

Issued in Fort Worth, TX, on January 27, 1984.

F. E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 84-3199 Filed 2-6-84; 8:45 am]

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## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Parts 140, 145, 146 and 147

#### Release of Information; Delegation of Authority To Release Information

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Final rules.

**SUMMARY:** The Commodity Futures Trading Commission is adopting final rules to reflect amendments enacted in the Futures Trading Act of 1982, which authorize withholding of information contained in records of a pending investigation and provide for notice prior to release of information pursuant to a subpoena or summons. In addition, the Commission is adopting a rule which delegates to certain Commission employees the authority to disclose information in a receivership or bankruptcy proceeding.

**EFFECTIVE DATE:** February 7, 1984.

#### FOR FURTHER INFORMATION CONTACT:

Tena Friery, Office of the General Counsel, Commodity Futures Trading Commission, 2033 K Street N.W., Washington, D.C. 20581, (202) 254-9880.

**SUPPLEMENTARY INFORMATION:** On May 25, 1983, the Commodity Futures Trading Commission ("Commission") published for comment in the Federal Register (48 FR 23440) proposed rules to implement changes made to the Commodity Exchange Act ("Act") by the Futures Trading Act of 1982, Pub. L. No. 97-444, 96 Stat. 2294 (1983) ("1982 Amendments"). The proposed rules

were intended to implement three newly enacted provisions which amended Section 8 of the Act, 7 U.S.C. 12.<sup>1</sup> Specifically Section 8(a) was amended to authorize the Commission to "withhold from public disclosure any data or information concerning or obtained in connection with any pending investigation of any person". Section 8(b) of the Act, 7 U.S.C. 12(b), authorizes the Commission to "disclose publicly any data or information that would separately disclose the market positions, business transactions, trade secrets, or names of customers of any

person when such disclosure is made in connection with a congressional proceeding, [or] in an administrative or judicial proceeding brought under" the Commodity Exchange Act. The 1982 Amendments also permit the Commission to make such disclosure "in any receivership proceeding involving a receiver appointed in a judicial proceeding brought under th[e] Act, or in any bankruptcy proceeding in which the Commission has intervened or in which the Commission has the right to appear and be heard under Title 11 of the United States Code". New Section 8(f) requires the Commission to provide notice to a submitter of information that it has received a summons or subpoena for the submitted information. In addition, Section 8(f) requires the Commission to wait for the expiration of fourteen days from the date of notice of the summons or subpoena before it discloses the requested information. The Commission received one comment from the public concerning this proposal. That commentator recognized that the proposed rule amendments effectuate changes authorized or required by the 1982 Amendments.<sup>2</sup>

To reflect its statutory authority to withhold matters pertaining to a pending investigation as contained in the 1982 Act's amendment to Section 8(a), of the Commission proposed to amend Rules § 145.5(c) ("Nonpublic matters") of Part 145—Commission Records and Information—and Rule § 147.3 ("General requirement of open meetings; grounds upon which meetings may be closed") of Part 147—Open Commission Meetings. The Commission received no comments on the proposed rule amendments to reflect the authority to withhold information concerning a pending investigation and has determined to adopt the amendments to Rules §§ 145.5(c) and 147.3 as proposed.

Secondly, the Commission found it unnecessary to amend its rules implementing the Privacy Act (Part 146) to reflect the authority of the revised

Section 8(b) to disclose information which it is normally prohibited from disclosing by Section 8(a) when such disclosure is made in a receivership or bankruptcy proceeding. However, in order to ensure timely and efficient disclosures pursuant to Section 8(b), the Commission determined that delegation to certain of its employees to make such disclosures would be appropriate. To effectuate this delegation, the Commission proposed to add Rule § 140.76.<sup>3</sup> Prior to the 1982 Amendments, the Commission had the power to disclose "market positions, business transactions, trade secrets, or names of customers" in a judicial proceeding brought under the Act. The Commission does not intend to change its practice regarding disclosure of confidential information pursuant to this portion of Section 8(b). However, the 1982 Amendments have extended the scope of the Commission's powers to disclose confidential information "to permit disclosure in connection with certain judicial receivership or bankruptcy proceedings." S. Rep. No. 384, 97th Cong., 2d Sess. 6-7 (1982). See also H.R. Rep. No. 565, 97th Cong., 2d Sess. 30 (1982). In this regard, the commentator expressed concern that the words "in connection with" had been included in proposed Rule 140.76. The Commission has no intent in including these words from the legislative history to broaden its authority. To make this clear, it has determined to eliminate this language from the final rule as adopted.<sup>4</sup>

Finally, the Commission proposed to amend Part 145<sup>5</sup> of its rules regarding Commission records and information and Part 146 of its rules regarding

<sup>1</sup>The Commission notes that this special delegation rule, similar to Commission Rules §§ 140.72, 140.73, and 140.75, see 48 FR 22133 (May 17, 1983), concerns only the release of information otherwise barred from release by Section 8 of the Act. These rules permit staff to release such information only when release of information is specifically authorized in the Act. Of course, other information, not barred from release by Section 8 of the Act, may be supplied to receivers or bankruptcy trustees insofar as it is relevant to their activities. See, e.g. 47 FR 43760-61 (Oct. 4, 1982), setting forth routine uses of Commission records which it maintains on individuals.

<sup>2</sup>The Commission wishes to note the Section 8(b) grant of authority to disclose certain confidential information would include an adversary proceeding brought by a trustee in "any bankruptcy proceeding in which the Commission has intervened . . ."

<sup>3</sup>Upon further consideration, the Commission has determined that the rule to establish the notification procedures required by Section 8(f) would be appropriate for inclusion in Part 140, Organization, Functions, and Procedures of the Commission, rather than Part 145, Commission Records and Information. For this reason, the text of the proposed Rule § 145.10, as adopted by the Commission, is added as Rule § 140.80.

<sup>4</sup>Sections 8(a), 8(b) and 8(f) were amended by Section 222 of the 1982 Amendments, Pub. L. 97-444, 96 Stat. 2309-2310 (1983).

<sup>5</sup>The commentator did, however, express concern that the opening paragraph of Rule § 145.5, as currently written, may be misread to indicate that the Commission has the discretion to publish or make available data and information which would separately disclose the business transactions or market positions of any person and trade secrets or names of customers. Section 8(a) presently—and prior to the 1982 amendments—prohibits the Commission from disclosing such information, except as otherwise specifically authorized in the Act. The Commission has not considered Rule § 145.5 as authority to make a discretionary release of business transactions or market positions of any person and trade secrets or names of customers. Further, the Commission is unaware of any misunderstanding which has resulted from the existing language of Rule § 145.5.

records maintained on individuals to conform these rules to the new Section 8(f) provisions governing release of information pursuant to a summons or subpoena. In this respect, the commentator noted that the legislative history of Section 8(f) makes clear that Congress in adopting this Section intended for it to have only a procedural effect.\*

The Commission agrees that Section 8(f) provides only for a procedure to notify submitters of information that such information is being sought pursuant to a summons or subpoena. Further, the Commission recognizes that the provision is intended to "help assure that confidential information is not inadvertently released" by the Commission. See footnote 5, below. The Commission does not believe, therefore, that these procedures apply with regard to information submitted to the Commission which is routinely available to the public. Examples of the types of information which the Commission considers not to require the notification of Section 8(f) are public filings by parties in reparation or enforcement proceedings or comments received from the public in the course of such Commission business as contract market designation or rule making. The Commission further believes that submitters of information may not be interested in receiving notification with regard to all submitted information. Accordingly, Rules §§ 140.80 and 146.6, as adopted, recognize the possibility of a waiver of these notification requirements.

In inviting comment on these rule amendments, the Commission noted that it had determined that the provisions of the Regulatory Flexibility Act, Pub. L. 96-354, 94 Stat. 1164, were inapplicable to the proposed procedural amendments to the regulations. See 5 U.S.C. 601. See also 48 FR 23440, 23442 (n.8) (May 25, 1983). The Commission noted further that the proposed amendments would not constitute new paperwork collection requirements within the meaning of the Paperwork Reduction Act, 44 U.S.C. 3501, et seq. *Id.*

\* Members of both the House and Senate agreed that Section 8(f) is strictly a procedural provision. It does not authorize or require disclosure of any information—confidential or otherwise. In fact, it is intended to help assure that confidential information is not inadvertently released by the CFTC, by requiring notice of a subpoena to the person who submitted the information to the CFTC is the first place. 128 Cong. Rec. H7508 (daily, Sept. 23, 1982) (remarks of Rep. Clinkman and Rep. de la Garza); 128 Cong. Rec. S13099 (daily ed., Oct. 1, 1982) (remarks of Sen. Huddleston and Sen. Helms).

## List of Subjects

### 17 CFR Part 140

Organization and functions, Disclosure of information, Bankruptcy or receivership proceedings, Disclosure pursuant to a summons or subpoena.

### 17 CFR Part 145

Freedom of information; Records and Information, Disclosure of information, Investigatory records, Disclosure exempted by statute.

### 17 CFR Part 146

Privacy, Records maintained on individuals, Disclosure of information, Disclosure pursuant to a summons or subpoena.

### 17 CFR Part 147

Sunshine Act, Closed commission meetings, Disclosure exempted by statute, Investigatory records.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and, in particular, Sections 2(a)(11) and 8, 7 U.S.C. 4a(j) and 12 (1983), the Commission hereby amends Parts 140, 145, 146 and 147 of Chapter 1 of Title 17 of the Code of Federal Regulations as follows:

## PART 140—ORGANIZATION, FUNCTIONS AND PROCEDURES OF THE COMMISSION

1. Section 140.76 is added to read as follows:

### § 140.76 Delegation of authority to disclose information in a receivership or bankruptcy proceeding.

(a) Pursuant to sections 2(a)(11) and 8(b) of the Act, the Commission hereby delegates, until such time as the Commission orders otherwise, to the Director of the Division of Enforcement, the Director of the Division of Trading and Markets, the General Counsel or any Commission employee under their direction as they may designate, the authority to disclose data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers, when such disclosure is made in any receivership proceeding involving a receiver appointed in a judicial proceeding brought under the Act, or in any bankruptcy proceeding in which the Commission has intervened or in which the Commission has the right to appear and be heard under Title 11 of the United States Code.

(b) Notwithstanding the provisions of paragraph (a), in any case in which the

Director of the Division of Enforcement, the Director of the Division of Trading and Markets, the General Counsel, or any employee designated by them to make disclosures pursuant to this section believes it appropriate, the matter may be submitted to the Commission for consideration. In addition, the Commission reserves to itself the authority to determine whether to grant a request for information in any particular case.

2. Section 140.80 is added to read as follows:

### § 140.80 Disclosure of information pursuant to a subpoena or summons.

The Commission shall provide notice to any person who has submitted information to the Commission when a summons or subpoena seeking the submitted information is received by the Commission. Notice ordinarily will be provided by mailing a copy of the summons or subpoena to the last known home or business address of the person who submitted the information. However, under circumstances which would make notice by mail unduly burdensome or costly, notice of the existence of the summons or subpoena may be affected by alternative means such as publication in the *Federal Register*. The Commission will not disclose such information until the expiration of at least fourteen days from the date of mailing, or such other notice as is given. This section shall not apply to (1) Congressional subpoenas or Congressional requests for information, (2) information which is considered by the Commission to be public information, or (3) information as to which the submitter has waived the notice provision of this section.

## PART 145—COMMISSION RECORDS AND INFORMATION

3. Paragraph (c) of § 145.5 is revised to read as follows:

### § 145.5 Nonpublic matters.

(c) Specifically exempted from disclosure by statute, including:

(1) Data and information which would separately disclose the business transactions or market positions of any person and trade secrets or names of customers; and

(2) Any data or information concerning or obtained in connection with any pending investigation of any person;

**PART 146—RECORDS MAINTAINED ON INDIVIDUALS**

4. Paragraph (b) of § 146.6 is revised to read as follows:

**§ 146.6 Disclosure to third parties.**

(b) The Commission will make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record. In any instance where a record on an individual, which has been submitted to the Commission by such individual, is sought pursuant to a summons or subpoena, notice will be given in accordance with the provisions of Section 8(f) of the Commodity Exchange Act, and § 140.80 of this Chapter, at least fourteen days prior to disclosure. Notice will not, however, be given with regard to any information as to which the submitter has waived the notice requirements of § 140.80.

**PART 147—OPEN COMMISSION MEETINGS**

5. Paragraph (b)(3) of § 147.3 is revised to read as follows:

**§ 147.3 General requirement of open meetings; grounds upon which meetings may be closed.**

(b) (3) Disclose matters specifically exempted from disclosure by statute (other than the Freedom of Information Act, as amended, 5 U.S.C. 552), provided that such statute (i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld. This includes, but is not limited to, data and information which would separately disclose the business transactions or market positions of any person and trade secrets or names of customers and data and information concerning or obtained in connection with any pending investigation of any person;

Issued in Washington, D.C. on February 1, 1984 by the Commission.

Jean A. Webb,  
Deputy Secretary of the Commission.

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**DEPARTMENT OF STATE****22 CFR Part 9b**

[Departmental Regulation 108.836]

**Regulations Governing Department of State Press Building Passes**

**AGENCY:** Department of State.

**ACTION:** Final rule.

**SUMMARY:** The Department of State amends its regulations by adding new regulations governing the issuance and use of press building passes to the Main State Department building on a 24-hour, 7 days-a-week basis and to establish procedures and guidance concerning the issuance of Department of State press building passes.

There are at present no written regulations governing press passes which grant access to the Main State Department building on a 24-hour basis. These regulations will provide publicly available guidance on the procedures for issuance of Department of State press building passes, and will safeguard the Department's personnel and classified material.

**EFFECTIVE DATE:** February 7, 1984.

**FOR FURTHER INFORMATION CONTACT:** Joseph W. Reap, Jr., Office of Press Relations, Room 2109, Department of State, 2201 C Street, NW., Washington, D.C. 20520. (202) 632-2492.

**SUPPLEMENTARY INFORMATION:****List of Subjects in 22 CFR Part 9b**

Administrative practice and procedure, Federal buildings and facilities, News media, Security measures.

Accordingly, Title 22 of the Code of Federal Regulations is amended by adding a new Part 9b to Chapter I to read as follows:

**PART 9b—REGULATIONS GOVERNING DEPARTMENT OF STATE PRESS BUILDING PASSES**

Sec.

- 9b.1 Press access to the Department of State.
- 9b.2 Press correspondents employed by American media organizations.
- 9b.3 Press correspondents employed by Foreign media organizations.
- 9b.4 Department of State building press passes for technical crews.
- 9b.5 Temporary Department of State press building passes.
- 9b.6 Grounds for denial, revocation, or non-renewal of Department of State building passes.
- 9b.7 Procedures for denial, revocation, or non-renewal of Department of State press building passes.
- 9b.8 Term and renewal of Department of State press building passes.

Authority: 22 U.S.C. 2658.

**§ 9b.1 Press access to the Department of State.**

(a) Correspondents without valid Department of State press building passes or without valid White House press passes shall have access to the Main State Building identical to that enjoyed by members of the public.

(b) Correspondents holding valid Department of State or valid White House press building passes:

(1) May enter the basement and first two floors of the Main State building without an appointment with a Department employee;

(2) May not escort non-passholders into the Department of State building.

(c) Correspondents, with or without a Department of State press building pass or White House press pass, may only enter above the second floor of the Main State building if the correspondent is invited by a Departmental employee to attend a social or official function in an office located above the second floor. Permission to enter above the second floor is strictly limited to direct passage to and from the appointment with the Department of State employee, or the office or reception room where the function takes place.

**§ 9b.2 Press correspondents employed by American media organizations.**

In order to obtain a Department of State press building pass, correspondents employed by American media organizations must:

(a) Present to the Office of Press Relations, Department of State, a letter from his or her organization stating:

(1) That the applicant is a bona fide, full-time correspondent based permanently in Washington, D.C.;

(2) That the applicant is employed by the certifying organization;

(3) That the organization gives the applicant substantial assignments in connection with the Department of State.

(b) Submit to the Office of Press Relations, Department of State, Washington, D.C. 20520 a signed application for a press building pass which includes the following information:

- (1) Name;
- (2) Affiliation with media organizations;
- (3) Date of birth;
- (4) Place of birth;
- (5) Citizenship;
- (6) Office address and telephone number;
- (7) Home address and telephone number;

(8) The names of other Governmental entities in Washington, D.C., such as Congress, the White House, the Department of Defense, if any, to which the applicant is already accredited;

(9) Whether the applicant has been convicted of a felony (or a crime in a foreign country that would be considered a felony if it were committed in the United States) within the last five (5) years.

(c) Arrange with the Office of Security to have his or her fingerprints taken.

#### **§ 9b.3 Press correspondents employed by foreign media organizations.**

In order to obtain a Department of State press building pass, correspondents employed by foreign media organizations must:

(a) Present to the Office of Press Relations, Department of State, Washington, D.C. 20520 a letter from his or her organization stating:

(1) That the applicant is a bona fide, full-time correspondent based permanently in Washington, D.C.;

(2) That the applicant is employed by the certifying organization;

(3) That the organization gives the applicant substantial assignments in connection with the Department of State.

(b) A letter from the Washington, D.C. Embassy of the nation where the organization is headquartered or from the Embassy of the United States in the nation where the organization is headquartered attesting to the existence of the news organization and the applicant's employment by that organization. The Director of the Office of Press Relations may accept a letter from another source attesting to the existence of such news organizations and the applicant's employment if, in his or her judgment, a substitute letter is warranted.

(c) Submit to the Office of Press Relations, Department of State, Washington, D.C. 20520 a signed application for a press building pass which includes the following information:

- (1) Name;
- (2) Affiliation with media organizations;
- (3) Date of birth;
- (4) Place of birth;
- (5) Citizenship;
- (6) Office address and telephone number;
- (7) Home address and telephone number;
- (8) Passport number of the applicant;
- (9) The names of the Governmental

agencies in Washington, D.C., such as Congress, the White House, the Department of Defense, if any, to which the applicant is already accredited;

(10) Whether the applicant has been convicted of a felony (or a crime in a foreign country that would be considered a felony if it were committed in the United States) within the last five (5) years.

(d) Arrange with the Office of Security to have his or her fingerprints taken.

#### **§ 9b.4 Department of State building press passes for technical crews.**

The Director of the Office of Press Relations may issue a limited number of Department of State press building passes to members of television and radio technical crews who provide technical support on a daily basis for correspondents accredited to the Department of State. Members of technical crews who do not possess press passes but who provide technical support for correspondents accredited to the Department of State may apply to the Office of Press Relations for a visitor's pass valid for one day.

#### **§ 9b.5 Temporary Department of State press building passes.**

A correspondent who meets all the qualifications stated in §§ 9b.2(a)(1) and 9b.2(a)(2) or 9b.3(a) and 9b.3(b), but does not have substantial assignments in connection with the Department of State may make arrangements with the Office of Press Relations for the issuance of a visitor's pass valid for one day.

#### **§ 9b.6 Grounds for denial, revocation, or non-renewal of Department of State press building passes.**

The Director of the Office of Press Relations of the Department of State, in consultation with the Office of the Legal Adviser and the Office of Security, may deny, revoke, or not renew the Department of State press building pass of any correspondent who:

(a) Does not meet the qualifications stated in §§ 9b.2(a)(1) and 9b.2(a)(2) or 9b.3(a)(1), 9b.3(a)(2) and 9b.3(b) above; or

(b) Poses a risk of harm to the personal safety of Department of State or other Governmental personnel or to Government property; or

(c) Engages or engaged in conduct for which there are reasonable grounds to believe may violate federal or state law or Department of State regulations;

(d) Has been convicted of a felony (or

a crime in a foreign country that would be considered a felony if it were committed in the United States).

#### **§ 9b.7 Procedures for denial, revocation, or non-renewal of Department of State press building passes.**

(a) If the Director of the Office of Press Relations, Department of State, anticipates that in applying the standard set forth in § 9b.6, and in consultation with the Office of the Legal Adviser and the Office of Security, a Department of State press building pass might be denied, revoked or not renewed, the correspondent will be notified in writing, by the Director, of the basis for the proposed denial in as much detail as the security of any confidential source of information will permit. This notification will be sent by registered mail.

(b) The notification of the proposed denial, revocation or non-renewal sent to the correspondent will also contain a statement advising the correspondent of his or her right to respond to the proposed denial and to rebut any factual basis supporting the proposed denial.

(c) The correspondent shall be allowed thirty (30) days from the date of the mailing of the proposed denial, revocation or non-renewal notification to respond in writing. The response shall consist of any explanation or rebuttal deemed appropriate by the correspondent and will be signed by the correspondent under oath or affirmation.

(d) If the correspondent is unable to prepare a response within 30 days, an extension for one additional 30-day period will be granted upon receipt of the correspondent's written request for such an extension.

(e) At the time of the filing of the correspondent's written response to the notification of the proposed denial, revocation or non-renewal, the correspondent may request, and will be granted, the opportunity to make a personal appearance before the Director of the Office of Press Relations, Department of State, for the purpose of personally supporting his or her eligibility for a press pass and to rebut or explain the factual basis for the proposed denial. The Director shall exercise, in consultation with the Office of the Legal Adviser and the Office of Security, final review authority in the matter. The correspondent may be represented by counsel during this appearance.

(f)(1) On the basis of the correspondent's written and personal response and the factual basis for the proposed denial, revocation or non-renewal, the Director of the Office of

Press Relations of the Department of State, in consultation with the Office of the Legal Adviser and the Office of Security, will determine whether or not further inquiry or investigation concerning the issues raised, is necessary.

(2) If a decision is made that no such inquiry is necessary, a final decision will be issued in conformity with paragraph (g) of this section.

(3) If a decision is made that such further inquiry is necessary, the Director of the Office of Press Relations of the Department of State, in consultation with the Office of the Legal Adviser and the Office of Security, will conduct such further inquiry as the Director deems appropriate. At the Director's discretion, the inquiry may consist of:

(i) The security of documentary evidence;

(ii) Personal interviews;

(iii) An informal hearing;

(iv) Any combination of paragraphs

(f)(3)(i) through (f)(3)(iii) of this section.

(g) On the basis of the correspondent's written and personal response, the factual basis for the proposed denial, and the additional inquiry provided for, if such inquiry is conducted, a final decision will be expeditiously made by the Director of the Office of Press Relations of the Department of State, in consultation with the Office of the Legal Adviser and the Office of Security, and in accordance with the standard set forth in § 9b.6. If a final adverse decision is reached, the correspondent will be notified of this final decision in writing. This notification will set forth, as precisely as possible and to the extent that security considerations permit, the factual basis for the denial in relation to the standard set forth in § 9b.6. This notification will be sent by registered mail and will be signed by the Director of the Office of Press Relations of the Department of State.

#### § 9b.8 Term and renewal of Department of State press building passes.

Department of State press building passes shall be valid until June 30th of each year. To renew his or her pass, each press correspondent must submit to the Office of Press Relations before that date of each year the applicable letter(s) and application described in § 9b.2 or 9b.3 of these regulations.

Dated: January 30, 1984.

Ronald I. Spiers,

Under Secretary of State for Management.

[FR Doc. 84-3108 Filed 2-6-84; 8:45 am]

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Parts 20 and 301

[T.D. 7941]

#### Special Lien for Estate Taxes Deferred Under Section 6166 or 6166A; Procedure and Administration

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations relating to a special lien under section 6324A for estate taxes deferred under section 6166 or 6166A. Changes to the applicable law were made by the Tax Reform Act of 1976, the Revenue Act of 1978, and the Economic Recovery Tax Act of 1981. The regulations would provide the public with the guidance needed to comply with the law and would affect those estates electing a special lien in favor of the United States on property as security for deferred payments of estate tax.

**DATES:** These regulations are generally effective for estates of decedents dying after December 31, 1976. The regulations necessitated by the Economic Recovery Tax Act of 1981 are effective for estates of decedents dying after December 31, 1981.

**FOR FURTHER INFORMATION CONTACT:** Neil W. Zyskind 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) 566-3287, not a toll-free call.

#### SUPPLEMENTARY INFORMATION:

##### Background

On May 11, 1983, the *Federal Register* published proposed amendments to the Estate Tax Regulations (26 CFR Part 20) and to the Procedure and Administration Regulations (26 CFR Part 301) under section 6324A of the Internal Revenue Code of 1954 (48 FR 21167). No comments were received and no public hearing was requested. Furthermore, no substantive changes have been made to the rules contained in the proposed regulations.

This Treasury decision is issued under the authority contained in sections 6324A(a) and 7805 of the Internal Revenue Code of 1954 (90 Stat. 1808, 68A Stat. 917; 26 U.S.C. 6324A(a), 7805).

##### Summary

Section 6324A permits the executor of a decedent's estate to elect a lien on section 6166 property in favor of the

United States in lieu of a bond or personal liability if an election under section 6166 or 6166A (as in effect prior to its repeal by the Economic Recovery Tax Act of 1981) was made. The election under section 6324A will not be effective unless all parties having an interest in the property subject to the lien sign an agreement in which they consent to the creation of the lien. Regulations concerning the election of and agreement to the lien may be found in § 301.6324A-1.

These regulations define the term "section 6166 lien property" and determine the maximum value of the property which the district director may require as section 6166 lien property. Section 20.6324A-1(b)(3) indicates when the district director may require additional property to be subject to the lien under section 6324A. Section 20.6324A-1(c) discusses the period and priorities of a section 6324A lien.

##### Special Analysis

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 which solicited public comments was issued, the Internal Revenue Service concluded when the notice was issued that the regulations are interpretative and that the notice and public procedure requirement 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).

The collection of information requirements contained in this regulation have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB and have been assigned No. 1545-0754.

##### Drafting Information

The principal author of these regulations is Neil W. Zyskind 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

## 26 CFR Part 20

Estate taxes.

## 26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes, Disclosure of information, Filing requirements.

## Adoption of Amendments to the Regulations

Accordingly, 26 CFR Parts 20 and 301 are amended as follows:

## § 20.2204-1 [Amended]

Paragraph 1. Section 20.2204-1 is amended as follows:

(a) Paragraph (a) is amended by removing the phrases "(1 year with respect to the estate of a decedent dying before January 1, 1974)" and "(1 year if applicable)" wherever they appear.

(b) Paragraph (b) is amended by removing the phrases "(1 year with respect to the estate of a decedent dying before January 1, 1974)" and "(or 1 year period if applicable)" wherever they appear.

Par. 2. A new § 20.2204-3 is added immediately following § 20.2204-2 to read as set forth below.

## PART 20—[AMENDED]

## § 20.2204-3 Special rules for estates of decedents dying after December 31, 1976; special lien under section 6324A.

For purposes of §§ 20.2204-1(b) and 20.2204-2(b), in the case of a decedent dying after December 31, 1976, if the executor elects a special lien in favor of the United States under section 6324A, relating to special lien for estate taxes deferred under sections 6166 or 6166A (as in effect prior to its repeal by the Economic Recovery Tax Act of 1981), such lien shall be treated as the furnishing of a bond with respect to the amount for which the time for payment has been extended under section 6166. If an election has been made under section 6324A, the executor may not thereafter substitute a bond pursuant to section 2204 in lieu of that lien. If a bond has been supplied under section 2204, however, the executor may, by filing a proper notice of election and agreement, substitute a lien under section 6324A for any part or all of such bond. See §§ 20.6324A-1 and 301.6324A-1 for rules relating to a special lien under section 6324A.

Par. 3. Section 20.6324A-1 is revised to read as set forth below.

## § 20.6324A-1 Special lien for estate tax deferred under section 6166 or 6166A.

(a) *In general.* If the executor of an estate of a decedent dying after December 31, 1976, makes an election under section 6166 or 6166A (as in effect prior to its repeal by the Economic Recovery Tax Act of 1981) to defer the payment of estate tax, the executor may make an election under section 6324A. An election under section 6324A will cause a lien in favor of the United States to attach to the estate's section 6166 lien property, as defined in paragraph (b)(1) of this section. This lien is in lieu of the bonds required by sections 2204 and 6165 and in lieu of any lien under section 6324 on the same property with respect to the same estate. The value of the property which the district director may require under section 6324A as section 6166 lien property may not exceed the sum of the deferred amount (as defined in paragraph (e)(1) of this section) and the required interest amount (as defined in paragraph (e)(2) of this section). The unpaid portion of the deferred amount (plus any unpaid interest, additional amount, addition to tax, assessable penalty, and cost attributable to the deferred amount) shall be a lien in favor of the United States on the section 6166 lien property. See § 301.6324A-1 of this chapter (Regulations on Procedure and Administration) for provisions relating to the election of and agreement to the special lien for estate tax deferred under section 6166 or 6166A (as in effect prior to its repeal by the Economic Recovery Tax Act of 1981).

(b) *Section 6166 lien property.*—(1) *In general.* Section 6166 lien property consists of those interests in real and personal property designated in the agreement referred to in section 6324A (c) (see paragraph (b) of § 301.6324A-1 of this chapter). An interest in property may be designated as section 6166 lien property only to the extent such interest can be expected to survive the deferral period (as defined in paragraph (e)(3) of this section). Property designated, however, need not be property included in the decedent's estate.

(2) *Maximum value of required property.* The fair market value of the property required by the district director to be designated as section 6166 lien property with respect to any estate shall not be greater than the sum of the deferred amount and the required interest amount, as these terms are defined in paragraphs (e) (1) and (2) of this section. However, the parties to the agreement referred to in section 6324A (c) may voluntarily designate property having a fair market value in excess of that sum. The fair market value of the

section 6166 lien property shall be determined as of the date prescribed in section 6151(a) (without regard to any extension) for payment of the estate tax. Such value must take into account any encumbrance on the property (such as a mortgage or a lien under section 6324B).

(3) *Additional lien property may be required.* If, at any time, the unpaid portion of the deferred amount and the required interest amount exceeds the fair market value of the section 6166 lien property, the district director may require the addition of property to the agreement in an amount up to such excess. When additional property is required, the district director shall make notice and demand upon the agent designated in the agreement setting forth the amount of additional property required. Property having the required value (or other security equal to the required value must be added to the agreement within 90 days after notice and demand from the district director. Failure to comply with the demand within the 90-day period shall be treated as an act accelerating payment of installments under section 6166(g) or 6166A(h) [as in effect prior to its repeal by the Economic Recovery Tax Act of 1981].

(4) *Partial substitution of bond.* See paragraph (c) of § 301.6324A-1 of this chapter for rules relating to the partial substitution of a bond for the lien where the value of property designated as section 6166 lien property is less than the amount of unpaid estate tax plus interest.

(c) *Special rules.*—(1) *Period of lien.* The lien under section 6324A arises at the earlier of the date—

(i) The executor is discharged from liability under section 2204; or

(ii) Notice of lien is filed in accordance with § 301.6323(f)-1 of this chapter.

The section 6324A lien continues until the liability for the deferred amount is satisfied or becomes unenforceable by reason of lapse of time. The provisions of § 301.6325-1(c), relating to release of lien or discharge of property, shall apply to this paragraph (c)(1).

(2) *Requirement that lien be filed.* The lien imposed by section 6324A is not valid against a purchaser (as defined in paragraph (f) of § 301.6323(h)-1), holder of a security interest (as defined in paragraph (a) of § 301.6323(h)-1), mechanic's lienor (as defined in paragraph (b) of § 301.6323(h)-1), or judgment lien creditor (as defined in paragraph (g) of § 301.6323(h)-1) until notice of the lien is filed. Once filed, the notice of lien remains effective without being refiled.

(3) *Priorities.* Although a notice of lien under section 6324A had been properly filed, that lien is not valid—

(i) To the extent provided in section 6323(b)(6), relating to real property tax and special assessment liens, regardless of whether such liens came into existence before or after the filing of the notice of Federal tax lien;

(ii) In the case of any real property subject to a lien for repair or improvement, as against a mechanic's lienor, whether or not such lien came into existence before or after the notice of tax lien was filed; and

(iii) As against any security interest set forth in section 6323(c)(3), relating to real property construction or improvement financing agreements, regardless whether such security interest came into existence before or after filing of the notice of tax lien.

However, paragraphs (c)(3) (ii) and (iii) of this section shall not apply to any security interest that came into existence after the date of filing of notice (in a manner similar to a notice filed under section 6323(f)) that payment of the deferred amount has been accelerated under section 6166(g) or 6166A(h) (as in effect prior to its repeal by the Economic Recovery Tax Act of 1981).

(d) *Release or discharge of lien.* For rules relating to release of the lien imposed by section 6324A or discharge of the section 6166 lien property, see section 6325 and § 301.6325-1 of this chapter.

(e) *Definitions.* For purposes of section 6324A of this section—

(1) *Deferred amount.* The deferred amount is the aggregate amount of estate tax deferred under section 6166 or 6166A (as in effect prior to its repeal by the Economic Recovery Tax Act of 1981) determined as of the date prescribed by section 6151(a) for payment of the estate tax.

(2) *Required interest amount.* The required interest amount is the aggregate amount of interest payable over the first four years of the deferral period. For purposes of computing the required interest amount, the interest rate prescribed by section 6621 in effect on the date prescribed by section 6151(a) for payment of the estate tax shall be used for computing the interest for the first four years of the deferral period. The 4-percent interest rate prescribed by section 6601(j) shall apply to the extent provided in that section. For purposes of computing interest during deferral periods beginning after December 31, 1982, interest shall be compounded daily.

(3) *Deferral period.* The deferral period is the period for which the payment of tax is deferred pursuant to the election under section 6166 or 6166A (as in effect prior to its repeal by the Economic Recovery Tax Act of 1981).

(4) *Application of definitions.* In the case of a deficiency, a separate deferred amount, required interest amount, and deferral period shall be determined as of the due date of the first installment after the deficiency is prorated to installments under section 6166 or 6166A (as in effect prior to its repeal by the Economic Recovery Tax Act of 1981).

#### PART 301—[AMENDED]

##### § 301.6324A-1 [Amended]

Par. 4. Paragraphs (a), (b)(1)(iv), (b)(4), and (f) of § 301.6324A-1 are amended by adding the phrase "(as in effect prior to its repeal by Economic Recovery Tax Act of 1981)" after each time the phrase "6166A" appears.

This Treasury decision is issued under the authority contained in sections 6324A(a) and 7805 of the Internal Revenue Code of 1954 (90 Stat. 1808, 68A Stat. 917; 26 U.S.C. 6324A(a), 7805). Approved by the Office of Management and Budget under control number 1545-0754.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: January 20, 1984.

John E. Chapoton,

Assistant Secretary of the Treasury.

[FR Doc. 84-3321 Filed 2-6-84; 8:45 am]

BILLING CODE 4830-01-M

#### DEPARTMENT OF JUSTICE

##### Office of the Attorney General

##### 28 CFR Part 0

[Order No. 1043-84]

##### Designation of an Acting Deputy Attorney General

AGENCY: Justice.

ACTION: Final rule.

**SUMMARY:** In an effort to manage more effectively the administration of the Department, the amendment authorizes the Attorney General to designate any official of the Department to serve as Acting Deputy Attorney General when there is a vacancy in that Office.

**EFFECTIVE DATE:** February 3, 1984.

##### FOR FURTHER INFORMATION CONTACT:

Ralph W. Tarr, Deputy Assistant Attorney General, Office of Legal Counsel, Department of Justice, 10th and Constitution Avenue, NW., Room 5224, Washington, D.C. 20530; (202) 633-2051.

**SUPPLEMENTARY INFORMATION:** This Order is not a rule within the meaning of either Executive Order 12291, section 1(a), or the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

#### List of Subjects in 28 CFR Part 0

Government employees, Organization and functions (Government agencies), Authority delegations (Government agencies), and Intergovernmental relations.

#### PART 0—[AMENDED]

By virtue of the authority vested in me as Attorney General, by 28 U.S.C. 509, 510 and 5 U.S.C. 301, § 0.132 of Title 28 of the Code of Federal Regulations is hereby amended by revising § 0.132(b) to read as follows:

**§ 0.132 Designating officials to perform the functions and duties of certain offices in case of absence, disability or vacancy.**

(b) In the event of a vacancy in the office of the Deputy Attorney General, the Attorney General may designate another official of the Department to perform the functions and duties of and act as Deputy Attorney General.

Dated: February 3, 1984.

William French Smith,

Attorney General.

[FR Doc. 84-3307 Filed 2-3-84; 2:13 pm]

BILLING CODE 1410-01-M

#### DEPARTMENT OF LABOR

##### Occupational Safety and Health Administration

##### 29 CFR Part 1952

##### Alaska State Plan; Level of Federal Enforcement

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Final rule; Level of Federal enforcement.

**SUMMARY:** Pursuant to 29 CFR 1954.3, the Occupational Safety and Health Administration (OSHA) and the State of Alaska have entered into an agreement which amends a previously executed operational status agreement between the parties delineating the level of Federal enforcement to be exercised within the State. Additionally, pursuant to 29 CFR 1902.2(c)(3), the Assistant Secretary has found that good cause exists for the exercise of Federal enforcement authority over the Annette Islands reserve of the Metlakatla Indian