 44C(c)(4) see (§ 1.44C-2(d)(4)).

(3) The item meets the definition of solar energy property (see § 1.44C-2(f)), wind energy property (see § 1.44C-2(g)), or geothermal energy property (see § 1.44C-2(h)).

(4) The item meets the definition of a category of energy-conserving component that has been added to the list of approved items pursuant to paragraph (d)(4)(viii) of § 1.44C-2.

(5) The item meets the definition of renewable energy source property that transmits or uses a renewable energy source that has been added to the list of approved renewable energy sources pursuant to paragraph (e)(2) of § 1.44C-2.

(b) *Procedure*—(1) *In general.* A manufacturer of an item desiring to apply under paragraph (a) shall submit the application to the Commissioner of Internal Revenue, Attention: Assistant Commissioner (Technical), TCE, 1111 Constitution Avenue, N.W., Washington, D.C. 20224. Upon being advised by the National Office, orally or in writing, that an adverse decision is contemplated a manufacturer may request a conference. The conference must be held within 21 calendar days from the date of that advice. Procedures for requesting an extension of the 21-day period and notifying the manufacturer of the Service's decision on that request are the same as those applicable to conferences on ruling requests by taxpayers (see section 9.05 of Rev. Proc. 80-20).

(2) *Contents of application.* The application shall include a description of the item (including appropriate design drawings and specifications) and an explanation of the purpose and function of the item. There shall accompany the application a declaration in the following form: "Under penalties of perjury, I declare that I have examined this application, including accompanying documents and, to the best of my knowledge and belief, the facts presented in support of the application are true, correct, and complete." The statement must be signed by the person or persons making the application.

(c) *Effect of certification under paragraph (a).* Certifications granted under paragraph (a)(1), (2), or (3) will be applied retroactively to April 20, 1977. However, certifications granted under paragraph (a) (4) or (5) will be applied retroactively only to the date the applicable energy-conserving component or renewable energy source was added by Treasury decision to the list of qualifying components or sources. Certification of an item under this section means that the applicable definitional requirement of § 1.44C-2 is considered satisfied in the case of any person claiming a residential energy

credit with respect to such item. However, it does not relieve manufacturers of the need to establish that their items conform to performance and quality standards (if any) provided under § 1.44C–4 and that their items can reasonably be expected to remain in operation at least 3 years, in the case of insulation and other energy-conserving components, or at least 5 years, in the case of renewable energy source property.

§ 1.44C–6 Procedure and criteria for additions to the approved list of energy-conserving components or renewable energy sources.

[Reserved]

§ 1.1016 [Deleted]

Par. 2. Section 1.1016 is deleted.

Par. 3. Section 1.1016–5 is amended by adding a new paragraph (t) to read as follows:

§ 1.1016–5 Miscellaneous adjustments to basis.

* * * * *

(t) *Section 44C credit.* In the case of property with respect to which a credit has been allowed under section 44C (relating to residential energy credit), basis shall be adjusted as provided in paragraph (k) of § 1.44C–3.

[FR Doc. 80–26561 Filed 8–26–80; 4:04 pm]

BILLING CODE 4830–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

Reregulation of Radio and TV Broadcasting; Erratum

AGENCY: The Federal Communications Commission.

ACTION: Final rule, correction to order.

SUMMARY: Correction to Order FCC 80–165 published in the **Federal Register** on April 17, 1980, at 45 FR 26059.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: John Reiser, Philip Cross, Steve Crane, Broadcast Bureau, (202) 653–7275.

SUPPLEMENTARY INFORMATION: In the matter of reregulation of radio and TV broadcasting; erratum.

Released: August 18, 1980.

In the above captioned *Order*, released April 16, 1980, and published in the **Federal Register** on April 17, 1980, at 45 FR 26059, subparagraph (h)(3) of § 73.93, Operator requirements (Item 5 of the Appendix) is stated incorrectly. It is corrected to read:

§ 73.93 [Corrected]

(h) * * *

(3) At such time as the regularly designated chief operator is unavailable or unable to act as chief operator (e.g., vacations, sickness), and an assistant chief operator has not been designated or, if designated, for any reason is unable to assume the duties of the chief operator, the licensee must designate another first-class radiotelephone operator as acting chief operator on a temporary basis.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 80–26551 Filed 8–28–80; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 83

[PR Docket No. 79–86]

Simplification of the FCC's Rules for Recreational Boaters; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule, correction (Errata).

SUMMARY: This action corrects the frequency listed in the final rule published at 45 FR 49934 for the Weather channel WX–3 which was incorrect.

EFFECTIVE DATE: August 21, 1980.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Nicholas G. Bagnato, Private Radio Bureau, (202) 632–7175.

SUPPLEMENTARY INFORMATION: In the matter of simplification of the FCC's rules for recreational boaters. PR Docket No. 79–86; Errata

Released: August 22, 1980.

In the Report and Order in the above-captioned matter, FCC 80–398, released July 28, 1980 at 45 FR 49934 the Weather channel WX–3 shown in Section 83.1012 was incorrectly indicated as 162.445 MHz. The Report and Order is corrected to show channel WX–3 properly as 162.475 MHz.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 80–26552 Filed 8–28–80; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 258

Fishermen's Protective Act Procedures; Provision for Fees

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration.

ACTION: Final regulation.

SUMMARY: Section 7 of the Fishermen's Protective Act (22 U.S.C. 1971–1980) authorizes the fees paid by vessel owners entering into agreements under Section 7. These fees are used to carry out a vessel seizure indemnification program under Section 7. This amendment establishes fees for the agreement year October 1, 1980 through September 30, 1981.

EFFECTIVE DATE: October 1, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Michael L. Grable, Chief, Financial Services Division, National Marine Fisheries Service, Washington, D.C. 20235, Telephone Number: (202) 634–7496.

SUPPLEMENTARY INFORMATION: Section 7 indemnifies against certain losses resulting from a foreign country's seizure of a United States vessel based on territorial oceanic rights which are either not recognized by the United States or (a) are unrelated to fishery conservation and management, (b) fail to consider traditional fishing practices of U.S. vessels, (c) are more onerous than those applied by the United States to foreign fishing vessels, or (d) fail to allow U.S. fishing vessels equitable access to foreign fishery zones.

Section 7 regulations have annually established fees based on prior and anticipated experience. The following amendment of the Section 7 regulations will establish fees for the agreement year beginning October 1, 1980.

All holders of agreements for the present agreement year ending 1980, who wish them extended through September 30, 1981, by amendment (rather than entering into an entirely new agreement) must submit their fees required by the following amendment. Failure to do so will result in agreement termination October 1, 1980.

This amendment is exempt from the rulemaking requirements of the Administrative Procedures Act (5 U.S.C. 553) and makes no substantive change in the program's conduct.