Medicine (HFV-114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3420.

SUPPLEMENTARY INFORMATION: The Upjohn Co., Kalamazoo, MI 49001, filed NADA 135-940 providing for use of Antirobe® Aquadrops Liquid (clindamycin hydrochloride) in dogs for treatment of infected wounds and abscesses caused by *Staphylococcus aureus*. The NADA is approved and the regulations are amended to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m to 4 p.m., Monday through Friday.

The Center for Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 520

Animal drugs, oral use.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for Part 520 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

2. By adding new § 520.447 to read as follows:

§ 520.447 Clindamycin hydrochloride liquid.

(a) *Specifications.* Each milliliter of 8.64 percent alcoholic solution contains the equivalent of 25 milligrams of clindamycin (as the hydrochloride).

(b) *Sponsor.* No. 000009 in § 510.600(c) of this chapter.

(c) *Conditions of use. Dogs—(1) Amount.* 2.5 milligrams per pound of body weight every 12 hours.

(2) *Indications for use.* For treatment of infected wounds and abscesses caused by *Staphylococcus aureus*.

(3) *Limitations.* Discontinue use after 3 or 4 days if no improvement of acute infection is observed; do not use for more than 28 consecutive days; use with caution in animals receiving neuromuscular blocking agents as clindamycin may potentiate their action; prescribe with caution in atopic animals; Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: May 14, 1985.

Gerald B. Guest,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 85-12359 Filed 5-22-85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8025]

Income Tax; Taxable Years Beginning After December 31, 1953; OMB Control Numbers Under the Paperwork Reduction Act; Returns Relating to Cash in Excess of $10,000 Received in a Trade or Business

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the requirement of reporting cash in excess of $10,000 received in a trade or business. Changes to the applicable law were made by the Tax Reform Act of 1984. The regulations affect any person who, in the course of a trade or business in which such person is engaged, receives cash in excess of $10,000 in 1 transaction (or 2 or more related transactions). The regulations provide these persons with the guidance necessary to comply with the law. In addition, the text of the temporary regulations set forth in this document serves as the text of the proposed rulemaking in the Proposed Rules section of this issue of the **Federal Register**.

DATES: The regulations apply to cash payments received after December 31, 1984, and are effective May 23, 1985.

FOR FURTHER INFORMATION CONTACT: Bruce H. Jurist 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, 202-566-3238 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary regulations relating to the reporting of cash in excess of $10,000 received in a trade or business under section 6050I of the Internal Revenue Code of 1954, as added by section 146 of the Tax Reform Act of 1984 (98 Stat. 685). The regulations provide that any person engaged in a trade or business who receives, in the course of that trade or business, cash in excess of $10,000 in 1 transaction (or 2 or more related transactions) must file an information return with respect to that transaction. The regulations also provide that a person who makes an information return must furnish a statement to each person identified on the return. The temporary regulations will remain in effect until superseded by final regulations on this subject. The regulations are issued under the authority of sections 6050I and 7805 of the Internal Revenue Code of 1954 (98 Stat. 685 26 U.S.C. 6050I; 68 Stat. 917, 26 U.S.C. 7805).

Explanation of Provisions

Section 6050I provides that an information return must be made by any person engaged in a trade or business who receives, in the course of that trade or business, cash in excess of $10,000 in 1 transaction (or 2 or more related transactions). The return must be filed with the Service by the 15th day following the date of receipt of the reportable cash payment. Any person required to make an information return under section 6050I must also furnish a statement to any person identified on the return showing the aggregate amount of reportable cash received from that person. The statement must be furnished on or before January 31 of the year following the calendar year in which the cash is received.

Section 6050I(c)(1)(A) provides that the reporting requirements of section 6050I will not apply to cash received in a transaction reported under Title 31 of the United States Code if the Secretary determines that reporting under section 6050I would duplicate the reporting to the Treasury under Title 31. On February 6, 1985, final regulations effective on May 7, 1985, which classify casinos with gross annual gaming revenue in excess of $1,000,000 as financial institutions subject to reporting and recordkeeping requirements of the

Bank Secrecy Act provisions of Title 31, were published in the Federal Register (50 FR 5065). In light of the issuance of the Title 31 regulations, special rules are provided with respect to cash received by casinos with gross annual gaming revenue in excess of $1,000,000.

Although these temporary regulations require attorneys to report with respect to the receipt of cash in excess of $10,000, the Service will entertain comments from the legal community concerning the possibility of developing an exception to the reporting requirement for information on transactions which might fall within the scope of the attorney-client privilege.

Because of the January 1, 1985, effective date of section 6050I, there is a need for immediate guidance. Therefore, these regulations have been drafted in question and answer format in order to facilitate their timely publication. No inference should be drawn, however, regarding issues not raised herein or regarding the inclusion of certain questions, and not others, in these regulations.

Executive Order 12291, Regulatory Flexibility Act, and Paperwork Reduction Act

The Commissioner of the Internal Revenue has determined that this regulation is not a major rule as defined in Executive Order 12291, or the Treasury and OMB implementation of the Order dated April 29, 1983. No general notice of proposed rulemaking is required by 5 U.S.C. 553(b) for temporary regulations. Accordingly, the Regulatory Flexibility Act does not apply and a Regulatory Impact Analysis is not required for this rule. The collection of information requirements contained in these regulations have been approved by the Office of Management and Budget (OMB) under section 3507 of the Paperwork Reduction Act.

List of Subjects in 26 CFR 1.6001—1.6109–2

Income taxes, Administration and procedure, Filing requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 and Part 602 are amended as follows:

PART 1—[AMENDED]

Income Tax Regulations

Paragraph 1. These regulations are issued under the authority contained in 26 U.S.C. 7805 and 26 U.S.C. 6050I. The authority citation for Part 1 is amended by adding, "§ 1.6050I–1T also issued under 26 U.S.C. 6050I."

Par. 2. The following new § 1.6050I–1T shall be added at the appropriate place.

§ 1.6050I–1T Returns relating to cash in excess of $10,000 received in a trade or business (Temporary).

The following questions and answers relate to the requirement of reporting cash in excess of $10,000 received in a trade or business under section 6050I of the Internal Revenue Code of 1954, as added by section 146 of the Tax Reform Act of 1984 (98 Stat. 685).

In General

Q–1: What does section 6050I require with respect to the reporting of cash received in a trade or business?

A–1: Section 6050I requires that an information return must be made by any person (as defined in section 7701 (a) (1)) who, in the course of a trade or business in which such person is engaged, receives cash in excess of $10,000 in 1 transanction (or 2 or more related transactions). For purposes of these questions and answers the person receiving the cash is referred to as the "recipient."

Q–2: What is the definition of "cash"?

A–2: "Cash" is the coin and currency of the United States or of any other country, which circulate in and are customarily used and accepted as money in the country in which issued. Cash includes United States silver certificates, United States notes, and Federal Reserve notes, but does not include bank checks, traveler's checks, bank drafts, wire transfers or other negotiable or monetary instruments not customarily accepted as money.

Trade or Business Requirement

Q–3: Under what circumstances is a person considered to be engaged in a trade or business?

A–3: For purposes of this section, a person is engaged in a trade or business if such person is engaged in a trade or business within the meaning of section 162 of the Internal Revenue Code of 1954.

Q–4: Must cash in excess of $10,000 which is not received in the course of a person's trade or business be reported?

A–4: No. The receipt of cash in excess of $10,000 by a person, other than in the course of the person's trade or business, is not reportable. Thus, for example, an individual in the trade or business of selling real estate need not report the receipt of cash in excess of $10,000 arising from the sale of the individual's motorboat, if the motorboat was not used in any trade or business in which such individual was engaged. For purposes of this section, any cash received in a transaction by a corporation is considered to be received in connection with a trade or business in which the corporation engages.

Q–5: Must cash in excess of $10,000 which is received by a service provider (such as an attorney, accountant, financial advisor, architect, engineer, or doctor) from a client be reported?

A–5: Yes. The receipt of cash in excess of $10,000 by a service provider from a client as payment for services rendered, or as reimbursement for expenses incurred in connection with the performance of services, must be reported in accordance with this section. In addition, as discussed in A–6 of this section, the receipt of cash in excess of $10,000 by a service provider from a client for use on behalf of the client (such as in establishing a trust fund for the benefit of the client or the client's designee) must be reported.

Q–6: Must cash in excess of $10,000 received by a person for the account of another person be reported?

A–6: Yes. The requirements of this section apply regardless of whether cash is received for the recipient's own account or for the account of another person. For example, a person who collects delinquent accounts receivable for an automobile dealer must report with respect to the receipt of cash in excess of $10,000 from the collection of a particular account whether the cash is received for the collector's own account (*i.e.*, where the collector has purchased the delinquent account from the automobile dealer at a discount), or for the account of the automobile dealer (*i.e.*, where the rights to the proceeds from the account are retained by the automobile dealer and the collection is made on a fee-for-service basis).

Q–7: Must cash in excess of $10,000 received by an agent from its principal be reported?

A–7: A person engaged in a trade or business, who in connection with such trade or business acts as an agent (or in some other similar capacity) and receives cash in excess of $10,000 from a principal, must report with respect to the receipt of cash in accordance with this section unless the following exception applies. An agent who receives cash from a principal and uses the cash within 15 days in a cash transaction (the "second cash transaction") which is reportable under section 6050I or section 5312 of Title 31 of the United States Code and the regulations under section 5312 (31 CFR Part 103), and who discloses the name, address, and taxpayer identification number of the principal to the recipient in the second

cash transaction need not report with respect to the initial receipt of cash from the principal. For example, if a person (the "principal") gives an attorney $75,000 in cash to purchase real property on behalf of the principal, and within 15 days the attorney purchases the property for cash from a real estate developer and discloses to the real estate developer the principal's name, address, and taxpayer identification number, the attorney need not report the initial receipt of $75,000 in cash. If, however, the attorney pays for the property by means other than cash, or effects the purchase more than 15 days following receipt of the cash from the principal, or fails to disclose the principal's name, address, and taxpayer identification number (assuming the agent does not know that the recipient has the principal's address or taxpayer identification number), or purchases the property from a person not engaged in a trade or business, then the attorney would be required to report with respect to the initial receipt of $75,000 in cash from the principal. An agent will be deemed to have met the disclosure requirements of this paragraph if the agent discloses only the name of its principal and the agent knows that the recipient has the principal's address and taxpayer identification number.

Transactions Subject to Reporting

Q–8: What is a "transaction" for purposes of this section?

A–8: For purposes of this section a transaction is the underlying event precipitating the payer's transfer of cash to the recipient. A transaction may be (but is not limited to) a sale of goods or services; a sale of real property; a sale of intangible property; a rental of real or personal property; an exchange of cash for other cash; the establishment or maintenance of or contribution to a custodial, trust, or escrow arrangement; a payment of preexisting debt; a conversion of cash to a negotiable instrument; or the making or repayment of a loan.

Q–9: Can single transactions be divided into multiple transactions?

A–9: (a) No. A single transaction may not be divided into multiple transactions in order to avoid reporting under this section.

(b) The following examples illustrate the application of the principle of this A–9:

Example 1. A person has a tacit agreement with a gold dealer to purchase $36,000 in gold bullion. The reporting requirement of this section cannot be avoided by recasting the single sales transaction into 4 separate $9,000 sales transactions.

Example 2. An attorney agrees to represent a client in a criminal case with the attorney's fee to be determined on an hourly basis. In the first month in which the attorney represents the client, the bill for the attorney's services comes to $8,000, which the client pays in cash. In the second month in which the attorney represents the client, the bill for the attorney's services comes to $4,000, which the client again pays in cash. The aggregate amount of cash paid ($12,000) relates to a single transaction, the sale of legal services relating to the criminal case, and must be reported under the provisions of this section.

Example 3. A person has an intention of contributing a total of $45,000 to a trust fund, and the trustee of the fund knows or has reason to know of that intention. The reporting requirement of this section cannot be avoided by the person making five separate $9,000 cash contributions to a single fund or by making five $9,000 cash contributions to five separate funds administered by a common trustee.

Q–10: What are "related transactions"?

A–10: Any transactions conducted between a payer (or its agent) and a recipient in a 24-hour period are related transactions, and must be aggregated and reported as a single transaction (if the aggregate amount exceeds $10,000). Thus, for example, if an individual attends a one-day auction and purchases two items, at a cost of $9,240 and $1,732.50 respectively (tax and buyer's premium included), the auction house is required to report the aggregate amount of cash received from the related sales ($10,972.50), even though the auction house accounts separately on its books for each item sold and presents the purchaser with separate bills for each item purchased. In addition to the general rule stated in the first sentence of this A–10, transactions conducted between a payer (or its agent) and a recipient during a period of more than 24 hours are related if the recipient knows or has reason to know that each transaction is one of a series of connected transactions. For example, if a coin dealer makes a cash sale of $9,000 worth of gold coins to the same person on each of three successive days, the three $9,000 transactions are related transactions aggregating $27,000 if the dealer knows, or has reason to know, that each transaction is one of a series of connected transactions.

Q–11: Are separate departments of a business treated as a single recipient for purposes of aggregating the cash payments received by each?

A–11: For purposes of these questions and answers, each store, division, branch, department, headquarters, or office ("branch") (regardless of physical location) comprising a portion of a person's trade or business shall be deemed to be a separate recipient, unless the branch that receives a cash payment (or a central unit linking such branch with other branches) would in the ordinary course of business have reason to know the identify of payers making cash payments to other branches of such person. For example, assume that N, an individual, purchases regulated futures contracts worth $7,500 and $5,500, respectively, through two different branches of Commodities Broker X on the same day. N pays for each purchase with cash. Each branch of Commodities Broker X transmits the sales information regarding each of N's purchases to a central unit of Commodities Broker X (which settles the transactions against N's account). Commodities Broker X must report with respect to the two related regulated futures contracts sales in accordance with this section.

Q–12: How are multiple payments relating to the same transaction (or two or more related transactions) reported?

A–12: Cash deposits or installment payments (or other similar methods of payment of prepayment) relating to a single transaction (or two or more related transactions) are reported in three different ways depending on the size of the initial and subsequent payments. (a) If the initial payment exceeds $10,000 and any subsequent payment exceeds $10,000, the recipient must report each payment that exceeds $10,000. These payments must be reported separately (or if the payments are made less than 15 days apart, the recipient may (if it so elects) make a single report with respect to the aggregate amount of the initial and subsequent payment or payments). (b) If the initial payment exceeds $10,000 but no subsequent payment exceeds $10,000, the recipient must report with respect to the initial $10,000 payment (within 15 days after the payment is received, as required by A–19), but need not report with respect to any subsequent payment. (c) If the initial payment does not exceed $10,000, the recipient must aggregate the initial payment and subsequent payments made within one year of the initial payment until such aggregate amount exceeds $10,000, and report with respect to the aggregate amount within 15 days after receipt of the payment that causes the aggregate amount to exceed $10,000. Any subsequent payment which by itself exceeds $10,000 must be separately reported.

Exceptions to the Reporting Requirement

Q–13: Must all recipients of cash in excess of $10,000 report under this section?

A–13: No. Financial institutions, as defined in subparagraphs (A), (B), (C), (D), (E), (F), (G), (J), (K), (R), and (S) of section 5312 (a) (2) of Title 31, United States Code, are not required to report the receipt of cash exceeding $10,000 under this section.

Q–14: What are the reporting requirements of this section with respect to financial institutions defined in subparagraphs (H), (I), (L), (M), (N), (O), (P), (Q), and (T) of section 5312(a)(2) of Title 31, United States Code?

A–14: The regulations under 31 CFR Part 103 do not require these financial institutions to report currency transactions under the Bank Secrecy Act. Accordingly, these financial institutions are required to report under this section with respect to transactions in which cash in excess of $10,000 is received.

Q–15: Are casinos which report certain cash transactions to the Treasury Department under 31 CFR 103.22(a)(2) and 103.25 required to report the same transactions under section 6050I and the regulations under section 6050I?

A–15: Casinos having gross annual gaming revenue in excess of $1,000,000 will become subject to reporting and recordkeeping requirements under Title 31 of the Code of Federal Regulations, as amended by 50 FR 7065 (February 6, 1985), on May 7, 1985. Under the authority granted by section 6050I(c)(1)(A), if a casino receives cash in excess of $10,000 and is required to report the receipt of such cash directly to the Treasury Department under 31 CFR 103.22(a)(2) and 103.25 and is subject to the recordkeeping requirements of 31 CFR 103.36, then the casino is not required to make a return with respect to the receipt of such cash under section 6050I and the regulations under section 6050I. This relief from reporting under section 6050I and the regulations under section 6050I applies only to cash received in the gaming business of a casino. See A–18 of these regulations.

Q–16: Are casinos which receive an exemption, under 31 CFR 103.45(c), from reporting certain cash transactions to the Treasury Department under 31 CFR 103.22(a)(2) and 103.25, required to report such transactions under section 6050I and the regulations under section 6050I?

A–16: The determination, under the authority granted by section 6050I(c)(1)(A), whether reporting will be required under section 6050I by casinos which are granted an exemption under 31 CFR 103.45(c) will be made on a case by case basis, concurrently with the granting of such an exemption.

Q–17: What are the reporting requirements of this section with respect to casinos having gross annual gaming revenue of $1,000,000 or less?

A–17: Since casinos having gross annual gaming revenue of $1,000,000 or less are not subject to the reporting and recordkeeping requirements of 31 CFR 103.22(a)(2), 103.25, and 103.36, such casinos are not eligible for the relief described in A–15 or A–16 and must report the receipt of cash in excess of $10,000 pursuant to the general requirements of section 6050I and the regulations under section 6050I.

Q–18: Are all transactions in which a casino with gross annual gaming revenue in excess of $1,000,000 receives cash in excess of $10,000 covered by A–15 or A–16?

A–18: No. Non-gaming businesses (such as shops, restaurants, entertainment, and hotels) at casino hotels and resorts are separate trades or businesses in which the receipt of cash in excess of $10,000 is reportable pursuant to the general requirements of section 6050I and the regulations under section 6050I. For example, if Casino A receives $12,000 in cash from a customer in payment for accommodations provided to that customer at Casino A's hotel, Casino A must report with respect to that transaction under section 6050I and the regulations under section 6050I.

Q–19: Is there a reporting requirement with respect to foreign cash transactions?

A–19: Generally, there is no reporting required with respect to a cash transaction if the entire transaction occurs outside the United States (the fifty states and the District of Columbia). An entire transaction consists of both the transaction as defined in A–8 of this section and the receipt of cash by the recipient. For example, assume that an airplane dealer reaches an agreement, which is formulated in part in the United States, to sell an airplane, with delivery of and payment for the airplane to be made in Mexico. If the dealer receives cash in excess of $10,000 in connection with the sale, the dealer must report in accordance with this section. If, however, no part of the agreement to sell had been formulated in the United States, the dealer would not be required to report with respect to the transaction. See A–20.

Q–20: Is there an exception to the rule that no reporting is required with respect to entire transactions occurring outside the United States?

A–20: Yes. If any part of an entire transaction occurs in the Commonwealth of Puerto Rico or a possession or territory of the United States and the recipient of cash in that transaction is subject to the general jurisdiction of the Internal Revenue Service under Title 26 of the United States Code and the recipient receives cash in excess of $10,000, then the recipient is required to report the transaction under this section.

Time, Manner, and Form of Reporting

Q–21: When must the reports required by this section be filed with the Internal Revenue Service?

A–21: In general, the reports required by this section must be filed with the Internal Revenue Service by the later of the 15th day after the date the reportable cash payment is received or the 15th day after the date of publication of these temporary regulations. If a person elects to report one payment several independently reportable payments, received within a 15-day period (as allowed in A–12), the report must be filed with the Internal Revenue Service by the 15th day after the initial payment is received.

Q–22: What form must a recipient use to report as required by section 6050I (a) and A–1 of these regulations?

A–22: A recipient must make an information return on Form 8300, which can be obtained from any Internal Revenue Service Forms Distribution Center.

Q–23: What information must be contained in a return described in A–22?

A–23: A return of information must contain the name, address, and taxpayer identification number of the person from whom the cash was received; the name, address, and taxpayer identification number of the person on whose behalf the transaction was conducted (if the recipient knows or has reason to know that the person from whom the cash was received conducted the transaction as an agent for another person); the amount of cash received; the date and nature of the transaction; and any other information required by Form 8300.

Q–24: Must a recipient follow any procedures to ensure that the information contained in a return is complete and correct?

A–24: Yes. Before effecting any transaction with respect to which a report is required under section 6050I (a) and A–1, a recipient must verify the identity of the person from whom the reportable cash is received. Verification of the identity of a person who purports

to be an alien must be made by examination of such person's passport, alien identification card, or other official document evidencing nationality or residence. Verification of the identity of any other person may be by examination of a document normally acceptable as a means of identification when cashing or accepting checks (for example, a driver's license or a credit card). In addition, a return will be considered incomplete if a recipient knows (or has reason to know) that an agent is conducting the transaction for a principal, and the return does not identify both the principal and the agent.

Q–25: Where must the recipient file the return?

A–25: A recipient must file Form 8300 by mailing it to the address shown in the instructions to the form.

Q–26: Must a recipient keep a copy of each Form 8300 that it files?

A–26: Yes. A recipient must keep a copy of each Form 8300 that the recipient files for five years from the date of filing.

Requirement of Furnishing Statements to Customers

Q–27: What statements must be furnished to persons identified on a return filed by a recipient?

A–27: Any person required to make an information return under section 6050I must furnish a single, annual, written statement to each person whose name is set forth in a return ("identified person") filed with the Internal Revenue Service.

Q–28: What information must be included on the statement?

A–28: The statement must include the following information:

(a) The name and address of the person making the return;

(b) The aggregate amount of reportable cash received by the recipient during the calendar year in all cash transactions relating to the identified person; and

(c) A legend stating that the information contained in the statement is being reported to the Internal Revenue Service.

Q–29: Must the statement be in a particular form or format?

A–29: No.

Q–30: Is the statement considered to be furnished to an identified person if it is mailed to the identified person at the identified person's last known address?

A–30: Yes.

Q–31: When is a statement required to be furnished to an identified person?

A–31: A statement is required to be furnished to an identified person on or before January 31 of the year following the calendar year in which the cash is received.

Penalties

Q–32: Are there penalties for failing to comply with the requirements of section 6050I and the regulations thereunder?

A–32: Yes. The penalty for failing to make any information return under section 6050I with respect to any identified person is provided in section 6652. The penalty for failing to furnish a statement to any identified person is provided in section 6678. Criminal sanctions also apply to willful failures to make a return under section 6050I.

Effective dates

Q–33: When is section 6050I effective?

A–33: Section 6050I is effective with respect to cash payments received after December 31, 1984.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 3. The authority citation for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 4. Section 602.101(c) is amended by inserting in the appropriate place in the table "§ 1.6050I–1 * * * 1545–0892".

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue this Treasury decision with notice and public procedure under subsection (b) of section 533 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: April 26, 1985.

Ronald A. Pearlman,

Assistant Secretary of the Treasury.

[FR Doc. 85–11902 Filed 5–21–85; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Parts 41, 48, and 602

[T.D. 8027]

Excise Taxes; Heavy Vehicle Use Tax, Credits and Refunds of the Tax on the Sale of Diesel Fuel, OMB Control Numbers

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the imposition of the tax on the use of heavy vehicles and relating to credits and refunds of the tax imposed on the sale of diesel fuel. Changes to the applicable tax law regarding heavy vehicles were made by the Surface Transportation Assistance Act of 1982 and the Tax Reform Act of 1984. Changes to the applicable tax law regarding credits and refunds of the diesel fuel tax were made by the Tax Reform Act of 1984. The regulations would affect owners of highway motor vehicles, State motor vehicle administrations, and users of diesel fuel and would provide them with the guidance needed to comply with those Acts.

EFFECTIVE DATES: May 23, 1985, except as otherwise provided in this document, the amendments to the regulations are applicable after June 30, 1984.

FOR FURTHER INFORMATION CONTACT: William A. Jackson 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 LR–31–83, (202–566–4336), not a toll free call.

SUPPLEMENTARY INFORMATION:

Background

On November 6, 1984, the **Federal Register** published proposed amendments to the Excise Tax Regulations (26 CFR Part 41) under sections 4481, 4482, and 4483 of the Internal Revenue Code of 1954 (Code) (49 FR 44300). These amendments were proposed to conform the regulations to 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) and are to be issued under the authority contained in sections 4482(b) (70 Stat. 390, 26 U.S.C. 4482(b)), 4483(d) (96 Stat. 2178, 26 U.S.C. 4483(d)), and 7805 (68A Stat. 917, 26 U.S.C. 7805) of the Code. That document also provided proposed amendments to the Excise Tax Regulations (26 CFR Part 41) to conform the regulations to section 143(a) of the Surface Transportation Assistance Act of 1982. Those amendments to the regulations were proposed to provide guidance regarding the proof of payment of the Federal heavy vehicle use tax that a State is required to receive as a condition for issuing a registration for a vehicle. In addition, that document contained proposed amendments to the Excise Tax Regulations (26 CFR Part 48) under section 6427(b)(2) of the Code relating to

an exemption from the tax imposed by section 4041 of the Code in the case of fuel used in certain buses, and under section 6427(g) of the Code relating to an income tax credit or refund for original purchasers of diesel-powered automobiles and light trucks. These last two amendments were proposed to conform the regulations to sections 911(b), of 915 of the Tax Reform Act of 1984, respectively. A public hearing was held on December 14, 1984. After consideration of all comments regarding the proposed regulations, the amendments are adopted as revised by this Treasury decision.

Summary of Revisions

Canadian Vehicles Used in the United States

The proposed regulations provided that the Federal heavy vehicle use tax is imposed on any highway motor vehicle that is registered in a Canadian province and is also proportionally registered in the United States under the International Registration Plan (IRP). Several commentators suggested that the imposition of the tax on Canadian vehicles should be suspended pending the completion of the trans-border trucking study by the Department of Transportation. This study was ordered by section 932 of the Tax Reform Act to study the significance of the heavy vehicle use tax on trans-border trucking operations. The regulations have been revised to provide that for taxable periods beginning after June 30, 1985, a vehicle that is issued a "base plate" by a Canadian province will not be subject to the tax merely because it is proportionally registered in the United States under the IRP or similar agreement and is used on the public highways in the United States. Accordingly, Rev. Rul. 81–86 (1981–1 C.B. 504), which held that such vehicles are liable for the tax, will be revoked.

Taxable Gross Weight

Section 41.4482(b)–1(e) of the proposed regulations provided that the taxable gross weight of a highway motor vehicle shall be the highest gross weight at which the vehicle is registered in any State during the taxable period. Under the proposed regulations, if a vehicle were registered only in a state or states that register vehicles on the basis of the unladen weight of the vehicle, the taxpayer would declare the taxable gross weight of the vehicle based on its gross operating weight. Several commentators pointed out that certain states that register vehicles on the basis of gross weight have large registered weight brackets and the highest registered weight of a vehicle may be several thousand pounds higher than the actual gross weight declared for the vehicle for purposes of registration. This would have made it possible for two identical vehicles having the same declared gross weight to have different taxable gross weights in different states depending on the size of each state's registered weight brackets.

Under the final regulations, the taxable gross weight of a highway motor vehicle is the weight which is declared by the taxpayer on the basis of the definition of taxable gross weight in § 41.4482(b)–1(a) regardless of whether or not the States in which the vehicle is registered register vehicles on the basis of the vehicle's unladen weight. Such declaration of taxable gross weight must be no less than the highest specific gross weight of the vehicle declared by the registrant at any time during the taxable period for any purpose including the registration of the vehicle in any State or the payment of any other fees or taxes. If no declaration by the registrant of a specific gross weight amount is required with respect to a vehicle, then the taxable gross weight must fall within the highest gross weight registration catagory for which such vehicle is registered if the vehicle is registered in any state that registers vehicles on the basis of gross weight.

Trucks Used in Logging

The final regulations clarify the requirement under § 41.4483–6(b) that a vehicle must be registered as a highway motor vehicle used exclusively in the transportation of harvested forest products under the laws of the State where such vehicle is required to be registered in order to qualify for a 25 percent reduction in the heavy vehicle use tax. This clarification states that if a vehicle is registered as a vehicle used in the transportation of harvested forest products under a State statute or legally valid regulations then such vehicle will be considered to be so registered under the laws of the State. In addition, the final regulations clarify that no special license plate or tag identifying a vehicle as being used in the transportation of harvested forest products is required. The final regulations also clarify a similar State registration requirement under § 41.4483–3(g)(1) regarding the 7,500 mile exemption for agricultural vehicles.

Proof of Payment

Section 41.6001–2 of the proposed regulations has been substantially revised in response to the many comments received regarding the proof of payment requirements. This section of the proposed regulations implemented section 143(a) of the Surface Transportation Assistance Act of 1982, which provided that a State must receive proof of payment of the Federal heavy vehicle use tax as a condition of registering a highway motor vehicle subject to the tax. Failure to require such proof of payment shall result in a reduction of that State's Federal-aid highway funds. In order to allow the State governments sufficient time to comply with the proof of payment requirements, the final regulations provide that the States will not be required to receive proof of payment as a condition of vehicle registration until October 1, 1985.

The final regulations under § 41.6001–2(b)(1) provide generally that a State to which an application is made to register a highway motor vehicle must receive from the registrant proof of payment of the heavy vehicle use tax. Such proof of payment must be received by a "base state" when issuing an "apportioned plate" under the International Registration Plan (IRP) (or similar agreement) for a highway motor vehicle, but no proof of payment is required to be presented to the other states for which the vehicle is proportionally registered and which are listed on the IRP cab card issued by the base state. Further, no proof of payment is required to be received by a State with respect to the issuance of certain special temporary travel permits.

In the case of a State that registers vehicles on the basis of gross vehicle weight, § 41.6001–2(b)(2)(i) of the final regulations provides that proof of payment is required to be received by such State with respect to any highway motor vehicle that has a declared gross weight in that State of 55,000 pounds or more. No proof of payment is required for any vehicle that has a declared gross weight in that State of less than 55,000 pounds. If no declaration of a specific gross weight is made with respect to a vehicle registered on the basis of gross weight, then the State must require proof of payment with respect to such vehicle if the minimum weight of the registered weight category for such vehicle is 55,000 pounds or more. In the case of a State that registers vehicles other than on the basis of gross vehicle weight, § 41.6001–2(b)(2)(ii) of the final regulations provides that such State may register a highway motor vehicle without receiving proof of payment with respect to such vehicle if the State receives a written statement stating that during the taxable period which includes the date on which the State receives the application for registration.

such vehicle had a taxable gross weight of less than 55,000 pounds. In addition, such State may register a highway motor vehicle without receiving either proof of payment or a written statement if such vehicle has an unladen weight of 8,000 pounds or less.

Generally, the final regulations provide that proof of payment with respect to a highway motor vehicle must be received by a State before such State issues a registration for such vehicle. However, § 41.6001–2(b)(3) of the final regulations is designed to allow States with computerized registration systems to implement a "suspension" registration system. Under the system provided in the final regulations, a State may register taxable highway motor vehicles without receiving proof of payment at the time the application for registration is received. Registration under a suspension system must be on the condition that the State receive proof of payment with respect to a taxable vehicle no later than 4 months after the beginning of the registration period. If the State does not receive the proof of payment within the required time then the State must suspend the registration of such vehicle until such time as proof of payment is received.

Section 41.6001–2(b)(6) of the final regulations provides that a description of the supporting documentation and records required by the Federal Highway Administration to verify compliance by the states of the proof of payment requirements is set forth in 23 CFR Part 669. The proposed regulations had provided that the States were not required to retain records of having received proof of payment. However, a lack of such records will make it difficult for the Federal Highway Administration to verify compliance by the States of the proof of payment requirements. For this reason, the final regulations have been revised to allow the Federal Highway Administration to prescribe rules stating what records it will require for its verification procedures.

The final regulations provide that in general, the vehicle identification numbers of the vehicles sought to be registered must appear on the proof of payment received by the State. However, § 41.6001–2(c)(1)(ii) of the final regulations provides that if a receipted Schedule 1 is submitted as proof of payment for registering one or more highway motor vehicles and the total of the number of vehicles on such Schedule 1 for which the tax has not been suspended under § 41.4483–3 exceeds 21 and the name of the taxpayer on such Schedule 1 is one of the names in which such vehicles are sought to be registered, then such Schedule 1 shall be accepted as proof of payment in support of the registration of a number of vehicles equal to or less than such total, and a list of the vehicle identification numbers is not required as part of the proof of payment. The same rule applies if the total of the number of vehicles on the Schedule 1 for which tax is suspended under § 41.4483–3 exceeds 9. If a receipted Schedule 1 does not include a list of vehicles for which tax is being reported and the name of the taxpayer on such Schedule 1 is not one of the names in which a vehicle is sought to be registered, then such Schedule 1 may be accepted as proof of payment with respect to such vehicle if it is accompanied by a written statement executed by the taxpayer containing the vehicle identification number of the vehicle sought to be registered and a statement that the tax was paid on such vehicle.

Finally, the final regulations regarding proof of payment do not require a State to verify the correctness of the taxable gross weights for vehicles listed on the proof of payment. The proposed regulations had provided that proof of payment received by a State on or after September 1, 1985 (other than a Schedule 1 on which the vehicles are not required to be listed), shall only serve as valid proof of payment for a vehicle whose vehicle identification number appears on the Schedule 1 and which is being registered at a weight equal to or less than the taxable gross weight listed on the Schedule 1 for such vehicle. The requirement that such vehicle not be registered at a weight which is higher than the taxable gross weight shown on the Schedule 1 is deleted from the final regulations.

Computer Tape Proof of Payment Verification

Several commentators suggested that the states by allowed to satisfy the proof of payment requirement through the exchange of computer tape between the State and the Internal Revenue Service. Although no system of this type is provided for in these final regulations, the Internal Revenue Service is continuing to actively consider the implementation of a computer tape proof of payment system. Such a system, and the procedures for complying with it, would be provided by Revenue Procedure.

Paperwork Reduction Act

The collection of information requirements contained in these final regulations have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act. These regulations have been approved by OMB (control number 1545–0143).

Special Analyses

The Commissioner of Internal Revenue has determined that this final rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is 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 regulations is William A. Jackson 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 41

Excise taxes, Motor vehicles.

26 CFR Part 48

Agriculture, Arms and ammunition, Coal, Excise taxes, Gasohol, Gasoline, Motor vehicles, Petroleum, Sporting goods, Tires.

26 CFR Part 602

Reporting and recordkeeping requirement.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Parts 41, 48, and 602 are amended as follows:

PART 41—[AMENDED]

Paragraph 1. The authority citation for Part 41 is revised to read as follows:

Authority: 26 U.S.C. 7805; § 41.4482(b)–1 also issued under 26 U.S.C. 4482(b); § 41.4483–3 also issued under 26 U.S.C.4483(d).

Par. 2. Section 41.4481–1 is revised to read as set forth below:

§ 41.4481–1 Imposition of tax.

(a) *In general.* (1) A tax is imposed under section 4481(a) of the Code for each taxable period beginning after June 30, 1984, on the first use on the public highways in the United States during such period of any highway motor vehicle that (together with the semitrailers and trailers customarily used in connection with highway motor vehicles of the same type as such highway motor vehicle) has a taxable gross weight of at least 55,000 pounds, at the rate specified in paragraph (b) of this section. The tax is imposed on the use of such a highway motor vehicle only if, at the time of the use of such vehicle, it is registered or required to be registered in the name of a person (whether or not such person is the person who uses the vehicle). See, however, §§ 41.4483–1, 41.4483–2, and 41.4483–3 relating respectively to exemptions from the tax in the case of highway motor vehicles used by a state or any political subdivision thereof, certain transit-type buses, and vehicles used for 5,000 or fewer miles (7,500 or fewer miles in the case of agricultural vehicles) on public highways. See § 41.4483–6 relating to a reduction in tax in the case of certain trucks used in logging. For definitions of the terms "registered", "highway motor vehicle", "taxable gross weight", "taxable period", "use", and "customary use", see §§ 41.4481–4, 41.4482(a)–1, 41.4482(b)–1, and paragraphs (b), (c), and (d) of § 41.4481(c)–1 respectively.

(2) For taxable periods beginning after June 30, 1985, any highway motor vehicle that is issued a base plate by a Canadian province under the International Registration Plan (IRP) or similar agreement and has a proportional registration under such agreement to satisfy the registration laws of any of the United States shall be exempt form the tax imposed by section 4481(a).

(b) *Rate of tax.* (1) For taxable periods after June 30, 1956, and before July 1, 1984, the tax is computed on each 1,000 pounds of taxable gross weight or fraction thereof for each highway motor vehicle the use of which at any time during the taxable period is subject to the tax. Thus, any fraction of 1,000 pounds of taxable gross weight is treated as 1,000 pounds for purposes of the computation of the tax. Following are the rates of tax in effect for taxable periods after June 30, 1956 and before July 1, 1984:

Period of vehicle use	Rate of tax per 1,000 pounds or fraction thereof of taxable gross weight
For each taxable year period commencing after June 30, 1956, and ending before July 1, 1961	$1.50
For each taxable year period commencing after June 30, 1961, and ending before July 1, 1984	3.00

(2) For taxable periods after June 30, 1984, the tax is computed on each 1,000 pounds of taxable gross weight or fraction thereof of each highway motor vehicle the use of which at any time during the taxable period is subject to the tax as set forth in paragraph (a)(1) of this section. Thus, any fraction of 1,000 pounds of taxable gross weight in excess of 55,000 pounds of taxable gross weight is treated as 1,000 pounds for purposes of the computation of the tax. Following are the rates of tax in effect for taxable periods after June 30, 1984:

Taxable gross weight	Rate of tax
At least 55,000 pounds but not over 75,000 pounds	$100 per taxable period plus $22 for each 1,000 pounds (or fraction thereof) in excess of 55,000 pounds.
Over 75,000 pounds	$550.

For the taxable period beginning July 1, 1988, and ending September 30, 1988, the annual rate of tax shall be determined by substituting "$25" for "$100", "$5.50" for "$22", and "$137.50" for "$550", in the table in this paragraph (b)(2). However, if the tax imposed by section 4481(a) is extended to apply to use after September 30, 1988, the rate of tax for taxable periods after June 30, 1988, shall be as provided in section 4481(a).

(c) *Computation of tax.* (1) Except as provided in paragraph (c)(2) of this section, the tax on the use of a particular highway motor vehicle for taxable periods beginning after June 30, 1984, is computed as follows:

(i) For vehicles with a taxable gross weight of at least 55,000 pounds, but not over 75,000 pounds, add to $100 an amount equal to $22 for each 1,000 pounds (or fraction thereof) in excess of 55,000 pounds; and

(ii) For vehicles with a taxable gross weight over 75,000 pounds, the tax is $550.

(2) If the first taxable use of a particular highway motor vehicle is made after the first month of the taxable period, the tax on the use of such vehicle for such taxable period is computed by multiplying the amount of tax that would be due for a full taxable period as computed under paragraph (c)(1) of this section, by a fraction. Such fraction shall have as its numerator the number of months in the taxable period beginning with the month of first taxable use and as its denominator the number of months in the entire taxable period. For purposes of determining the fraction, any part of a month is counted as a full month. (See example (2) of paragraph (e) of this section.)

(3) If a Form 2290 has been filed for a taxable period for a highway motor vehicle based on a particular taxable gross weight, and such taxable gross weight increases during the same taxable period, then the taxpayer shall file a new Form 2290 and pay (either in full or by installments) any additional tax imposed as a result of the increased taxable gross weight. Such additional tax shall be equal to the amount calculated according to the following formula:

$$\left[\left(T_1 \times \frac{P}{12}\right) + \left(T_2 \times \frac{R}{12}\right)\right] - T_1.$$

where:

T_1 = Tax imposed for a full taxable period (or partial taxable period as determined under paragraph (c)(2) of this section) at the vehicle's previously reported taxable gross weight.

T_2 = Tax imposed for the same taxable period as used in T_1 at the vehicle's increased taxable gross weight.

P = The number of months in the taxable period during which the vehicle's taxable gross weight was as previously reported for such taxable period. This number does not include the month in which the vehicle's taxable gross weight increased.

R = The number of months remaining in the taxable period including the month in which the vehicle's taxable gross weight was increased.

If tax was imposed for a partial taxable period as determined under paragraph (c)(2) of this section, the additional tax is determined by substituting the number of months in such partial taxable period for "12" in the above formula.

(4) If in any taxable period the taxable gross weight of a highway motor vehicle

is decreased, the computation of tax is not affected and no right to credit or refund of any tax paid under section 4481 arises.

(5) If in any taxable period a highway motor vehicle is destroyed or stolen before the first day of the last month in the taxable period, and is not subsequently used during such taxable period, the tax shall be calculated proportionately from the first day of the month in the period in which the first taxable use of the highway motor vehicle occurs to and including the last day of the month in which the highway motor vehicle was destroyed or stolen. Any tax paid under section 4481(a) on such a highway motor vehicle in excess of the tax calculated in the preceding sentence, shall be an overpayment for which a credit or refund of tax may be claimed. For purposes of this paragraph (c)(5), a highway motor vehicle is destroyed if the vehicle is damaged due to an accident or other casualty to such an extent that it is not economical to rebuild.

(6) If the use of a highway motor vehicle during the taxable period is discontinued (for reasons other than destruction or theft as described in paragraph (c)(5) of this section) or is converted to a use which is exempt from the tax imposed by section 4481(a), the computation of the tax is not affected and no right to a credit or refund of any tax paid under section 4481 arises.

(d) *Credit or refund of tax under section 4481(a).* (1) Any claim for refund of an overpayment of tax under section 4481(a) due to destruction or theft or the vehicle shall be made in accordance with the applicable provisions of this section and § 301.6402–2 (Regulations on Procedure and Administration) and shall be filed by the person in whose name the vehicle is registered or required to be registered when the vehicle is destroyed or stolen. A claim for refund of the tax imposed by section 4481(a) is to be filed on Form 843 (Claim).

(2) Any person entitled to claim a refund of tax under paragraph (d)(1) of this section may, in lieu of claiming a refund of such tax, claim a credit for such tax on the next Form 2290 required to be filed.

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

Example (1). In the taxable period beginning July 1, 1984, the first taxable use of a particular highway motor vehicle, a bus, having a taxable gross weight of 56,000 pounds, occurs on July 10, 1984, at which time the vehicle is registered in the name of X. A tax of $122 ($100+$22) is imposed on X for the use of such vehicle for such taxable period.

Example (2). On July 1, 1984, X has registered in his name a highway motor vehicle having a taxable gross weight of 60,000 pounds. The vehicle is in "dead storage" until August 10, 1984, at which time X starts using the vehicle on the public highways in carrying on his trucking business. On August 10, 1984, the vehicle is still registered in X's name. Since the first taxable use of this highway motor vehicle during the taxable period occurred on August 10, 1984, X is required to pay a tax of $192.50 ([$100+(5×$22)]×11/12) for such taxable period.

Example (3). On April 15, 1985, a vehicle with a taxable gross weight of 70,000 pounds and registered in the name of Y is completely destroyed. Y had purchased the vehicle from X who had paid the tax for the taxable period beginning July 1, 1984. Y is entitled to a refund of tax for those full months after destruction in the taxable period ending June 30, 1985. Thus, Y may file a claim for a refund of $71.67—2/12 of the total tax of $430 ($100+(15×$22)).

§ 41.4481–1T [Removed]

Par. 3. Section 41.4481–1T is removed.

§ 41.4481–1aT [Redesignated as § 41.4481–T]

Par. 4. Section 41.4481–1aT is redesignated as § 41.4481–1T.

Par. 5. Section 41.4481–2 is amended as follows:

(a) Paragraph (a)(2) and the example contained therein are revised to read as set forth below.

(b) The material following the first sentence of paragraph (b) is revised to read as set forth below.

§ 41.4481–2 Persons liable for tax.

(a) * * *

(2) The application of paragraph (a)(1) of this section may be illustrated by the following example:

Example. In the taxable period beginning July 1, 1985, the first taxable use of a particular highway motor vehicle having a taxable gross weight of 60,000 pounds occurs on July 10, 1985, at which time the vehicle is registered in the name of Y. On September 1, 1985, Y sells the vehicle to X who registers and uses the vehicle before the end of such taxable period. Since the vehicle was registered in the name of Y at the time of its first taxable use, Y is liable for the total tax of $210 ($100+(5×$22)) imposed on the use of the vehicle for the taxable period. X is also liable for $210 tax or any part thereof, but only to the extent that Y does not pay it. To the extent that either X or Y pays the tax the other party is relieved of such liability.

(b) * * * Such person shall also obtain and keep as evidence a statement from the transferor as to whether there was in effect, at the time the vehicle was acquired, a suspension under § 41.4483–3(a) of the tax imposed by section 4481(a). The evidence may take the form of a written statement, signed and dated by the person from whom the vehicle was acquired, showing whether there was or was not a prior taxable use of the vehicle and whether there was a suspension of tax in the taxable period. If the vehicle is acquired from a dealer in highway motor vehicles, the statement may be obtained from such dealer or from the person from whom the dealer acquired such vehicle. If evidence is not obtained showing whether there was or was not a prior taxable use of such vehicle and whether there was a suspension of tax in the taxable period, such person shall keep as a part of his records a written statement of the reason why he was unable to obtain such evidence.

* * * * *

Par. 6. Section 41.4482(b)–1 is amended as follows:

(a) Paragraph (a) is revised to read as set forth below.

(b) Paragraph (d) is amended by revising the heading to read as set forth below and by substituting "after June 30, 1969, and before July 1, 1984" for "beginning on or after July 1, 1969", at the end of the first sentence.

(c) New paragraphs (e) and (f) are added to read as set forth below.

§ 41.4482(b)–1 Definition of taxable gross weight.

(a) *In general.* The tax imposed on the use of a highway motor vehicle (of a taxable gross weight of at least 55,000 pounds) is based on the taxable gross weight of such highway motor vehicle. Taxable gross weight of a highway motor vehicle is determined with reference to the sum of (1) the actual unloaded weight of such highway motor vehicle (fully equipped for service); (2) the actual unloaded weight of any trailers or semitrailers (fully equipped for service) customarily used in combination with such highway motor vehicle; and (3) the weight of the maximum load customarily carried on such highway motor vehicle and on any trailers or semitrailers customarily used in combination with such highway motor vehicle. In order to determine the taxable gross weight of a particular vehicle for a particular taxable period, use the appropriate method described in either paragraphs (c), (d), or (e) of this section, or § 41.4482(b)–1T.

* * * * *

(d) *Schedule of taxable gross weights for taxable periods beginning after June 30, 1969, and ending before July 1, 1984.* * * *

(e) *Determination of taxable gross weight for taxable periods after June 30, 1985*—(1) *In general.* For purposes of the tax imposed by section 4481(a), the taxable gross weight of a highway motor vehicle shall be equal to the sum of the weights referred to in paragraph (a) of

this section. The taxable gross weight of a highway motor vehicle shall be reported by the taxpayer on Form 2290 for any vehicle that has a taxable gross weight of 55,000 pounds or more. In the case of a highway motor vehicle that is registered in at least one State that requires a declaration of gross weight to be stated as a specific amount for any purpose (including proportional or prorate registration or the payment of any other fees or taxes), the taxable gross weight of such vehicle must be no less than the highest gross weight declaration (or combined gross weight declaration in the case of a tractor-trailer or truck-trailer combination) made by the registrant in any State with respect to such vehicle. If a highway motor vehicle is registered in at least one State that requires vehicles to register on the basis of gross weight and such vehicle is not registered in any State that requires a declaration of gross weight to be stated as a specific amount by the registrant, the taxable gross weight of such vehicle must fall within the highest gross weight category of such State for which such vehicle is registered during the taxable period. Declarations of weight made in order to obtain special temporary travel permits which allow a vehicle to, (i) operate in a State in which the vehicle is not registered or prorated, (ii) operate at more than a State's maximum statutory weight limit, or (iii) operate at more than the weight that the vehicle is registered in a State, shall not be considered in determining the taxable gross weight of a vehicle.

(2) *Buses.* For purposes of the tax imposed by section 4481(a), the taxable gross weight of a bus shall be the sum of the weights referred to in paragraph (a) of this section except that "the weight of the maximum load customarily carried" on a bus shall be equal to 150 pounds times the number of units of seating capacity provided for passengers and driver.

(f) *Examples.* The provisions of this section may be illustrated by the following examples:

Example (1). A is the owner of a truck-tractor. On January 1, 1985, A registers the truck-tractor in three states—X, Y, and Z. For purposes of registering the vehicle in State X, A declares the gross operating weight of his truck-tractor to be 60,000 pounds. The declaration of the gross weight of the vehicle at 50,000 pounds places A's truck-tractor in the State X registration category of 55,000 to 62,000 pounds gross weight. Thus, the registered weight of A's vehicle in State X is 62,000 pounds. At the same time as A registers the vehicle in State X, A also proportionally registers the vehicle under the IRP in State Y. A uses the same declared gross weight of 60,000 pounds for purposes of the State Y proportional registration. Registration in State Y at this declared gross weight places A's truck-tractor in the State Y gross weight registration category of 58,000 to 68,000 pounds. Finally, A registers the truck-tractor in State Z. Registration of vehicles in State Z is based on the unladen weight of the vehicle. During the taxable period beginning on July 1, 1985, A's truck-tractor is not registered in any other state. For the taxable period beginning on July 1, 1985, A must declare a taxable gross weight of no less than 60,000 pounds for purposes of the tax imposed by section 4481(a) because that is the highest declared gross weight for state registration or other purposes. Should A declare to any State agency a higher gross operating weight with respect to the truck-tractor during the same taxable period (except for a special temporary permit), A would then be liable for additional tax as determined under paragraph (c)(3) of § 41.4481–1.

Example (2). Assume the same facts as in example (1), except that on one occasion during the taxable period, A was issued a special 2-day permit to use his truck-tractor in State Y to haul a load which would give A's unit a total gross weight of 80,000 pounds. A may still declare the taxable gross weight of his unit to be no less than 60,000 pounds because special permits to haul heavier loads on a temporary basis are not considered in determining the taxable gross weight of a vehicle.

Example (3). C owns and has registered in his name 2 trucks which are identical in all respects and which are used to carry the same type of load. The first vehicle is registered only in State X at a registered weight of 73,000 pounds based on a declared gross weight of 70,000 pounds. The second vehicle is registered only in State Y at a registered weight of 66,000 pounds based on a declared gross weight of 65,000 pounds. No other declarations of gross weight are made with respect to either vehicle. For purposes of the Federal heavy vehicle use tax, the taxable gross weight of the vehicle registered in State X may be declared at no less than 70,000 pounds and the taxable gross weight of the vehicle registered in State Y may be declared at no less than 65,000 pounds even though the vehicles are identical.

Par. 7. Section 41.4482(c)–1 is amended by substituting "1988" for "1979" every place it appears in paragraph (b) and by adding a new paragraph (d) immediately after paragraph (c) to read as set forth below:

§ 41.4482(c)–1 Definition of State, taxable period, use and customary use.

* * * * *

(d) *Customary use.* For taxable periods beginning after June 30, 1984, the term "customary use" as used in the regulations in this part, means that a semitrailer or trailer shall be treated as customarily used in connection with a highway motor vehicle if the vehicle is equipped to tow such semitrailer or trailer.

Par. 8. Examples (1), (2), and (3) of § 41.4483–2(f) are amended by substituting "1984" for "1962" wherever it appears, by substituting "1985" for "1963" wherever it appears, by substituting the phrase "at least 55,000 pounds" for "more than 26,000 pounds" wherever it appears, and by substituting the phrase "less than 55,000 pounds" for "26,000 pounds or less" wherever it appears.

§ 41.4483–2T [Removed]

Par. 9. Section 41.4483–2T is removed.

§ 41.4483–3T [Removed]

Par. 10. Section 41.4483–3 is redesignated as § 41.4483–4, § 41.4483–3T is removed, and a new § 41.4483–3 is inserted immediately after § 41.4483–2 to read as set forth below:

§ 41.4483–3 Exemption for trucks used for 5,000 or fewer miles and agricultural vehicles used for 7,500 or fewer miles on public highways.

(a) *Suspension of tax.*—(1) *In general.* Liability for the tax imposed by section 4481(a) is suspended during a taxable period if it is reasonable to expect that the vehicle will be used for 5,000 or fewer miles on public highways during such taxable period and the owner furnishes in the time and manner required the information required under paragraph (a)(2) of this section. See paragraph (g) of this section regarding special rules for agricultural vehicles. See § 41.4482(c)–1(c) for the meaning of "use" on the public highways.

(2) *Information to be supplied in support of suspension of tax.* The owner of a highway motor vehicle who reasonably expects that the vehicle will be used for 5,000 or fewer miles on public highways during a taxable period shall furnish on the first Form 2290 (Federal Heavy Vehicle Use Tax Return) filed during the taxable period for such motor vehicle, such information as is required by the Form in order to support the suspension of tax under paragraph (a) of this section.

(b) *Cessation of suspension from tax.* If a highway motor vehicle on which the tax under section 4481(a) is suspended for a particular taxable period under paragraph (a)(1) of this section is used for more than 5,000 miles on public highways during such taxable period, the owner of the vehicle shall pay the tax for the entire taxable period in accordance with section 4481(a). The tax shall be reported on a Form 2290, which must be filed on or before the last day of the month immediately following the month in which the use of the vehicle during the taxable period exceeds 5,000 miles. If such Form is filed within the

time required by the preceding sentence, it shall be treated as timely filed.

(c) *Exemption.* If at the end of any taxable period during which the tax under section 4481(a) on a highway motor vehicle was suspended under paragraph (a)(1) of this section the vehicle has not been used for more than 5,000 miles on public highways, the vehicle shall be exempt from the tax for that taxable period. The owner of the vehicle shall verify that the vehicle was used for less than 5,000 miles in such ended taxable period on the first Form 2290 filed for the next taxable period.

(d) *Examples.* The provisions of this section may be illustrated by the following examples:

Example (1). A is the owner of 6 highway motor vehicles, each of which has a taxable gross weight in excess of 55,000 pounds. None of these 6 vehicles are agricultural vehicles. The vehicles are placed in use during July 1984. Because of the nature of his business, A reports on the first Form 2290 filed after June 30, 1984, that he reasonably expects that none of the vehicles will be used for more than 5,000 miles on public highways. Accordingly, the tax imposed by section 4481(a) is suspended for A's 6 vehicles for the taxable priod July 1, 1984, through June 30, 1985.

Example (2). Assume the same facts as in example (1) except that during the month of February 1985, the use of one of A's vehicles exceeds 5,000 miles on public highways. A is liable for the full tax for the taxable period July 1, 1984, through June 30, 1985, for that vehicle at the rate set forth in § 41.4481–1(b), and must so report on a Form 2290 filed on or before March 31, 1985, the last day of the month following the month in which the use exceeds 5,000 miles.

(e) *Credit or refund of tax for highway motor vehicle used 5,000 or fewer miles.* (1) If a highway motor vehicle on which the tax imposed by section 4481(a) has been paid for a given taxable period is used for 5,000 or fewer miles on public highways during such taxable period, the person who paid the tax may file a claim for refund of an overpayment of the tax at the end of the taxable period. Claims for refunds of tax made under this paragraph (e) shall be filed in the same manner as claims for refunds filed under § 41.4481–1(d). Refunds of tax made under this paragraph (e) shall be without interest.

(2) Any person entitled to claim a refund of tax under paragraph (e)(1) of this section may, in lieu of claiming a refund of such tax, claim credit for such tax on the first Form 2290 filed for the next taxable period.

(f) *Relief from liability for tax under certain circumstances.* If the tax imposed by section 4481(a) on a highway motor vehicle is suspended for any taxable period under paragraph (a) of this section and the vehicle is transferred while the suspension is in effect, the transferor will not be liable for any tax on such vehicle for such taxable period if such transferor furnishes a statement to the transferee on which is included the transferor's name, address and taxpayer identification number, the vehicle identification number, the date of transfer of the vehicle, the number of miles the vehicle has been used on the public highways during the taxable period, the odometer reading at the time of the transfer, and the name, address and taxpayer identification number of the transferee. The statement required in the preceding sentence shall be attached by the transferee to a Form 2290 which must be filed on or before the last day of the month following the month in which such vehicle is transferred. The suspension from tax under paragraph (a) continues until the vehicle is used on the public highways for more than 5,000 miles during the taxable period (including use by the transferor for the portion of the taxable period prior to the transfer). If the transferor has furnished the statement required in this paragraph (f), the transferee and not the transferor is liable for the entire tax under section 4481(a) for the taxable period in which the transfer was made. If the transferor has not furnished such statement to the transferee, then the transferor is also liable for the tax on the use of such vehicle for such taxable period to the extent that the tax or an installment payment of the tax has not been previously paid. See paragraph (b) of this section relating to cessation of suspension from tax.

(g) *Special rule for agricultural vehicles—(1) In General.* In applying the provisions of this section to an agricultural vehicle, "7,500" shall be substituted for "5,000" each place it appears in paragraphs (a) through (f) of this section.

(2) *Meaning of terms*—(i) *Agriculture vehicle.* An agricultural vehicle is any highway motor vehicle—

(A) Used (or expected to be used) primarily for farming purposes, and

(B) Registered (under the laws of the State or States in which such vehicle is required to be registered) as a highway motor vehicle used for farming purposes.

A highway motor vehicle is used primarily for farming purposes if more than one-half of such vehicle's use (determined on the basis of mileage) during the taxable period is for farming purposes. Further, the highway motor vehicle must be registered (under the laws of the State or States where such vehicle is required to be registered) as a highway motor vehicle used for farming purposes for the entire taxable period in order to qualify as an agricultural vehicle. See § 41.4482(a)–(1) for the definition of "highway motor vehicle". A vehicle will be considered to be registered under the laws of the State as a highway motor vehicle used for farming purposes if such vehicle is so registered under a State statute or legally valid regulations. In addition, no special tag or license plate identifying a vehicle as being used for farming purposes is required.

(ii) *Farming purposes.* For purposes of this section, "farming purposes" means the transporting of any farm commodity to or from a farm, or the use directly in agricultural production.

(iii) *Farm commodity.* A "farm commodity" is any agricultural or horticultural commodity, feed, seed, fertilizer, livestock, bees, poultry, fur-bearing animals, or wildlife. A farm commodity does not include a commodity which has been changed by a processing operation from its raw or natural state. For example, juice which has been extracted from fruits or vegetables is not a farm commodity for purposes of this paragraph (g).

(iv) *Farm.* The term "farm" includes stock (including feed yards for fattening cattle), dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, orchards, and such greenhouses and other similar structures as are used primarily for the raising of any agricultural or horticultural commodity. Greenhouses and other similar structures used primarily for purposes other than the raising of agricultural or horticultural commodities (for example, display, storage, or fabrication of wreaths, corsages, and bouquets) do not constitute "farms".

(v) *Agricultural production*—(A) *In general.* A highway motor vehicle is considered to be used directly in agricultural production only if it is used as indicated in the following paragraphs.

(B) *Use of a highway motor vehicle in connection with cultivating, raising, and harvesting.* A highway motor vehicle is considered to be used directly in agricultural production if such vehicle is used in connection with cultivating the soil, or raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training and management of livestock, bees, poultry, and fur-bearing animals and wildlife. A highway motor vehicle which is used in connection with operations such as canning, freezing, packaging, or other processing operations will not be considered to be used directly in agricultural production.

(C) *Use of a highway motor vehicle in connection with planting, cultivation, caring for, cutting, etc., of trees.* A highway motor vehicle is used directly for agricultural production if it is used in connection with planting, cultivating, caring for, or cutting of trees, or in connection with the preparation (other than milling) of trees for market; but only if such operations are incidental to farming operations. These farming operations include felling trees and cutting them into logs or firewood, but do not include sawing logs into lumber, chipping, or other milling operations. The operations specified in this paragraph (g)(2)(v)(C) will be considered "incidental to farming operations" only if they are of a minor nature in comparison with the total farming operations involved. Therefore, a treefarmer or timbergrower may not claim that a highway motor vehicle used in that trade or business is used directly in agricultural production.

(D) *Use of a highway motor vehicle in connection with the operation, management, conservation, improvement, or maintenance of a farm.* A highway motor vehicle is used directly for agricultural production if it is used in connection with the operation, management, conservation, improvement, or maintenance of a farm and its tools and equipment. Examples of these operations include clearing land, repairing fences and farm buildings, building terraces or irrigation ditches, cleaning tools or farm machinery, painting, and other activities which contribute in any way to the conduct of a farm as such, as distinguished from any other enterprise in which the owner of the highway motor vehicle may be engaged.

(3) *Mileage on farm not counted toward 7,500 mile limit.* For purposes of this section, the number of miles which a highway motor vehicle is driven on a farm and not on the public highways shall not be taken into account when determining whether the vehicle's mileage is in excess of 7,500 miles. Accurate records should be kept by taxpayers of the number of miles that a highway motor vehicle is operated on a farm.

(h) *Owner.* For purposes of this section the term "owner" means, with respect to any highway motor vehicle, the person described in section 4481(b).

Par. 11. New § 41.4483–5, and § 41.4483–6 are added immediately after newly designated § 41.4483–4 to read as set forth below:

§ 41.4483–5 Termination of exemptions.

The exemptions described in §§ 41.4483–1 and 41.4483–2 shall not apply on and after October 1, 1988.

§ 41.4483–6 Reduction in tax for trucks used in logging.

(a) *In general.* The tax imposed by section 4481 shall be reduced by 25 percent in the case of a truck used in logging.

(b) *Truck used in logging.* The term "truck used in logging" means any highway motor vehicle which—

(1) Is used exclusively during the taxable period for the transportation, to and from a point located on a forested site, of products harvested from such forested site, and

(2) Is registered (under the laws of the State or States in which such vehicle is required to be registered) as a highway motor vehicle used exclusively in the transportation of harvested forest products.

Products harvested from the forested site may include timber which has been processed for commercial use by sawing into lumber, chipping or other milling operations if such processing occurs prior to transportation from the forested site. A vehicle will be considered to be registered under the laws of a state as a highway motor vehicle used exclusively in the transportation of harvested forest products if such vehicle is so registered under a state statute or legally valid regulations. In addition, no special tag or license plate identifying a vehicle as being used in the transportation of harvested forest products is required.

Par. 12. Section 41.6001–1 is amended as follows:

(a) Paragraphs (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), and (a)(7) are redesignated as paragraphs (a)(3), (a)(4), (a)(5), (a)(6), (a)(7), and (a)(8) respectively; a new paragraph (a)(2) is added to read as set forth below; and the paragraph (a) introductory text, paragraph (a)(1), and newly designated paragraphs (a)(6) and (a)(7) are revised to read as set forth below.

(b) Paragraphs (c) and (d) are redesignated as paragraphs (d) and (e) respectively.

(c) A new paragraph (c) is inserted immediately after paragraph (b) to read as set forth below.

(d) Newly designated paragraph (e)(2) is revised to read as set forth below.

§ 41.6001–1 Records.

(a) *Records to be kept.* Every person in whose name a highway motor vehicle having a taxable gross weight of at least 55,000 pounds is registered or required to be registered at any time during the taxable period shall keep records sufficient to enable the district director to determine whether such person is liable for the tax and, if so, the amount thereof. See § 41.4482(b)–1 for the definition of taxable gross weight. Such records shall show with respect to each such vehicle:

(1) A description of the vehicle (including serial number or manufacturer's number) in sufficient detail to permit positive identification of the vehicle.

(2) The weight of the loads carried by the vehicle in such form as is required under the laws of any State in which the vehicle is registered or required to be registered, in order to permit verification of such vehicle's taxable gross weight.

* * * * *

(6) In the case of any such vehicle disposed of otherwise than by sale or other transfer (including disposition by theft or destruction for taxable periods after June 30, 1984), the date and method of disposition of the vehicle.

(7) In the case of a secondhand highway motor vehicle acquired at any time in the taxable period, evidence showing whether there was a prior taxable use in such taxable period of the highway motor vehicle (see paragraph (b) of § 41.4481–2) or, for taxable periods after June 30, 1984, whether there was a suspension of tax in effect (see § 41.4483–3). For filing requirements of purchaser of second-hand vehicle, see paragraph (b) of § 41.6011(a)–1.

* * * * *

(c) *Exemption for vehicles used 5,000 miles or less.* The owner of a highway motor vehicle who reasonably expects the vehicle to be exempt from the tax under section 4481(a) by reason of § 41.4483–3(c) for a given taxable period shall keep records which indicate the reason that the use of the vehicle is not expected to exceed 5,000 miles on public highways.

* * * * *

(e) * * *

(2) Records required by paragraph (a) of this section shall be maintained for a period of at least 3 years after the date the tax becomes due or the date the tax is paid, whichever is the later. Records required by paragraphs (b) and (c) of this section shall be maintained for a period of at least 3 years after the end of the taxable period for which such exemption applies. Records required by paragraph (d) of this section (including any record required by paragraphs (a), (b), or (c) of this section which relates to a claim) shall be maintained for a period of at least 3 years after the date the claim is filed.

Par. 13. A new § 41.6001–2 is inserted immediately after § 41.6001–1 to read as follows:

§ 41.6001–2 Proof of payment for state registration purposes.

(a) *In general.* This section sets forth the circumstances under which a State must require proof of payment of the tax imposed by section 4481(a), and the required manner in which such proof of payment is to be received by the State as a condition of issuing a registration for a highway motor vehicle. A State must either comply with the provisions of this section or, in the alternative, comply with such other rules regarding the satisfaction of this proof of payment requirement as may be prescribed by the Commissioner (by Revenue Procedure or otherwise), in order to avoid a reduction of Federal-aid highway funds apportioned under 23 U.S.C. 104(b)(5). The rules of this section apply to highway motor vehicles for which applications for registration are received by a State on or after October 1, 1985. For purposes of this section, an application for registration which is mailed will be considered to be received by a State on the date on which it is postmarked.

(b) *Proof of payment required*—(1) *In general.* A State to which an application is made to register a highway motor vehicle must receive from the registrant proof of payment of the tax imposed by section 4481(a) (or proof of suspension of such tax under § 41.4483–3) unless otherwise provided in this paragraph (b)(1), or paragraph (b)(2) or (5) of this section. See paragraph (c) of this section for the meaning of "proof of payment". Such proof of payment must be received by the State before the State issues a registration for such vehicle unless the State is using a system of registration provided in paragraph (b)(3) of this section. The term "proof of payment", when used in this section, shall be considered to refer in appropriate cases to proof of suspension of the tax imposed by section 4481(a). Except as provided in paragraph (b)(4) of this section, any proof of payment presented to a State must relate to tax paid (or suspended under § 41.4483–3) for the taxable period which includes the date that the State receives the application for registration. A "base state" must be presented proof of payment when issuing an "apportioned plate" under the International Registration Plan (IRP) (or similar agreement) for a highway motor vehicle, but no proof of payment of the tax imposed by section 4481(a) is required to be presented to the other states for which the vehicle is proportionally registered and which are listed on the IRP cab card issued by the base state. Further, a State is not required to receive proof of payment in order to issue special temporary travel permits which allow a vehicle to, (i) operate in a State in which the vehicle is not registered (including proportional or prorate registration), (ii) operate at more than the State's maximum statutory weight limit, or (iii) operate at more than the weight that the vehicle is registered in a State. Further, a State may register a highway motor vehicle without proof of payment if the person registering the vehicle presents the original or a photocopy of a bill of sale (or other document evidencing transfer) indicating that the vehicle was purchased by the owner either as a new or used vehicle during the preceding 60 days before the date that the State receives the application for registration of such vehicle.

(2) *States required to receive proof of payment with respect to vehicles subject to tax*—(i) *Registration in States that register vehicles on the basis of gross weight.* A State that registers vehicles on the basis of gross weight must require proof of payment with respect to any highway motor vehicle that has a declared gross weight in that State of 55,000 pounds or more. If no declaration of a specific gross weight is made with respect to a highway motor vehicle registered on the basis of gross weight, then the State must require proof of payment with respect to such vehicle if the minimum weight of the registered weight category for such vehicle is 55,000 pounds or more. No such proof of payment is required for any vehicle that does not have a declared gross weight in that State of 55,000 pounds or more.

(ii) *Registration in States that register vehicles other than on the basis of gross weight.* A State that registers vehicles other than on the basis of gross weight must require proof of payment in order to register a highway motor vehicle unless the State receives a written statement stating that during the taxable period which includes the date on which the State receives the application for registration, such vehicle had a taxable gross weight of less than 55,000 pounds. The written statement must state the number of vehicles being registered that have a taxable gross weight of less than 55,000 pounds and must be signed by the person registering the vehicles. A State may register a highway motor vehicle without receiving either proof of payment or a written statement as described above if such vehicle has an unladen weight of 8,000 pounds or less. However, the State must require proof of payment when issuing a "base plate" registration for a vehicle if a gross weight declaration of 55,000 pounds or more is made to the State with respect to such vehicle in order to proportionally register the vehicle in another State under the IRP.

(iii) *State may require additional proof.* Nothing contained in this section shall prohibit a State from refusing to register a highway motor vehicle without additional proof that the vehicle is not subject to tax under section 4481(a) even though the person registering the vehicle submits a written statement declaring that the taxable gross weight of such vehicle is less than 55,000 pounds.

(3) *Suspension registration system.* A State may issue a registration with respect to any or all highway motor vehicles subject to tax under section 4481(a) without receiving proof of payment if such vehicles are registered under a "suspension" registration system. Registration of a vehicle subject to tax under a suspension system must be on the condition that, (i) the State receive proof of payment with respect to such vehicle no later than 4 months (or any lesser time to be determined by the State) after the beginning of the vehicle's registration period, and (ii) the State's system provides for the automatic suspension (*e.g.* through the use of computer-generated notices) of such vehicle's registration if no proof of payment is received within the required time. Following such a suspension of registration, the State must not allow the vehicle to be registered until valid proof of payment is received. A State may either register all vehicles subject to tax under section 4481(a) in the manner described in this paragraph (b)(3) or adopt this manner of registration only in situations which the State deems appropriate. A State that registers vehicles other than on the basis of gross weight may also register vehicles not subject to tax under a suspension registration system for purposes of receiving the written statement described in paragraph (b)(2)(ii).

(4) *Registration during certain months.* In the case of a highway motor vehicle subject to tax under section 4481(a) for which a State receives an application for registration during the months of July, August or September, proof of payment for the immediately preceding taxable period may be used to verify payment of the tax imposed by section 4481(a).

(5) *Registration in a State several times during the taxable period.* A State is required to receive proof of payment with respect to a highway motor vehicle subject to tax under section 4481(a) only

once during a taxable period. Thus, in the case of a State that allows a highway motor vehicle to be registered on a quarterly basis, rather than annually, proof of payment will be required to be presented to the State only once during the taxable period. The State may designate any one of the four quarterly registration periods as the time for submitting proof of payment.

(6) *Proof of payment records.* See 23 CFR Part 669 for a description of the supporting documentation and records that will be required by the Federal Highway Administration (FHWA) in order to allow the FHWA to verify that the State is in compliance with the rules of this section.

(c) *Proof of payment*—(1) *In general.* (i) The proof of payment required in paragraph (b) of this section shall consist of a receipted Schedule 1 (Form 2290) that is returned by the Internal Revenue Service to a taxpayer who files a return of tax under section 4481(a) and pays the amount of tax (or installment thereof) due with such return. A photocopy of such receipted Schedule 1 shall also serve as proof of payment. Such Schedule 1 shall serve as proof of suspension of such tax under § 41.4483–3 for the number of vehicles entered in that part of the Schedule 1 designated for vehicles for which tax has been suspended. Except as provided in paragraph (c)(1)(ii) of this section, the vehicle identification number of the vehicle being registered must appear on the Schedule 1 (or an attached page) in order for the Schedule 1 to be a valid proof of payment for such vehicle.

(ii) If a receipted Schedule 1 is submitted as proof of payment for the registration of one or more highway motor vehicles and—

(A) (*1*) The total of the number of vehicles on such Schedule 1 for which tax has not been suspended under § 41.4483–3 exceeds 21, or

(*2*) The total of the number of vehicles on such Schedule 1 for which tax has been suspended under § 41.4483–3 exceeds 9, and

(B) The name of the taxpayer appearing on such Schedule 1 is one of the names in which such vehicles are sought to be registered,

such Schedule 1 shall be accepted as proof of payment in support of the registration of a number of vehicles equal to or less than such total and a list of the vehicles (or their vehicle identification numbers) is not required as part of such proof of payment.

(iii) If a Schedule 1 which does not include a list of vehicle identification numbers is submitted as proof of payment for the registration of one or more highway motor vehicles and the name of the taxpayer appearing on such Schedule 1 is not one of the names in which such vehicles are sought to be registered then such Schedule 1 shall be accepted as proof of payment in support of the registration of a number of vehicles equal to or less than the total number of vehicles on such Schedule 1 provided the Schedule 1 is accompanied by a written statement executed by the taxpayer. Such written statement shall contain the vehicle identification numbers of the vehicles sought to be registered and a statement that the tax under section 4481(a) has been paid with respect to such vehicles for the taxable period. The statement must be signed by the taxpayer whose name appears on the Schedule 1.

(2) *Acceptable substitute for receipted Schedule 1.* For purposes of this section, a State shall accept as proof of payment a photocopy of the Form 2290 (with the Schedule 1 attached) which was filed with the Internal Revenue Service for the vehicle being registered with sufficient documentation of payment of tax due at the time the Form 2290 was filed (such as a photocopy of both sides of a cancelled check). This substitute proof of payment may be used to register a vehicle when, for example, the receipted Schedule 1 has been lost, or when at the time required for registration of a vehicle, a receipted Schedule 1 has not been received by a taxpayer who has filed a Form 2290 with respect to such vehicle. The rules of paragraph (c)(1)(ii) of this section regarding the circumstances in which a list of vehicle identification numbers is not required as part of a valid proof of payment, apply to a non-receipted Schedule 1 received by a State with a Form 2290 as a substitute proof of payment under this paragraph (c)(2).

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

Example (1). A applies to register a 3-axle single unit truck in State R, a member of the International Registration Plan, on November 1, 1985. State R registers vehicles based on unladen weight. At the same time, A applies for a proportional registration under the IRP to use the truck in State S. State S does not register vehicles on the basis of unladen weight. For purposes of the proportional registration in State S, A declares the gross weight of his truck at 50,000 pounds. A does not register the truck in any other states. A's truck has a taxable gross weight, as determined under § 41.4482(b)–1(e), of less than 55,000 pounds and therefore is not subject to tax under section 4481(a). A submits a written statement along with his application for registration in State R. The written statement states that A's vehicle has a taxable gross weight of less than 55,000 pounds and is signed by A. State R may register A's truck and issue a proportional registration for A to use his truck in State S without receiving proof of payment.

Example (2). Assume the same facts as in example (1) except that A applies for proportional registration under the IRP in State S and declares the truck to have a gross weight of 60,000 pounds. The taxable gross weight of A's truck, as determined under § 41.4482(b)–1(e) is 60,000 pounds. State R may not register A's truck unless it receives proof of payment within the meaning of paragraph (c) of this section.

Example (3). On October 10, 1985, C applies to register 9 vehicles in State U and declares the gross weight of each vehicle to be 70,000 pounds. C has not applied for registration in any other states. At the time of applying for registration, C presents a photocopy of a receipted Schedule 1 (Form 2290) that shows a total of 9 vehicles which are subject to tax under section 4481(a) and for which tax is not suspended under § 41.4483–3(a). The vehicle identification numbers of the vehicles that C is seeking to register must be listed on the Schedule 1 in order for State U to register the vehicles.

Example (4). On November 10, 1985, B applies to register 10 vehicles in State T jointly in the names of B and F (a fleet operator) and declares each to have a gross weight of 70,000 pounds. B submits along with the registration application, a photocopy of a receipted Schedule 1 (Form 2290) that shows a total of 100 vehicles which are subject to tax under section 4481(a). F is the taxpayer named on the Schedule 1. No vehicle identification numbers are listed on the Schedule 1 and no list of such numbers is attached. State T may consider the Schedule 1 as proper proof of payment under paragraph (c)(1)(ii) of this section and may register B's vehicles.

Par. 14. The authority citation for Part 48 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 15. Sections 48.6427–1T and 48.6427–2T are removed and new §§ 48.6427–2 through 48.6427–7 are inserted immediately after § 48.6427–1 to read as follows:

§§ 48.6427–2 Through 48.6427–5 [Reserved]

§ 48.6427–6 Limitation on credit or refund of tax paid on fuel used in intercity, local or school buses after July 31, 1984.

(a) *Limitation on amount of credit or refund*—(1) *In general.* In the case of fuel sold or used after July 31, 1984, on which tax was imposed under section 4041(a), the amount of credit or refund under section 6427(b)(1) shall not exceed 12 cents per gallon except where fuel is used in a bus while such bus is being operated as a "qualified local bus" in which case the credit or refund shall be the full amount of tax paid under section 4041(a) on such fuel.

(2) *Qualified local bus.* A bus is considered to be operated as a "qualified local bus" if such bus—

(i) Is engaged in furnishing (for compensation) intracity passenger land transportation that is available to the general public and is scheduled and along regular routes,

(ii) Has a seating capacity of at least 20 adults (not including the driver), and

(iii) Is under contract with (or is receiving more than a nominal subsidy from) any State or local government (as defined in section 4221(d)(4)) to furnish such transportation.

A company that operates qualified local buses is eligible for a full refund or credit only with respect to fuel used while such buses are operating as qualified local buses. For example, a company that operates its buses along subsidized intracity routes and also on intercity or unsubsidized intracity routes may obtain a full refund or credit only with respect to fuel used while operating the subsidized intracity routes.

(b) *Meaning of terms*—(1) *Contract with a State or local government.* A bus is under contract with a State or local government only if the contract imposes a bona fide obligation on the operator of the bus to furnish the transportation to which the contract relates.

(2) *More than a nominal subsidy.* A subsidy is more than nominal if the subsidy is reasonably expected to exceed an amount equal to 3 cents multiplied by the number of gallons of fuel used while operating on subsidized routes.

(3) *Intracity passenger land transportation.* The term "intracity passenger land transportation" means the land transportation of passengers to and from points located within the same metropolitan area. The term includes transportation along routes that cross State, city or county boundaries provided such routes remain within the metropolitan area.

§ 48.6427-7 Credit of refund of the increased diesel fuel tax to the original purchaser of a diesel-powered automobile or light truck.

(a) *In general.* A credit or refund of the diesel fuel differential amount may be claimed under section 6427(g) for a qualified diesel-powered highway vehicle purchased after January 1, 1985, and before January 1, 1988. A credit or refund of a fraction of the diesel fuel differential amount may be claimed for certain qualified diesel-powered highway vehicles held on January 1, 1985. Any person who is, or is treated as, an original purchaser of a qualified diesel-powered highway vehicle is eligible to claim a credit or refund of the diesel fuel differential amount (or fraction thereof). No interest is payable on the diesel fuel differential amount (or fraction thereof).

(b) *Original purchaser*—(1) In general. Generally, an original purchaser is the first person to purchase a new qualified diesel-powered highway vehicle after January 1, 1985 for a use other than resale. In addition, a person holding a qualified diesel-powered highway vehicle for a use other than resale at the end of January 1, 1985, is treated as an original purchaser. For purposes of determining the holder of the vehicle at the end of January 1, 1985, the owner of the vehicle for federal income tax purposes is treated as the holder of the vehicle. However, State or local governments (as defined in section 4221(d)(4)) or nonprofit educational organizations (as defined in section 4221(d)(5)), do not qualify as original purchasers or as holders who are treated as original purchasers.

(2) *Use other than resale*—(i) *Use of a vehicle by a dealer as a demonstrator.* The use of a new vehicle by a dealer as a demonstrator will not be treated as a use other than resale, nor will it cause the vehicle to be treated as other than new when sold by a dealer. Thus, a dealer may not claim a credit or refund under this section for a vehicle used as a demonstrator vehicle; rather, the first person to purchase the demonstrator vehicle for a use other than resale will qualify as the original purchaser of the vehicle.

(ii) *Treatment of leased vehicles.* The lease or rental of a vehicle is treated as a use other than resale both in the case of vehicles purchased after January 1, 1985, and vehicles held at the end of such date. Thus, for example, a person who purchases a qualified diesel-powered highway vehicle on January 15, 1985, and leases the vehicle under either a long-term or short-term lease under which the lessee is not treated as the owner for Federal income tax purposes, is eligible to claim a credit or refund for the diesel fuel differential amount. In addition, a person who is the owner-lessor of a vehicle leased to a lessee under a long-term or short-term lease in effect at the end of January 1, 1985, will be treated as the holder of such vehicle at the end of January 1, 1985 (unless the lease is treated as a sale for Federal income tax purposes).

(3) *Vehicles subject to a lien.* If a person purchases a vehicle subject to a lien and registers the vehicle in the name of the lienholder, the purchaser is eligible to claim the credit or refund even if the lienholder holds nominal title to the vehicle.

(c) *Qualified diesel-powered highway vehicle.* A qualified diesel-powered highway vehicle is any diesel-powered highway vehicle (as defined in § 48.4041-7(b)) which—

(1) Has at least 4 wheels,

(2) Has a gross vehicle weight rating (within the meaning of § 48.4061(a)-1(f)(3)) of 10,000 pounds or less, and

(3) Is registered for highway use in the United States under the laws of any State.

(d) *Diesel fuel differential amount*—(1) *In general.* The diesel fuel differential amount is $102 in the case of a vehicle other than a truck or van and $198 in the case of a truck or van. A van for this purpose is a vehicle which had no body sections protruding more than 30 inches ahead of the leading edge of the windshield.

(2) *Amount of credit or refund.* The amount of credit or refund allowable to a person holding a qualified diesel-powered highway vehicle on January 1, 1985, depends upon the model year of the vehicle. The table below sets forth the applicable amounts:

Model year of qualified diesel-powered highway vehicle	Amount	
	Other than truck or van	Truck or van
1984 or 1985	$102	$198
1983	85	165
1982	68	132
1981	51	99
1980	34	66
1979	17	33

No credit or refund is allowed in the case of a 1978 or earlier model year vehicle. The model year designated by the manufacturer for the vehicle is the model year for purposes of the above table.

(e) *Reduction in basis.* For purposes of subtitle A of the Internal Revenue Code, the basis of any qualified diesel-powered highway vehicle is reduced (but not below zero) by the diesel fuel differential amount (or fraction thereof) allowable with respect to such vehicle. For example, if a qualfied diesel-powered highway vehicle is purchased for business purposes by an original purchaser on January 2, 1985, the basis of such vehicle for purposes of determining depreciation, investment tax credit, and the amount of gain or loss to be recognized upon a disposition of the vehicle is reduced by $102 in the case of a vehicle other than a truck or van, and $198 in the case of a truck or van. Such basis reduction shall be

considered to occur on the date of purchase or, in the case of a vehicle held on January 1, 1985, on such date.

(f) *Deduction for business purposes.* The availability or claiming of the diesel fuel differential amount (or fraction thereof) as a credit or refund has no effect on the availability to the taxpayer of any otherwise allowable deduction for the cost of diesel fuel purchased by the taxpayer.

(g) *Claiming the credit or refund*—(1) *One-time claim.* The diesel fuel differential amount (or fraction thereof) may be claimed only once for a qualified diesel-powered highway vehicle. The claim is made by the original purchaser or person treated as the original purchaser, and is claimed as an income tax credit, unless such person is eligible under section 6427(j) to file a claim for refund in lieu of an income tax credit.

(2) *Procedure for claiming the diesel fuel differential amount as an income tax credit.* The amount of credit determined under paragraph (d) of this section is entered on Form 4136 together with any other credits to be entered on such Form. The Form 4136 is then attached to the original purchaser's income tax return.

(3) *Time of claiming credit.* In the case of a qualified diesel-powered highway vehicle purchased by an original purchaser after January 1, 1985, and before January 1, 1988, the credit is claimed on the income tax return for the taxable year during which the vehicle was purchased. In the case of a person who is treated as an original purchaser by reason of holding the vehicle at the end of January 1, 1985, the credit is claimed on the income tax return for the taxable year which includes December 31, 1984, *i.e.*, the tax return for 1984 in the case of a calendar year taxpayer.

(4) *Procedure of claiming the diesel fuel differential amount as a refund.* The diesel fuel differential amount may be claimed by the original purchaser or person treated as the original purchaser, as a refund by filing Form 843 (Claim) with the Internal Revenue Service.

Par. 16. The authority citation for Part 602 continues to read a follows:

Authority 26 U.S.C. 7805.

Par. 17. Section 602.101(c) is amended by inserting in the appropriate places in the table:

"§ 41.4481–1	1545–0143"
"§ 41.4481–2(b)	1545–0143"
"§ 41.4483–3	1545–0143"
"§ 41.6001–1	1545–0143"
"§ 41.6001–2	1545–0143"
"§ 48.6427–7	1545–0143"

James I. Owens,

Acting Commissioner of Internal Revenue.

Approved: May 16, 1985.

Ronald A. Pearlman,

Assistant Secretary of the Treasury.

[FR Doc. 85–12427 Filed 5–22–85; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

Extension of Study on Alabama's Program Provisions Concerning Disposal of Excess Spoil

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: The Director, OSM, is extending the trial period for a study of provisions for the disposal of excess spoil on abandoned mine sites contained in Alabama's approved permanent program for the regulation of surface coal mining and reclamation operations and the surface effects of underground mining under the provisions of the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The Alabama program was conditionally approved by the Secretary of the Interior on May 20, 1982 (47 FR 22030). By that notice, the Secretary announced that a one year trial period would be held in order to evaluate the adequacy of Alabama's plan for disposal of excess spoil on abandoned mine sites. The one year period expired May 10, 1983, and was extended to August 20, 1984 (48 FR 34026). The extension was granted because few permit applications requesting approval to use the excess spoil provisions had been received, and the data was therefore insufficient to allow OSM to make a meaningful evaluation of the plan at that time.

On November 1, 1984, the State submitted to OSM, a status report "to fulfill the provisions of terms of approval of the Alabama Program" concerning excess spoil disposal. After providing opportunity for public comment and conducting a thorough review of the status report, OSM has decided that a further extension of time is necessary to build sufficient data upon which to base an evaluation of the excess spoil disposal program. Therefore, OSM is extending the trial study period until August 20, 1989, for the reasons set forth in this notice. The Federal rules at 30 CFR Part 901.15 are being amended to implement this action.

This final rule is being made effective immediately in order to expedite the State program amendment process and encourage States to conform their programs to the Federal standards without undue delay; consistency of the State and Federal standards is required by SMCRA.

EFFECTIVE DATE: May 23, 1985.

FOR FURTHER INFORMATION CONTACT: John T. Davis, Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 228 West Valley Avenue, 3rd Floor, Homewood, Alabama 35209; Telephone: (205) 254–0890.

SUPPLEMENTARY INFORMATION:

I. Background

Information regarding the general background on the Alabama State program, including the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Alabama program can be found at 47 FR 22020–22058 (May 20, 1982) and 48 FR 34026 (July 27, 1983). In the May 20, 1982 notice under Finding 18.1 (47 FR 22038–39), the Secretary approved, with certain restrictions, Alabama's plan to allow the disposal of excess spoil generated by current operations on areas which have been previously disturbed but not adequately reclaimed. The provisions of Alabama's plan were set forth at state rule section 805.11. (That section has now been recoded as 880–X–9B–11 under a State generic recodification scheme.) No comparable provision is contained under the Federal rules.

The Secretary's findings on Alabama's provision noted that under the State's plan, the previously disturbed area must be included within the currently permitted bond area, but an additional bond amount would not be required. In an attempt to ensure the reclamation of the entire area in the event an operator defaults on his obligations and abandons the job, the State regulations provide that the condition of the entire area will be considered before full bond release is granted. The Federal regulations at 30 CFR 800.11(b)(1) require that all operations to be conducted within the permit area during the life of the mine be covered by a performance bond. By that definition, those areas to be used for excess spoil disposal must be included in the performance bond. In his decision findings the Secretary expressed concern that the State's plan might