

further opportunity for public comment under the Administrative Procedure Act is unnecessary. See 5 U.S.C. 553(b) (1982).

IV. Paperwork Reduction Act and Effective Date

The information collection provisions in this notice are being submitted to the Office of Management and Budget (OMB) for its approval under the Paperwork Reduction Act, 44 U.S.C. 3501-3520 (1982) and OMB's regulations, 5 CFR 1320.12 (1983). Interested persons can obtain information on information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. [Attention: Ken Malloy (202) 357-8033]. Comments on information collection provisions can be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Washington, D.C. 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission].

These amendments to the filing requirements will become effective on December 24, 1984. If OMB's approval and control number have not been received by that date, the Commission will issue a notice temporarily suspending the effective date.

List of Subjects in 18 CFR Part 294

Electric utilities, Reporting and recordkeeping requirements.

In consideration of the foregoing, Part 294 of Chapter I, Title 18, Code of Federal Regulations, is amended as set forth below.

By the Commission.
Kenneth F. Plumb,
Secretary.

PART 294—[AMENDED]

1. The authority citation for Part 294 continues to read as follows:

(Public Utility Regulatory Policies Act of 1978, Pub. L. 95-617, 92 Stat. 3117; Federal Power Act, 16 U.S.C. 792 *et seq.*; Department of Energy Organization Act, 42 U.S.C. 7107 *et seq.*; E.O. 12,009, 42 FR 46,267; Administrative Procedure Act 5 U.S.C. 553)

§ 294.101 [Amended]

2. In § 294.101, paragraphs (a)(1), (a)(2), and (b)(4) are amended by removing the words, "prior to April 30, 1985,".

3. In § 294.101, paragraph (b)(1) is amended by removing the words "by July 23, 1979," and "if such shortages were to occur prior to September 30, 1979".

4. In § 294.101, new paragraphs (d) and (e) are added, to read as follows:

§ 294.101 Shortages of Electric Energy and Capacity

(d) *Reports to other government entities.* Any report filed with another governmental entity that contains the information that must be reported under this part may be filed to comply with this part.

(e) *Number of copies.* Any public utility that files under this part must provide an original of any filing and at least two exact copies to this Commission and one copy to any state regulatory authority and firm power wholesale customers, unless otherwise required by the Commission.

[FR Doc. 84-26543 Filed 10-5-84; 8:45 am]

BILLING CODE 6717-01-M

18 CFR Part 385

[Docket No. RM84-21-000; Order No. 402]

Rules of Practice and Procedure; Interlocutory Appeals

Issued: October 5, 1984.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is amending its Rules of Practice and Procedure to require that any person filing an interlocutory appeal must serve an additional copy of the appeal on the Motions Commissioner by Express Mail or hand delivery. In addition, the appellant must add the words "INTERLOCUTORY APPEAL" below the docket designation in the caption of its filings. These two amendments will alleviate practical and administrative difficulties in meeting the seven-day period for acting on appeals.

EFFECTIVE DATE: This rule is effective October 5, 1984.

FOR FURTHER INFORMATION CONTACT: Joseph R. Hartsoe, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE Washington, D.C. 20426, (202) 357-8033.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon and Oliver G. Richard III.

Rules of Practice and Procedure; Interlocutory Appeals Docket No. RM84-21-000, Order No. 402. Final Rule.

The Federal Energy Regulatory Commission (Commission) is amending Rule 715(c) of its Rules of Practice and Procedure, 18 CFR 385.715(c) (1983), which governs the appeal of a presiding officer's denial of a motion to permit an

interlocutory appeal. The amendment requires that any person filing an interlocutory appeal must serve an additional copy of the appeal to the Motions Commissioner by Express Mail or hand delivery. In addition, the Commission is revising Rule 2002, 18 CFR 2002 (1983), to require a participant to add the words "INTERLOCUTORY APPEAL" below the docket designation in the caption of its filing.

Under current Rule 715(c)(5), the Motions Commissioner has seven days after filing to act upon a participant's appeal of a presiding officer's denial of a motion for interlocutory appeal under Rule 715(b). Within those seven days, the Motions Commissioner must: (1) obtain the participant's filing; (2) consider whether the information presented is sufficiently complete; and (3) determine whether extraordinary circumstances exist which make prompt Commission review of the contested ruling necessary to prevent detriment to the public interest or to prevent irreparable harm to a person. If a no extraordinary circumstances determination is made within seven days after the appeal is filed and if the Motions Commissioner has not otherwise provided for a different time period to receive and consider additional information, the appeal is automatically denied under Rule 715(c)(5).

The Commission has found that deciding whether to grant an interlocutory appeal within the seven-day period provided in Rule 715(c)(5) can be difficult. On occasion, it has taken the full seven days simply to obtain the appeal filed by the participant and to begin to analyze the issues involved. In these circumstances, there is insufficient time to reach a decision on whether the information is complete enough and, if so, to decide whether extraordinary circumstances are present.

The Commission is alleviating these practical and administrative difficulties by making two amendments to its Rules of Practice and Procedure. First, those filing on interlocutory appeal under Rule 715(c)(5) must serve an additional copy to the Motions Commissioner by Express Mail or by hand delivery. This change should permit full and fair consideration of an interlocutory appeal without causing a lengthy delay in the proceedings. Second, a participant filing an appeal of a presiding officer's denial of a motion for interlocutory appeal under Rule 715(c) must now include the words "INTERLOCUTORY APPEAL" underneath the docket designation. This will enable the Commission staff to

identify these filings quickly and to ensure that the appeal is routed on an expedited basis.

Because this final rule is a matter of agency organization, procedure, and practice, prior notice and comment are unnecessary under section 4 of the Administrative Procedure Act, 5 U.S.C. § 553(b) (1982). In addition, the Commission finds that this rule will improve the handling and consideration of requests for interlocutory appeals and will thereby benefit the participants in Commission proceedings. Therefore, this rule will become effective immediately upon issuance, pursuant to 5 U.S.C. § 553(d) (1982).

List of Subjects in 18 CFR Part 385

Administrative practice and procedure.

Accordingly, the Commission, effective immediately, amends Part 385 of Title 18, Chapter I, Code of Federal Regulations, as set forth below.

By the Commission,
Kenneth F. Plumb,
Secretary.

PART 385—[AMENDED]

1. In § 385.715, paragraphs (c)(1) and (c)(2) are amended by adding a new sentence at the end of each paragraph, to read as follows:

§ 385.715 **Interlocutory appeals to the Commission from rulings of presiding officers (Rule 715).**

(c) *Appeal of a presiding officer's denial of motion to permit appeal.* (1) Any person filing an appeal under this paragraph must serve a separate copy of the appeal on the Motions Commissioner by Express Mail or by hand delivery.

(2) The appeal must be labeled in accordance with § 385.2002(b) of this chapter.

2. In § 385.2002, paragraphs (b), (c), and (d) are redesignated as (c), (d), and (e) respectively, and a new paragraph (b) is added to read as follows:

§ 385.2002 **Caption of filings (Rule 2002).**

(b) The words "INTERLOCUTORY APPEAL" underneath the docket designation if the filing is an appeal under Rule 715(c) of a presiding officer's denial of a motion for an interlocutory appeal;

3. The authority citation of Part 385 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101-7352 (1982);

Executive Order 12,009, 3 CFR 142 (1978); Administrative Procedure Act, 5 U.S.C. 551-557 (1982); Independent Offices Appropriation Act, 31 U.S.C. 9701 (1982); Natural Gas Act, 15 U.S.C. 717-717w (1982); Federal Power Act, 16 U.S.C. 791a-828c (1982); Natural Gas Policy Act, 15 U.S.C. 3301-3432 (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601-2645 (1982); Interstate Commerce Act, 49 U.S.C. 1-27 (1976), unless otherwise noted.

[FR Doc. 84-26541 Filed 10-5-84; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 558

Animal Drugs, Feeds, and Related Products; Change of Sponsor

AGENCY: Food and Drug Administration.
ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for four approved new animal drug applications (NADA's) (tylosin, tylosin-sulfamethazine, lincomycin, and pyrantel tartrate) from Feed Fortifiers, Inc., to Nutrius, Inc. Nutrius submitted supplemental NADA's providing for the change.

EFFECTIVE DATE: October 9, 1984.

FOR FURTHER INFORMATION CONTACT:

David L. Gordon, Center for Veterinary Medicine (HFV-238), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6243.

SUPPLEMENTARY INFORMATION: Nutrius, Inc., Two Brecksville Commons, 8221 Brecksville Rd., Brecksville, OH 44141, submitted supplements to NADA's 93-518 (tylosin), 98-639 (tylosin-sulfamethazine), 119-063 (pyrantel tartrate), and 132-659 (lincomycin) to provide for a change of sponsor from Feed Fortifiers, Inc., Manson, IA 50563. In addition, Feed Fortifiers informed the agency of the change. Nutrius acquired the assets of Feed Fortifiers including facilities and NADA's. This change of sponsor does not involve any changes in manufacturing facilities, equipment, procedures, or production personnel. The regulations are amended to reflect the sponsor change.

As a result of this action, Feed Fortifiers is no longer the sponsor of an approved NADA. Nutrius has not previously been listed in the list of sponsors of approved NADA's in 21 CFR 510.600. The section is amended to delete the entries for Feed Fortifiers and to add Nutrius.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting requirements.

21 CFR Part 558

Animal drugs, Animal feeds.

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 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.83), Parts 510 and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. Part 510 is amended in § 510.600 in paragraph (c)(1) by removing the entry for Feed Fortifiers, Inc., and by adding a new entry alphabetically, and in paragraph (c)(2) by removing the entry for "017255" and by adding a new entry numerically, to read as follows:

§ 510.600 **Names, addresses, and drug labeler codes of sponsors of approved applications.**

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
Nutrius, Inc., Two Brecksville Commons, 8221 Brecksville Rd., Brecksville, OH 44141.....	051359

(2) * * *

Drug labeler code	Firm name and address
051359	Nutrius, Inc., Two Brecksville Commons, 8221 Brecksville Rd., Brecksville, OH 44141.....

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

2. Part 558 is amended:

§ 558.321 [Amended]

a. in § 558.325 *Lincomycin* in paragraph (b)(5) by removing the number "017255" and inserting in its place "051359".

§ 558.485 [Amended]

b. In § 558.458 *Pyrantel tartrate* in paragraph (a)(7) by removing the number "017255" and inserting in its place "051359".

§ 558.625 [Amended]

c. In § 558.625 *Tylosin* in paragraph (b)(2) by removing the number "017255" and inserting in its place "051359".

§ 558.630 [Amended]

d. In § 558.630 *Tylosin* and *sulfamethazine* in paragraph (b) (3) and (9) by removing the number "017255" and inserting in its place "051359".

Effective date. October 9, 1984.

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

Dated: September 28, 1984.

Marvin A. Norcross,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 84-26551 Filed 10-5-84; 8:45 am]

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DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 1**

[T.D. 7982]

Income Tax; Energy Investment Credit for Qualified Intercity Buses

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the availability of the energy investment credit for qualified intercity buses. The Crude Oil Windfall Profit Tax Act of 1980 added qualified intercity buses to the list of energy property. The regulations provide the public with the guidance needed to comply with this legislation.

DATES: The amendments are effective for the period beginning on January 1, 1980, and ending December 31, 1985.

FOR FURTHER INFORMATION CONTACT: Michel A. Dazé of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attention: CC:LR:T (202-566-3458, not a toll-free call).

SUPPLEMENTARY INFORMATION:**Background**

This document contains final amendments to the Income Tax Regulations (26 CFR Part 1) under section 48(l)(16) of the Internal Revenue Code of 1954, relating to the energy investment credit for qualified intercity buses. These regulations were published in proposed form in the *Federal Register* on September 3, 1982 (47 FR 38918). A few comments were received suggesting various changes to the proposed amendments. There were no requests for

a public hearing and none was held. With only minor revisions, the proposed regulations are adopted by this Treasury decision.

Effective Date

The notice of proposed rulemaking was published in the *Federal Register* approximately two and one-half years after section 48(l)(16) became effective. One comment objects to a retroactive application of the final regulations because the statutory language and the legislative history provided the only guidance to taxpayers during that time period. Since these regulations are interpretative, the final regulations are effective for the entire period during which section 48(l)(16) is in effect.

Eligible Taxpayers

Section 48(l)(16)(A)(i) allows the energy investment credit (energy credit) for qualified intercity buses (qualifying buses) only to common carriers regulated by either the Interstate Commerce Commission or an appropriate State agency. The final regulations adopt the definition of a common carrier in the Revised Interstate Commerce Act as published in the proposed regulations. If the taxpayer is engaged wholly in intrastate commerce, the standard for the appropriateness of a State agency is also taken from that Act. One comment observed that an operator of only intrastate service in a State which has deregulated the bus industry would be regulated by neither the Interstate Commerce Commission nor an appropriate State agency. He suggested that the definition of a common carrier should be modified so that these operators are not denied the energy credit. This suggestion was not adopted. There is no statutory authority for the Secretary to waive the requirement of regulation by a Federal or State agency. In some cases, an intrastate carrier may satisfy the requirement by registering with the Interstate Commerce Commission.

Leased Buses

Section 1.48-9(q)(7)(iv) of the proposed regulations contained rules for determining whether a leased bus is energy property and the eligibility of either the lessor or the lessee of that bus to claim the energy investment credit. This Treasury decision reserves paragraph (q)(8) for new rules relating to leased buses and does not adopt paragraph (q)(7)(iv) as proposed. Rules for determining whether a leased bus is energy property and the eligibility of a taxpayer to claim the energy credit for that bus are repropounded elsewhere in this issue of the *Federal Register*.

Intercity Transportation

The proposed regulations define intercity transportation by reference to the definition of commercial zones in the Revised Interstate Commerce Act (49 U.S.C. 10526(b)(1)). Transportation not provided entirely within a commercial zone is intercity transportation. Two comments object that the definition of intercity transportation is overly restrictive, that it does not carry out the intent of Congress in enacting the credit, and that it introduces excessive complexity to the regulations. The definition of a qualifying bus in section 48(l)(16)(B) includes the intercity transportation requirement and is intended to distinguish intercity buses from local transit buses (H.R. Rep. No. 96-817, 96th Cong., 2d Sess. 134 (Conference Report, 1980)). The regulations (49 CFR Part 1048) promulgated by the Department of Transportation to define commercial zones provide an easily applied, objective measure of the boundaries within which buses will be used for local transit. Accordingly, the final regulations adopt the definition of intercity transportation without change.

Increase in Operating Seating Capacity

Under section 48(l)(16)(C), qualified investment for a qualifying bus is taken into account for the energy credit only to the extent that the bus increases the taxpayer's operating seating capacity (operating capacity). Only a bus used predominantly on a full-time basis in the trade or business of furnishing intercity transportation will be counted in operating capacity.

Under the proposed regulations, in order to meet the definition of a qualifying bus and to be counted in operating capacity, the bus must satisfy the full-time use requirement and pass two 90 percent tests. Proposed § 1.48-9(q)(7). To be used full time, a bus must be driven at least 10,000 miles during the taxable year. That figure is prorated on a daily basis for buses placed in service during the taxable year or for a short taxable year described in section 441(b)(3). Ninety percent or more of those miles must be driven to provide passenger transportation or charter service (passenger service), not necessarily intercity. Of the miles driven to provide passenger service, 90 percent or more must be for intercity transportation. Thus, up to 10 percent of annual miles may be driven for non-passenger purposes, such as for maintenance, and up to 10 percent of the passenger miles may be driven on local runs.

In response to a comment, the final regulations clarify that odometer readings will be considered the best evidence of annual miles driven. Another comment suggests that an operator should be permitted to keep records of miles traveled on a fleet-wide basis, rather than for individual buses. To be eligible for the energy credit, a newly acquired bus must increase, and therefore be included in, total operating capacity. With fleet-wide record keeping, it is possible that several new buses will, on the average, satisfy the use requirement of section 48(l)(16)(C)(ii) for a taxable year, while individually not every new bus would be included in operating capacity and thus eligible for the energy credit. Therefore, the suggestion is not adopted.

One comment argues that the requirement that 81% of total miles must be driven to furnish intercity passenger transportation is an interpretation of predominant use inconsistent with predominant use standards appearing elsewhere in the Code. The writer referred to § 48.4221-11(b)(2) and temporary § 142.1-1(e) which interpret use of a bus predominantly for a particular purpose to mean that more than 50 percent of its hours of use and miles driven are for that purpose. However, this objection ignores the additional requirement in section 48(l)(16)(C) that in order for a bus to be included in operating capacity, it must be used "predominantly on a full-time basis" to furnish intercity passenger transportation.

A second comment finds the proposed predominant use test unfair to small and medium-sized carriers who, in order to maximize revenue, must provide more non-qualifying service than allowed in the proposed regulations. The comment suggests that only 70 percent of the passenger miles should be driven to furnish intercity transportation. The final regulations retain the requirement of 10,000 miles of total use and adopt the requirement that at least 70 percent of the miles be driven while furnishing intercity passenger transportation or intercity charter service.

Proposed § 1.48-9(q)(8)(ii) defines operating capacity as the combined seating capacities of all buses in the taxpayer's fleet which are intercity buses in a taxable year. Two comments suggest that it is unclear whether this provision could be interpreted to require including in operating capacity all intercity buses that have met the predominant use test during the year, whether or not they are owned by the taxpayer at the end of the year. Since this interpretation could result in an

artificial increase in operating capacity for a taxable year in which an operator replaces an old bus with a qualifying bus, the final regulations make clear that operating capacity includes only buses owned at the end of the year.

Under the proposed regulations, if the increase in operating capacity for a taxable year is less than the total seating capacities of buses added during the year, the qualified investment attributable to the increase in operating capacity is determined by multiplying the qualified investment for the regular investment credit by the ratio of increase in capacity to added capacity. Increase in capacity is the difference between the prior year's operating capacity and the present year's operating capacity. Added capacity is the number of seats included in the present year's operating capacity which were not included in the prior year's operating capacity. Any bus contributing to an increase will be counted as added capacity, including a bus ineligible for the energy credit, because, for example, it is acquired used.

One comment suggests an amendment to the proposed regulations to allow an operator to allocate all of its increase in operating capacity to one or more qualifying buses. A second suggestion would exclude from added capacity a replacement bus that is ineligible for the energy credit. Neither amendment is adopted. Ratable allocation of increase in operating capacity to an operator's qualified intercity buses provides an even-handed method of determining qualified investment for the energy credit.

Recapture of Energy Credit

Under the proposed regulations, the energy credit would be recaptured in a year in which a qualifying bus ceases to be energy property with respect to the taxpayer. One comment suggests that the cessation of energy property status should be deemed to occur on the last day of the taxable year in which a bus fails to qualify. This suggestion is not adopted because it is inconsistent with § 1.47-1(c)(ii)(b) which provides that a cessation shall be treated as having occurred on the first day of the taxable year when the event causing cessation does not occur on a specific date.

Executive Order 12291 and Regulatory Flexibility Act

The Commissioner of Internal Revenue has determined that this final rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. Although a notice of proposed rulemaking that solicited

public comment was issued, the Internal Revenue Service concluded when the notice was issued that the regulations are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 did not apply. Accordingly, the final regulations do not constitute regulations subject to the Regulatory Flexibility Act 5 U.S.C. Chapter 6).

Drafting Information

The principal author of these final regulations is Michel A. Dazé 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 regulations, both on matters of substance and style.

List of Subjects in 26 CFR Part 1

Income taxes, Tax liability, Tax rates, Credits.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended as follows:

PART 1—[AMENDED]

Paragraph 1. Section 1.46-3(f)(1) is amended by adding at the end thereof the following new sentence:

§ 1.46-3 Qualified Investment.

(f) *Partnerships*—(1) *In general.* * * * For computation of each partner's qualified investment for the energy credit for a qualified intercity bus, see § 1.48-9(q)(9)(iv).

Par. 2. Section 1.47-1(h)(3) is amended by:

1. Inserting "(i)" between "(3) Cessation." and "The term", and
2. By adding new paragraph (h)(3)(ii) to read as set forth below.

§ 1.47-1 Recomputation of credit allowed by section 38.

(h) *Special rules for energy property.*

(3) *Cessation.* * * *

(ii) A qualified intercity bus described in § 1.48-9(q) must meet the predominant use test (of § 1.48-9(q)(7)) for the remainder of the taxable year from the date it is placed in service and for each taxable year thereafter. A cessation occurs in any taxable year in which the bus is no longer a qualifying bus under § 1.48-9(q)(6). A qualified intercity bus does not cease to be energy property for a taxable year subsequent

to the one in which it was placed in service by reason of a decrease in operating capacity (see § 1.48-9(q)(9)) for that year compared to any prior taxable year.

Par. 3. Section 1.48-9 is amended by adding and reserving paragraphs (o), (p), and by adding paragraph (q) to read as follows:

§ 1.48-9 Definition of energy property.

(o) [Reserved].

(p) [Reserved].

(q) *Qualified intercity buses*—(1) *In general.* This paragraph (q) prescribes rules and definitions for purposes of section 48(l)(2)(A)(ix) and (16). Energy property includes qualified intercity buses of an eligible taxpayer, but only to the extent of the increase in the taxpayer's total operating seating capacity (operating capacity) under paragraphs (q) (9), (10), and (11) of this section. For application of recapture rules see § 1.47-1(h)(3)(ii).

(2) *Eligible taxpayer.* A taxpayer is an eligible taxpayer only if it is determined to be both—

(i) A common carrier regulated by the Interstate Commerce Commission or an appropriate State agency and

(ii) Engaged in the trade or business of furnishing intercity transportation by bus.

(3) *Common carrier.* The taxpayer is a common carrier only if the taxpayer holds itself out to the general public as providing passenger bus transportation for compensation over regular or irregular routes, or both.

(4) *Appropriate State agency.* A State agency is appropriate only if it has both—

(i) Power to regulate intrastate transportation provided by a motor carrier, within the meaning of section 10521(b)(1) of the Revised Interstate Commerce Act (49 U.S.C. 10521(b)(1)), and

(ii) Power to initiate an exemption proceeding under section 1025(b) of that Act (49 U.S.C. 10525(b)).

(5) *Intercity transportation.* Intercity transportation means intercity passenger transportation or intercity passenger charter service. Intercity transportation does not include transportation provided entirely within a municipality, contiguous municipalities, or within a zone that is adjacent to, and commercially a part of, the municipality or municipalities (within the meaning of section 10526(b)(1) of the Revised Interstate Commerce Act (49 U.S.C. 10526(b)(1))). See 49 CFR Part 1048 (regulations defining commercial zones under that statute).

(6) *Definition of qualified intercity bus.* A qualified intercity bus (qualifying bus) is an automobile bus—

(i) The chassis and body of which are exempt (under section 4063(a)(6)) from the 10-percent excise tax generally imposed under section 4061(a) on trucks and buses.

(ii) With a seating capacity of at least 36 passengers (in addition to the driver).

(iii) With one or more baggage compartments, in an area separated from the passenger area, with an aggregate capacity of at least 200 cubic feet, and

(iv) Which meets the predominant use test.

(7) *Predominant use test.* (i) A bus meets the predominant use test for a taxable year only if it meets the following conditions:

(A) It is used on a full-time basis during the taxable year, and

(B) At least 70 percent of the total miles driven are driven while furnishing intercity transportation.

(ii) A bus driven from the end point of one trip to the beginning point of another trip ("deadheading"), both of which furnish intercity transportation of passengers, will be considered to have been driven while furnishing intercity transportation of passengers, even if no passengers are carried.

(iii) A bus is considered used on a full-time basis in a taxable year if it was driven 10,000 miles in that year. If available, the best evidence of annual mileage is the difference odometer readings at the beginning and end of each taxable year. If the bus was placed in service during the taxable year, or for a short taxable year described in section 441(b)(3), that 10,000 mile figure is prorated on a daily basis.

(iv) If a qualifying bus fails to meet the predominant use test in a taxable year, a cessation occurs in that taxable year. See § 1.47-1(h)(3)(ii).

(v) The following examples illustrate this paragraph (g)(7):

Example (1). X, a bus company, used a bus for trips between city M and city N, a distance of 100 miles. These trips qualify as furnishing intercity transportation. During the taxable year, 300 round trips were run carrying passengers both ways and 75 trips were run carrying passengers from city M to city N immediately after each of which the bus was returned to city M for the next trip. The bus was also driven 20,000 miles to furnish passenger service which was local transportation. During the taxable year, the bus was driven a total of 100,000 miles. X makes the following calculations to determine if it met the predominant use test for the taxable year.

1. Total miles driven.....	100,000
2. Intercity miles driven:	
a. Passenger round trips (100 x 2 X 300).....	60,000
b. Passenger one-way (75 x 100).....	7,500
c. Non-passenger return trips (75 x 100).....	7,500
3. Total intercity passenger miles (sum of lines 2 a, b, and c).....	75,000
4. 79% of line 1.....	79,000

Since line 1 is not less than 10,000 miles, the full-time use requirement is met. Since line 3 is greater than line 4, the 70 percent intercity mileage test is met. Thus, for the taxable year, the bus meets the predominant use test in paragraph (q)(7)(i) of this section.

Example (2). The facts are the same as in example (1), except that the bus was placed in service on the last day of the taxable year. The bus was used only to run one round trip, carrying passengers, between cities M and N, 10,000 miles X one day ÷ 365 days = 27.4 miles. Because, for the one day of the taxable year that the bus was in service, the bus was driven more than 27.4 miles, and all these miles were driven to furnish intercity transportation, it met the predominant use test for the taxable year.

(8) *Leased buses.* [Reserved].

(9) *Operating capacity.* (i) Qualified investment for a qualifying bus is taken into account for the energy credit only to the extent the bus increases the taxpayer's operating capacity. To increase operating capacity, a bus must be counted in operating capacity. The increase in a taxpayer's operating capacity is the excess of the taxpayer's operating capacity for the current taxable year over its operating capacity for the immediately preceding taxable year. Related taxpayers determine operating capacity on a group basis under paragraph (q)(10) of this section.

(ii) Operating capacity for a particular taxable year is determined by adding together the seating capacities of all intercity buses used by the taxpayer in that year and still owned by the taxpayer at the end of that year. An intercity bus is a bus which meets the chassis and body test and the predominant use test in paragraph (q)(6) of this section whether or not the bus is still in use at the end of the taxable year. In the case of a leased bus to which paragraph (q)(8) of this section applies, the lessee's operating capacity determines qualified investment for the energy credit.

(iii) The qualified investment for the energy credit for a qualifying bus is the bus's qualified investment for the regular credit multiplied by a fraction. The numerator of the fraction is the increase in the taxpayer's operating capacity for the taxable year. The denominator is the added operating capacity for the taxable year. Added operating capacity for the taxable year is determined for a taxpayer by adding together the seating capacities of the

taxpayer's intercity buses included in operating capacity for the taxable year which were not included in operating capacity for the immediately preceding taxable year.

(iv) In the case of a partnership, each partner's qualified investment for the energy credit for a qualifying bus is the partner's qualified investment for the regular credit (determined under § 1.46-3(f) multiplied by the fraction referred to in paragraph (q)(9)(iii) of this section for the partnership, as determined for the partnership taxable year in which the bus is placed in service.

(v) The following example illustrates this paragraph (q)(9):

Example. Corporation Y is a calendar year bus company that is an eligible taxpayer under paragraph (q)(2) of this section. Based upon the facts as set forth in the following table, Y makes the following calculations to determine the energy credit earned in 1981:

1. 1980 operating capacity determined as of 12/31/80:	
a. 5 intercity buses × 50 seats each.....	250
b. Total 1980 operating capacity.....	250
2. 1981 operating capacity determined as of 12/31/81:	
a. 2 1980 buses used on a full-time basis in 1981.....	100
b. 1981 added capacity.....	
i. Qualifying buses:	
Bus 1.....	45
Bus 2.....	55
Bus 3.....	50
ii. Intercity bus not a qualifying bus.....	50
iii. Total 1981 added capacity.....	200
c. Total 1981 operating capacity.....	300
3. 1981 increase in operating capacity (line 2c—line 1b).....	50
4. Fraction for determining qualified investment attributable to increase in capacity (line 3+line 2 (b)(iii)).....	1/6

Accordingly, the energy credit earned in 1981 for each of the qualifying buses is determined as follows:

Qualified investment for the regular credit	×	Line 4	×	Energy per centage	=	Energy credit earned
Bus 1: \$15,000		1/6		10		\$375
Bus 2: \$20,000		1/6		10		500
Bus 3: \$25,000		1/6		10		625
Total energy credit earned in 1981						1,500

(10) **Related taxpayers.** (i) Related taxpayers are treated as one taxpayer in determining the increase in operating capacity under paragraph (q)(9)(ii) of this section and in determining the qualified investment in qualified intercity buses for the energy credit under paragraph (q)(9)(iii) of this section. Related taxpayers are members of a group of trades or businesses that are under common control (as defined in § 1.52-1(b)).

(ii) Related taxpayers make all computations relating to operating

capacity on a group basis. Also, the determination of whether a bus meets the predominant use test is made on a group basis by aggregating bus usage by each member of the group. For example, if a bus is acquired by one member and used by that member for part of a taxable year and used by other members for the remainder, the combined usage is aggregated in determining whether the predominant use test is met. In addition, all related taxpayers are treated as one person in applying paragraph (q)(8) of this section (relating to leasing).

(iii) The energy credit earned for a qualifying bus is allocated to the member which acquired (or is a lessee treated under section 48(d) as having acquired) the bus whether or not that member had a separate increase in operating capacity for the taxable year.

(iv) Each member must make its own computation of the group's increase in operating capacity for the period comprising its taxable year. A member will make this computation as of the end of its taxable year ignoring different taxable years of other members. For the period comprising its taxable year, the member makes all calculations relating to group operating capacity, including the determination of full-time use by other members.

(v) Each member determines the composition of the group as of the end of that member's taxable year. For example, if X uses the calendar year and makes its computation as of December 31, 1981, and Y is a member of X's group at that time, Y's operating capacity determined as of the end of X's immediately preceding taxable year (December 31, 1980) is taken into account by X for 1980 even if Y was not a member of the group for any day prior to December 31, 1981.

(vi) The following example illustrates this paragraph (q)(10):

Example (a). Corporations X and Y are related taxpayers. In this example, each bus is a qualifying bus with a seating capacity of 50. Each bus owned at the close of either X's or Y's taxable year was used on a full-time basis for the relevant period corresponding to X's or Y's taxable year. Other facts are set forth in the following table:

	X	Y
Taxable year ends.....	Dec. 31.....	June 30.....
Operating capacity for 1979.....	5 buses.....	10 buses.....
Buses added.....	3 buses Mar. 1, 1980.....	3 buses May 15, 1981.....
Buses sold.....	2 buses Mar. 31, 1981.....	2 buses Sept. 30, 1980.....
Cost of each added bus.....	\$40,000.....	\$60,000.....

(b) X makes the following calculations to determine the energy credit earned for calendar year 1980.

1. 1979 operating capacity determined as of 12/31/79:	
a. Attributable to X (5 buses × 50 seats).....	250
b. Attributable to Y (10 buses × 50 seats).....	500
c. Total 1979 operating capacity.....	750
2. 1980 operating capacity determined as of 12/31/80:	
a. X's 5 and Y's 8 1979 buses used on a full-time basis in 1980 and still owned on 12/31/80.....	650
b. 1980 added capacity (X's 3 buses × 50 seats).....	150
c. Total 1980 operating capacity.....	800
3. 1980 increase in operating capacity (line 2c—line 1c).....	50
4. Fraction in paragraph (q)(9)(iii) of this section (line 3 ÷ line 2b).....	1/6

Accordingly, X earned an energy credit of \$4,000 in 1980 (\$40,000 × 1/6 × 10% × 3 buses).

(c) Since in calendar year 1981 X placed no qualifying buses in service, X earned no energy credit in 1981.

(d) Since in the taxable year 7/1/79-6/30/80 Y placed no qualifying buses in service, Y earned no energy credit in that taxable year.

(e) Y makes the following calculations to determine the energy credit earned in the taxable year 7/1/80-6/30/81.

1. Operating capacity for the taxable year ending 6/30/80 determined as of the close of that year:	
a. Attributable to X (8 buses × 50 seats).....	400
b. Attributable to Y (10 buses × 50 seats).....	500
c. Total operating capacity for that year.....	900
2. Operating capacity for the taxable year ending 6/30/81 determined as of the close of that year:	
a. X's 6 and Y's 8 buses from prior taxable year used on a full-time basis during current taxable year and still owned on 6/30/81.....	700
b. Capacity added during current taxable year (X's 3 buses × 50 seats).....	150
c. Total operating capacity for that year.....	850
3. Increase in operating capacity for taxable year ending 6/30/81 (line 2c—line 1c).....	(50)

As determined for Y's taxable year ending 6/30/81 the group experienced a decrease in operating capacity. Thus, no energy credit is available for the buses Y placed in service in its taxable year ending 6/30/81.

(11) **Section 381(a) transactions.** (i) In the case of a transaction described in section 381(a), the operating capacity of each transferor or distributor corporation, determined as of the date of distribution or transfer (within the meaning of § 1.381(b)-1(b)), shall reduce the operating capacity of the acquiring corporation (determined without this paragraph (q)(11)) for its first taxable year ending on or after that date for purposes of determining the acquiring corporation's energy credit for that year. This paragraph (q)(11) shall not apply to any case to which paragraph (q)(10) of this section (dealing with related taxpayers) applies.

(ii) The following example illustrates this paragraph (q)(11):

Example. X and Y are unrelated corporations which use the calendar year. For

1981, each has an operating capacity of 250 seats (5 buses $\times$ 50 seats). X merges into Y on January 1, 1982. On May 1, 1982, Y retires and sells two buses and acquires four 50-seat qualifying buses at a cost of \$40,000 each. All buses owned by Y on December 31, 1982, are included in operating capacity. Y makes the following calculations to determine the energy credit earned in taxable year 1982.

1. Y's 1981 operating capacity determined as of 12/31/81	250
2. 1982 operating capacity determined as of 12/31/82 without this paragraph (q)(11):	
a. X's 5 buses plus Y's 5 1981 buses less 2 retired buses (8 buses $\times$ 50 seats)	400
b. 1982 added capacity (4 buses $\times$ 50 seats)	200
c. Total	600
3. Operating capacity of transferor (X) on 1/1/82	250
4. Y's 1982 operating capacity (line 2c—line 3)	350
5. 1982 increase in operating capacity (line 4—line 1)	100
6. Fraction in paragraph (q)(9)(iii) of this section (line 5—line 2b)	%
7. Energy credit earned in 1982 (\$40,000 $\times$ $\frac{1}{2}$ $\times$ 100 $\times$ 4 buses)	\$8,000

Par. 4 Section 1.381(c)(23)–1 is amended by adding and reserving paragraph (i) and by adding paragraph (j) to read as follows:

§ 1.381(c)(23)–1 Investment credit carryovers in certain corporate acquisitions.

(i) [Reserved]

(j) Carryover of operating capacity for qualified intercity bus. For rules for determining an acquiring corporation's qualified investment for the energy credit for a qualified intercity bus, see § 1.48–9(q)(ii).

This Treasury decision is issued under the authority contained in Code sections 38(b) (76 Stat. 963, 26 U.S.C. 38(b)), 48(l)(16) (94 Stat. 264, 26 U.S.C. 48(l)(16)), and 7805 (68A Stat. 917, 26 U.S.C. 7805).

Roscoe L. Egger, Jr.,
Commissioner of Internal Revenue.

Approved: September 25, 1984.

Ronald A. Pearlman,
Acting Assistant Secretary of the Treasury.
[FR Doc. 84-26659 Filed 10-5-84; 8:45 am]
BILLING CODE 4830-01-M

26 CFR Part 41

(T.D. 7970)

Heavy Vehicle Use Tax; Tax on Diesel Fuel; Tax on the Sale of Piggyback Trailers; Extension of Payment Due Date for Certain Fuel Taxes; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to temporary rule.

SUMMARY: This document contains a correction to the Federal Register publications beginning at 49 FR 34466 of the temporary regulations which were

the subject of Treasury Decision 7970 relating to the imposition of heavy vehicle use tax, the increase of the tax on diesel fuel, the reduction for a one-year period of the tax on the sale of piggyback trailers and semitrailers, and the extension of the payment due date for certain fuel taxes.

EFFECTIVE DATE: The regulations relating to the heavy vehicle use tax are effective after June 30, 1984. The regulations relating to the tax on diesel fuel are effective after July 31, 1984. The regulations relating to the tax on the sale of piggyback trailers are effective for piggyback trailers sold at retail after July 17, 1984, and before July 18, 1985.

The regulations relating to the fuel tax payment date are effective for certain fuel taxes due after March 31, 1983. The correction is to be effective with respect to the same dates.

FOR FURTHER INFORMATION CONTACT: B. Faye Easley of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attention: CC:LR:T, 202-566-3935 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On August 31, 1984, the Federal Register published temporary regulations (49 FR 34466) relating to heavy vehicle use tax under sections 4481, 4482, and 4483 of the Internal Revenue Code of 1954, as amended by section 513 of the Highway Revenue Act of 1982 (Title V of the Surface Transportation Assistance Act of 1982) (Pub. L. 97-424, 96 Stat. 2177) and sections 901, 902, and 903 of the Tax Reform Act of 1984 (Division A of the Deficit Reduction Act of 1984) (Pub. L. 98-369, 98 Stat. 1003). The document also contained temporary regulations in the form of questions and answers relating to an increase in the tax on diesel fuel under section 4041(a) of the Code, a credit or refund to original purchasers of diesel-powered automobiles and light trucks under section 6427 (g) of the Code, and an exemption of certain buses from the diesel fuel tax under section 6427(b)(2) of the Code as amended by sections 911(a), 911(b), and 915 of the Tax Reform Act of 1984, respectively. Also contained were temporary regulations in the form of questions and answers relating to a reduction in the retailers excise tax on the sale of piggyback trailers and semitrailers under section 4051(d) of the Code as amended by section 921 of the Tax Reform Act of 1984. Also included were questions and answers relating to an extension of the payment due date

for certain fuel taxes under section 518(a) of the Highway Revenue Act of 1982 as amended by section 734(i) of the Tax Reform Act of 1984.

Need for Correction

As published, Treasury Decision 7970 incorrectly includes the word "twenty" rather than the word "ten" on page 34470, in the first line of the right-hand column.

Correction of Publication

Accordingly, the publication of Treasury Decision 7970 which was the subject of FR Doc. 84-23130 (August 31, 1984) is corrected on page 34470 (§ 41.4481-1T(f), Example 6) by removing the word "twenty" from the first line in the third column and adding the word "ten" in its place.

George H. Jelly,

Director, Legislation and Regulations Division.

[FR Doc. 84-26660 Filed 10-5-84; 8:45 am]

BILLING CODE 4830-01-M

VETERANS ADMINISTRATION

38 CFR Part 21

Veterans Education; Medical-Dental Internships and Residencies

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The regulation which the VA (Veterans Administration) uses in determining whether to recognize medical and dental residencies as institutional training under the GI Bill has become outdated. Changes in accrediting associations and the structure of medical and dental residencies are reflected in the amended regulation. This regulation states how the VA will determine which residencies are institutional training under the GI Bill.

EFFECTIVE DATE: September 19, 1984.

FOR FURTHER INFORMATION CONTACT:

June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420 (202-389-2092).

SUPPLEMENTARY INFORMATION: On pages 12718 and 12719 of the Federal Register of March 30, 1984, there was published a notice of intent to amend part 21 in order to state which residencies are institutional training under the GI Bill and how these residencies will be measured.