

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

6. Section 75.100 is amended as follows:

J-11, J-44, J-18, J-19, J-102, J-65, and J-181 [Amended]

Where "Phoenix" appears substitute "Salt River"

J-4 and J-50 [Amended]

Where "Casa Grande" appears substitute "Stanfield"

J-92 [Amended]

Where "Phoenix" appears substitute "Salt River" and where "Casa Grande" appears substitute "Stanfield"

Issued in Washington, D.C., on September 20, 1985.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85-23211 Filed 9-27-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Parts 71 and 75

[Airspace Docket No. 84-AWA-24]

Alteration of Jet Routes and VOR Federal Airways—Indiana

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment realigns one Jet Route and five Federal Airways and cancels one Federal Airway. All actions arise from decommissioning of the Lewis, IN, Very High Frequency Omni-Directional Radio Range and Tactical Air Navigation Aid (VORTAC). The affected Jet Route and Federal Airways will be realigned using the upgraded Terre Haute, IN, VORTAC. These actions are expected to help increase utility and efficiency in use of navigational aids (NAVAID) by users of the National Airspace System (NAS).

EFFECTIVE DATE: 0901 GMT, November 21, 1985.

FOR FURTHER INFORMATION CONTACT: Gene Falsetti, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

History

On November 15, 1984, the FAA proposed to amend Parts 71 and 75 of

the Federal Aviation Regulations (14 CFR Parts 71 and 75) to realign one Jet Route, five VOR Federal Airways and cancel one VOR Federal Airway (49 FR 45171). These actions were proposed due to decommissioning of the Lewis, IN, VORTAC. Functions of the old Lewis VORTAC are transferred to the upgraded Terre Haute, IN, VORTAC. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, and a slight change to the original proposed alignment of Federal Airway V-7, these amendments are the same as those proposed in the notice. As proposed in the NPRM the revised V-7 would have been realigned direct between Pocket City and Terre Haute. However, to ensure airway clearance from the Red Hills MOA, the airway is configured from the Pocket City 016° and the Terre Haute, IN, 191° radials. Sections 71.123 and 75.100 of Parts 71 and 75 of the Federal Aviation Regulations were republished in Handbook 7400.6A dated January 2, 1985.

The Rule

These amendments to Parts 71 and 75 of the Federal Aviation Regulations realign Jet Route J-73, Federal Airways V-7, V-12, V-171, V-221 and V-243 and cancels V-514.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 75

Aviation safety, VOT Federal airways and Jet routes.

Adoption of the Amendments

Accordingly, pursuant to the authority delegated to me, Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) as amended (49 FR

48532, 50 FR 14092 and 50 FR 23398) are further amended, as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 71.123 is amended as follows:

V-7 [Amended]

By removing the words "INT Pocket City 015° and Lewis, IN, 198° radials, Lewis, Terre Haute, IN;" and substituting the words "INT Pocket City 016° and Terre Haute, IN, 191° radials; Terre Haute;

V-12 [Amended]

By removing the words "Lewis, IN;"

V-171 [Amended]

By removing the word "Lewis," and substituting the words "Terre Haute,"

V-221 [Amended]

By removing the words "via INT Bible Grove 087° and Bloomington, IN, 253° radials; Bloomington;" and substituting the words "via Bloomington, IN;"

V-243 [Amended]

By removing the words "Lewis, IN;" and substituting the words "Terre Haute, IN;"

V-514 [Revoked]

3. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

4. Section 75.100 is amended as follows:

J-73 [Amended]

By removing the words "Lewis, IN;" and substituting the words "Terre Haute, IN;"

Issued in Washington, D.C., on September 23, 1985.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Ch. I

Characteristics Distinguishing Cash and Forward Contracts and "Trade" Options

AGENCY: Commodity Futures Trading Commission.

ACTION: Interpretative Statement of the Office of the General Counsel.

SUMMARY: In 1982, Congress authorized the Commodity Futures Trading Commission to establish a pilot program for option trading on agricultural commodities. The Commission determined to permit the offer and sale of agricultural options on contract markets. At the same time, it considered whether to permit so-called "trade" options, i.e., off-exchange options on a physical commodity entered into among commercial users of the commodity or its byproducts, in the initial phase of the pilot agricultural program. However, the Commission deferred the final decision whether to permit trade options until there had been greater experience with the agricultural option pilot program.

Since this pilot program began, the staff has received inquiries and information about various proposed and already existing commodity contracts between agricultural producers and merchants in which the producer pays a "premium" in return for a minimum guaranteed price for the commodity. Certain of these contracts have characteristics of both "forward" and option contracts. Forward contracts are generally exempt from the Commodity Exchange Act's regulatory scheme. In contrast, trade options are not currently permitted under the agricultural option pilot program. Therefore, the Office of the General Counsel is issuing this interpretation regarding the nature of these types of instruments and distinctions between them to provide guidance to the public.

ADDRESS: Any comments on this interpretation should be sent to Kenneth M. Raisler, General Counsel; Office of the General Counsel; Commodity Futures Trading Commission; 2033 K Street, NW; Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Joan L. Loizeaux, Assistant General Counsel; Office of the General Counsel; Commodity Futures Trading Commission; 2033 K Street, NW; Washington, DC 20581; (202) 254-9880.

SUPPLEMENTARY INFORMATION: The Commodity Exchange Act ("Act") creates a comprehensive framework for the regulation of futures contracts and options. Thus, no person may offer, enter into or confirm a commodity option transaction unless that transaction is specifically permitted under the Commission's rules.¹ Similarly, the Act prohibits the offer and sale of a contract for future delivery of a commodity unless that contract is effectuated on or subject to the rules of

a board of trade (exchange) that has been designated a contract market.² To obtain this designation, a board of trade must satisfy the criteria set forth in the Act including enforcing its rules to prevent manipulations and corners of the market.³ After its designation the contract market must continue to satisfy these initial criteria, as well as fulfill ongoing requirements set forth in the Act.⁴

However, Congress generally exempted from the Act's regulatory scheme commercial, merchandizing transactions in a physical commodity in which delivery was delayed or deferred for commercial convenience or necessity. Thus, section 2(a)(1)(A) provides that the term "future delivery" does not include "any sale of any cash commodity for deferred shipment or delivery."⁵ The history of this exemption and its use in commercial practice, together with a brief description of options and the Commission's regulation of options, are set forth below.

A. The Exclusion of Forward Contracts from the Scope of the Commodity Exchange Act

In 1921, Congress enacted the Futures Trading Act to curb both the increasingly disruptive activities by grain speculators on exchanges and the proliferation of off-exchange "bucket" shop operations.⁶ Congress sought to bring federal control to futures trading to prevent economic disturbances in the price of grain, by imposing a "prohibitive tax" ⁷ on contracts for future delivery not traded on contract markets. However, witnesses testified before the Congressional committees considering the bill that there were a variety of legitimate off-exchange commercial transactions in which delivery of the grain was delayed.⁸ Thus,

¹ Section 4(a), 7 U.S.C. 6(a) (1982).

² Sections 5, 5(d), 7 U.S.C. 7, 7(d) (1982).

³ Section 5a, 7 U.S.C. 7a (1982).

⁴ 7 U.S.C. 2 (1982). But see, section 6(b), 7 U.S.C. 9 (1982) [granting the Commission enforcement jurisdiction over manipulation and attempted manipulation of "the market price of any commodity, in interstate commerce"].

⁵ Act of August 24, 1921, ch. 86, 42 Stat. 187, *et seq.* See, e.g., S. Rep. No. 212, 67th Cong., 1st Sess. 4-5 (1921).

⁶ Hearings on H.R. 168, H.R. 231, H.R. 2238, H.R. 2331, H.R. 2363, H.R. 5228 Before the House Committee on Agriculture, 67th Cong., 1st Sess. 10 (1921) (colloquy between Mr. Kincheloe and Mr. Tinch).

⁷ *Futures Trading in Grain: Hearings on H.R. 5676 Before the Senate Committee on Agriculture and Forestry*, 67 Cong., 1st Sess. 8-9, 214, 431, 462 (1921) (statements of Chester Morrill, George T. McDermott, F. B. Wells, Henry Wallace) ("1921 Senate Hearings").

then-Secretary of Agriculture Henry Wallace urged that the bill preserve the right to buy or sell part of next season's crop which had not yet been planted or harvested "but which would exist in time for delivery."⁹ Another witness urged Congress to distinguish prohibited futures contracts.

from transactions which might be made for forward delivery or forward shipment, such, for example, as an exporter might enter into obligating himself to ship a certain amount of grain three months hence, which would be a transaction for future delivery, but which the Secretary thought was not really intended to be governed by this bill.¹⁰

Therefore, to make clear that forward contracts were not to be subject to taxation, the Senate added language to section 2 of the bill to exclude "any sale of cash grain for deferred shipment" from the term "future delivery."¹¹ This exclusion was designed to make clear that all "cash grain sales in which actual delivery of the physical commodity is deferred for later shipment" were exempt from taxation under the Act.¹²

To determine whether a particular contract is exempt from the Act's jurisdiction as a forward contract, the courts and the Commission have required that the contract's terms and the parties' practice under the contract make clear that

both parties to the contracts deal in and contemplate future delivery of the actual . . . [commodity].¹³

First, the contract must be a binding agreement on both parties to the contract: one must agree to make delivery and the other to take delivery

⁸ 1921 Senate Hearings at 462.

⁹ 1921 Senate Hearings at 9 (statement of Chester Morrill).

¹⁰ S. Rep. No. 212, 67th Cong., 1st Sess. 1 (1921). In agreeing to the addition of this exclusionary language to section 2, the House added the words "or delivery" after the word "shipment." See H.R. Rep. No. 345, 67th Cong., 1st Sess. 7 (1921).

¹¹ 1921 Senate Hearings at 431 (statement of F. B. Wells). See also, 1921 Senate Hearings at 213-215 (statement of George T. McDermott); 61 Cong. Rec. 4762 (1921) (statement of Senator Capper).

¹² In *Hill v. Wallace*, 259 U.S. 44 (1922), the Futures Trading Act of 1921 generally was declared unconstitutional as an impermissible attempt at regulation through the taxing power. Therefore, Congress enacted the Grain Futures Act of 1922 which regulated grain futures trading under the commerce clause, 42 Stat. 998. The exemption for forward contracts was included without change in the Grain Futures Act of 1922, 42 Stat. 998. In 1936, the Commodity Exchange Act broadened the exclusion to apply to sales of "any cash commodity" for deferred shipment or delivery since that Act covered commodities in addition to grains, 49 Stat. 1491.

¹³ *CFTC v. CoPetro Marketing Group, Inc.*, 680 F.2d 573, 578 (9th Cir. 1982) (emphasis in the original). ("CoPetro").

¹ Sections 4(c), 4(c)(1), 4(c)(2), 7 U.S.C. 6(c)(1), 6(c)(2), 6(c)(3) (1982). See, e.g., Parts 32 and 33 of the Commission's rules, 17 CFR Parts 32, 33 (1984).

of the commodity.¹⁴ Second, because forward contracts are commercial, merchandizing transactions which result in delivery, the courts and the Commission have looked for evidence of the transactions' use in commerce. Thus, the courts and the Commission have examined whether the parties to the contracts are commercial entities that have the capacity to make or take delivery and whether delivery, in fact, routinely occurs under such contracts.¹⁵

Forward contracts frequently are not standardized. Contract terms are often negotiated, particularly grade, delivery point and settlement date. Even in those instances when contract terms are standardized by a single contracting party, certain terms may nonetheless be left open to negotiation.¹⁶ Historically, forward contracts have set a fixed price for grain or cotton at the time the contract was entered.

However, an instrument, called a "deferred pricing" contract, has evolved in which the price is not established at the time the contract is entered. Rather, the contract sets a formula to determine the final contract price by a later "closing date." The formula may specify a particular base price, such as a futures contract price or major cash market price. The agreement may also set a differential to be added to or subtracted from the base price to determine the final price. The contract also specifies a period of time during which the producer may "fix" the final price. For example, the parties might enter into a contract in March which guarantees the farmer the price of the December futures contract plus or minus an agreed-upon differential. The farmer may set the final price for the commodity between the time at which the contract is entered and the "closing date," e.g. the last business day in November, based on the

producer's expectation of the price trend for that contract.¹⁷

Some deferred pricing contracts require immediate delivery. Title passes upon delivery. However, the contract permits the farmer to delay fixing the final price for the commodity until the agreed-upon closing date although the commodity has already been delivered and title has passed to the merchant. The contract also eliminates the producer's need to secure storage space for the commodity. The Commission staff views such deferred pricing contracts as a form of spot contract. These contracts are used solely to merchandize the commodities. Both parties have transferred title to the commodity and delivery has occurred.

B. Commodity Options

The Commodity Exchange Act vests the Commission with plenary jurisdiction over "any transaction which is of the character of, or is commonly known to the trade as an 'option' . . ." ¹⁸ The Act does not define the term "option." Therefore, to determine whether an instrument is an option, the Commission and the courts have examined pre-existing contract law, commercial practice and the economic nature of the contract.¹⁹

Traditional contract law defines an option as a contract in which

the option holder makes no promise, but pays cash or gives some other executed consideration. The option giver's promise is enforceable, in spite of lack of mutuality of promise.²⁰

Similarly, the Commission relied on traditional contract analysis in its determination whether a particular instrument was an option. Thus, an option is

necessarily a unilateral contract which binds the optionee to do nothing but grants him the right to accept or reject the offer in accordance with its terms within the time and manner specified in the option. The outstanding factor is that the optionee is not bound until he acts on the option one way or

another. At the same time, during the period when the optionee is free to accept or reject, the optionor cannot act in derogation of the terms of the option.²¹

The courts and the Commission have carefully examined "the economic reality of the transaction, not its name" to determine whether an instrument is an option.²² In particular, an option is a limited risk instrument. That is, the option purchaser is not liable for payment resulting from any adverse price movement of the commodity underlying the option. Rather, the option purchaser will benefit from a favorable price move and will not be liable for any other losses beyond the premium or other payment that the purchaser pays for the option.

Following the Congressional and Commission bans on options in 1978,²³ certain companies began to offer and sell instruments with a variety of names which had the characteristics of options. In *CFTC v. U.S. Metals Depository Co.*, the Commission alleged that defendants were selling options in another guise. The Honorable Edward Weinfeld stated that the determination whether the instrument was an option

must begin with the definition of "options." Although neither the Act nor the Commission's regulations define the term, Courts have often differentiated between options and deferred delivery (or futures) contracts. The latter is a transferable contractual agreement "to buy or sell a fixed amount and grade of a certain commodity on some specified date. A commodity option, on the other hand, confers upon the holder the right to buy ('call option') or to sell ('put option') either a specified amount of a commodity or a futures contract for that amount of a commodity within a certain period of time at a given price (the 'strike price')." ²⁴

From that definitional basis, Judge Weinfeld identified three aspects which convinced the court that defendants' instruments were options. An option gives the purchaser the right to make or take delivery of the commodity. The initial charge for an option is normally a nonrefundable premium covering the grantor's commissions, costs and

¹⁴ *In re Stovall*, [1977-1980 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶20,941 at 23, 77-78 (C.F.T.C. 1979); Office of the Chief Economist, U.S. Commodity Futures Trading Commission, *Forward Contracting in Selected Agricultural Commodities: An Inquiry into Defaults 1-5* (1977). See also Gillen & Jaeger, *Forward Contracting in Agricultural Commodities: A Case History Analysis of the Cotton Industry*, 12 J. Mar. J. Prac. & Proc. 253, 267 (1979) ("Gillen & Jaeger"); E. Roy, *Contract Farming and Economic Integration*, 248-249 (1972).

¹⁵ *CoPetro*, 660 F.2d at 576-579; *NBT Metals, Inc. v. Manhattan Metals (Non-Ferrous), Ltd.*, 576 F. Supp. 1046, 1056 (S.D.N.Y. 1983); *In re Stovall*, Comm. Fut. L. Rep. at 23,776-23,779. See also *CFTC v. Commercial Petrolera International S.A.*, [1980-1982 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶21,222 at 25,096-97 (S.D.N.Y. 1981).

¹⁶ Advisory Committee on Definition and Regulation of Market Instruments, U.S. Commodity Futures Trading Commission, *Recommended Policies on Futures, Forward and Leverage Contracts and Transactions*, 18-19, 21 nn. 5, 6 (1978).

¹⁷ A. Paul, R. Heifner & J. Helmuth, U.S. Department of Agriculture, *Agriculture Economic Report No. 320, Farmers' Use of Forward Contracts and Futures Markets 17-18* (1976). ("Farmers' Use of Forward Contracts and Futures Markets").

¹⁸ Section 2(a)(1)(A), 7 U.S.C. 2 (1982). See also section 4c, 7 U.S.C. 6c (1982).

¹⁹ *CFTC v. Precious Metals Associates*, 620 F.2d 900, 907-908 (1st Cir. 1980) ("Precious Metals Associates"); *British American Commodity Options Corp. v. Bagley*, 552 F.2d 482, 484-485 nn. 4, 5; cert. denied, 484 U.S. 938 (1977) ("BACO"); *CFTC v. Goldex International Ltd.*, [1977-1980 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,839 at 23,441 (N.D. Ill. 1979) at 23,441 ["Goldex"].

²⁰ A. Corbin, *Contracts* section 152 at 222 (1952). See *Precious Metals Associates*, 620 F.2d at 907 citing with approval A. Corbin, *Contracts* § 259 at n.5 (1952).

²¹ *In the Matter of Precious Metals Associates*, Comm. Fut. L. Rep. ¶ 20,882 at 23,596 n.8, citing with approval, 1 Williston, *Contracts* section 61B at 199, 200 (3d ed. 1957).

²² *Precious Metals Associates*, 620 F.2d 908. See also *CFTC v. Morgan, Harris & Scott, Ltd.*, 484 F. Supp. 669, 675 (S.D.N.Y. 1979).

²³ Section 4c(c), 7 U.S.C. 6c(c) (1982); Rule 32.11, 17 C.F.R. 32.11 (1984).

²⁴ *CFTC v. U.S. Metals Depository Co.*, 488 F. Supp. 1149, 1154-1155 (S.D.N.Y. 1979). (*U.S. Metals Depository*).

profits.²⁵ The purchaser's losses on an option are normally limited to the premium. Therefore, the Court concluded options are "limited risk" investments—the buyer is under no obligation to exercise his option and will, at most, lose the initial fee. . . .²⁶

Thus, an option is a contract in which only the grantor is obligated to perform. As a result, the option purchaser has a limited risk from adverse price movements. This characteristic distinguishes an option from a forward contract in which both parties must routinely perform and face the full risk of loss from adverse price changes since one party must make and the other take delivery of the commodity. In contrast, in an option, only the grantor of a call (put) is required to sell (buy) a given quantity of a commodity (or a futures contract on that commodity) on or by a specified date in the future if the option is exercised. The purchaser of the option may buy or sell the commodity, but he or she is under obligation to do so.²⁷ If the price of the underlying commodity moves in the manner favorable to the option purchaser, the purchaser can exercise the option. If the price does not move in a favorable direction, the purchaser can simply abandon the option and forfeit any premium.²⁸

C. The Commission's Consideration of "Trade" Options on Agricultural Commodities

In 1982, Congress determined to permit a pilot program in the trading of options on agricultural commodities.²⁹

²⁵ *U.S. Metals Depository*, 468 F. Supp. at 1155. See also, *CFTC v. Morgan, Harris & Scott, Ltd.*, 464 F. Supp. 669, 675-676 (S.D.N.Y. 1979) ("Morgan, Harris & Scott"). See A Corbin, *Contracts* § 152 at 222, section 259 at n.5 (1952) (the purchaser of an option pays a premium or other consideration); *SEC v. Commodity Options International, Inc.*, 563 F.2d 628-631 (9th Cir. 1977) (a rebate was paid on the premium in addition to any profit realized).

²⁶ *U.S. Metals Depository*, 468 F. Supp. at 1155. See also *BACO*, 552 F.2d at 485; *Morgan, Harris & Scott*, 464 F. Supp. at 675, 676.

²⁷ *Precious Metals Associates*, 620 F.2d at 907-908; *BACO*, 552 F.2d at 484-485.

²⁸ *CFTC v. Morgan, Harris & Scott, Ltd.*, 464 F. Supp. 669, 675-676 (S.D.N.Y. 1979) ("Morgan, Harris & Scott"); *CFTC v. U.S. Metals Depository Co.*, 468 F. Supp. at 1155.

²⁹ "The Commission may . . . establish a pilot program for a period of three years" in agricultural options. "The Commission may authorize commodity option transactions during the pilot program in as many commodities as will provide an adequate test" of these options. Section 4(c), 7 U.S.C. 6(c) (1982). Options may be permitted on "Wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, mill feeds, butter, eggs, Solanum tuberosum (Irish potatoes), wool, wool tops, fats and oils (including lard, tallow, cottonseed oil, peanut oil, soybean oil and all other fats and oils), cottonseed meal, cottonseed, peanuts, soybeans, soybean meal, livestock, livestock products, and frozen concentrated orange juice. . . ." Section 2(a)(1)(A), 7 U.S.C. 2 (1982).

The Commission therefore began a rulemaking to determine whether and under what circumstances agricultural options should be offered.³⁰ Among other issues, the Commission considered whether to permit so-called "trade" options on agricultural commodities. "Trade options" generally are off-exchange options in a physical commodity entered into in normal commercial channels for that commodity or its byproducts.³¹ Section 4(c) of the Act authorizes the Commission to permit trade options to be offered and sold to a purchaser who is a producer, processor, commercial user of, or a merchant handling, the commodity involved in the transaction, or the products or by-products thereof.³²

The Commission specifically asked for comments whether the agricultural option pilot program should include trade options, recognizing that there might be benefits to producers and commercial handlers of agricultural commodities in permitting trade options. However, the Commission ultimately deferred a determination whether to permit trade options until there had been experience with the offer and sale of exchange-traded agricultural options. The Commission was of the view that limiting options to exchanges initially would provide additional self-regulatory oversight by the exchanges in the offer, sale and trading of agricultural options which would not be available for off-exchange trade options.³³ Thus,

³⁰ 48 FR 46797 (October 14, 1983); 48 FR 6128 (February 10, 1983). The Commission also convened an Agricultural Options Advisory Committee, pursuant to 5 U.S.C. App. I, Section 1, *et seq.*, to provide advice on the nature of a pilot program. That committee was succeeded by an Agricultural advisory Committee with a broader membership and mandate. The issue of "trade" options was extensively discussed at the new committee's first two meetings.

³¹ Report of the Advisory Committee on Market Instruments, reprinted in *Hearings Before the Subcommittee on Agricultural Research and General Legislation of the Senate Committee on Agriculture, Nutrition, and Forestry*, 95th Cong., 2d Sess. 337, 343-346 (1978).

³² 7 U.S.C. 6(c) (1982).

The Commission currently permits trade options only in the commodities which are not enumerated in Section 2(a)(1)(A) (see n. 30 *supra*). These options may be "offered by a person who has a reasonable basis to believe that the option is offered to a qualified commercial entity if "such producer, processor, commercial user or merchant is offered or enters into the commodity option transaction solely for purposes related to its business as such." Rule 32.4(a), 17 CFR 32.4(a) (1984).

³³ 49 FR 2752, 2756 (January 23, 1984). See also 48 FR at 46800.

agricultural trade options may not be lawfully offered or sold at this time.³⁴

D. Examples of Agricultural Contracts.

As noted above, various agricultural contracts either are currently being entered into between producers of agricultural commodities and elevators or merchants handling or dealing in that commodity or its byproducts in commercial channels or are being proposed to be offered by merchants to producers. Three examples of contracts are described and analyzed below.

1. The producer agrees to deliver a specified quantity and grade of a commodity to a dealer by a specified date in the future. Delivery of the commodity is mandatory, absent an intervening event such as crop failure.³⁵ Generally, the contract does

³⁴ Further, Section 4c, 7 U.S.C. 6c (1982), generally prohibits any person "in the business of buying, selling, producing, or otherwise using" an agricultural commodity from granting options on a physical agricultural commodity. Pub. L. 97-444, section 206(4), 96 Stat. 2301 (1983). See 50 FR 10786, 10787 n.2 (March 18, 1985).

³⁵ Some contracts provide for a liquidated damages or penalty clause if the producer fails to deliver. For example, if the seller fails to deliver any part of the crop specified in the contract, the seller is liable to the merchant for the difference between the contract price and the current market value of that commodity. Some contracts appear to require that the farmer obtain the grain from another source if the producer's crop is not sufficient to meet the contract's requirements. Other contracts are silent as to the effect of non-performance. In each of these instances, however, it is intended that delivery of the physical crop occur, absent destruction of all or a portion of the crop by forces which neither party can control. The presence of such clauses in a contract does not change the analysis of the nature of the contract.

Some commodities are sold through acreage or output contracts in which the farmer agrees to sell the total output on a specified number of acres, based generally on prior output. See *Gillen & Joeger* at 268-269. However, if the farmer cannot produce the anticipated amount of commodity using accepted agricultural techniques for the crop, there is no penalty as long as the producer delivers the remaining production from the contracted for acreage. Again, the parties intend delivery and, but for intervening conditions, such as weather, insects or disease, would transfer title to the entire crop. Indeed, it appears that a party who did not deliver his crop under such a contract and instead marketed it elsewhere would be in breach of the contract and likely liable for damages. *Gillen & Joeger* at 269.

However, a contract provision which permitted a producer to avoid delivery for a reason other than for an intervening condition not in the control of either party could change any conclusion about the nature of the contract. Moreover, the Commission is aware that public marketing and sales presentations made to prospective purchasers of certain instruments sometimes differ markedly from the written offering material. Thus, the Commission and the courts have consistently looked beyond written materials and examined the day-to-day operations of a transaction to determine its underlying purpose.

not establish the final price to be paid for the commodity, but rather the method by which a final price will be determined. In some contracts, the agreement establishes a particular futures contract which will be used as the base price. In addition, some contracts may establish the "basis" which will be used to calculate the final price for the commodity.³⁶

This particular contract mandates delivery by the producer and acceptance of that delivery by the dealer. The parties are commercial participants in the stream of commerce for the commodity. The unique feature common to these contracts is a "minimum price guarantee." The merchant guarantees the producer a minimum price for the commodity. In return for this minimum price guarantee, a premium is deducted from the final price paid for the commodity. The producer is required to deliver the commodity but has the right to receive the minimum price for the commodity. If, however, the pricing formula or the subsequent market price specified in the contract entitles the producer to a higher price, the producer may demand this higher price for the commodity.

The Office of the General Counsel believes that this type of contract comes within the forward contract exemption of section 2(a)(1)(A) since legally the contract's predominant feature is its use by producers and merchants to market a commodity through actual delivery. The producer, absent depredation to the crop, must make delivery of the commodity. The merchant or the elevator must accept that delivery. Because both parties are participants in the normal commercial channels for these commodities, each is in a position to fulfill all obligations under the contract, and both parties intend that commercial marketing of the commodity by means of delivery will occur.

In stating this view, we recognize that these contracts have characteristics of a cash-settled put option because the minimum price guarantee places a floor on the producer's losses. In addition, the guarantee is secured by the payment of a premium which covers the merchant's expenses and exposure in offering these contracts, such as the cost of the merchant's purchasing of an exchange-traded option to offset its risks. If the commodity price is above the minimum guarantee price, the producer receives the prevailing price. If the commodity

price is less than the minimum guarantee price, the producer receives the guaranteed amount. However, these contracts lack a salient characteristic of an option: the farmer cannot "accept or reject the offer."³⁷ Rather, the parties use this contract as a marketing vehicle. Thus, the producer is normally required to deliver the commodity. Moreover, in order to collect any payment for the commodity, including the minimum price guarantee, the producer must first make delivery. Further, under the contracts described in this example, the producer would be in breach of the contract if he or she failed to deliver to the merchant and could be liable for damages under the contract.

Because this type of contract is a hybrid of both a forward and an option contract, an examination must be made of the parties' use of the contract in their marketing program, as well as the contract's terms. In this example, the contract mandates delivery, absent events beyond the parties' control, and a primary purpose of the contract is to market agricultural commodities in the normal channels of commerce. To the extent that this contract includes characteristics of an option, those terms cannot be severed or marketed separately from the hybrid contract, and particularly from that contract's requirement of delivery. The intent of the exemption for forward contracts in section 2(a)(1)(A) is to exclude marketing transactions in the normal stream of commerce for a commodity or its byproducts where delivery is intended, but delivery is delayed for commercial convenience or necessity. In this Office's view, the contract in this example serves these purposes and, as such, is exempt under section 2(a)(1)(A) of the Act.

2. The producer and merchant enter into a contract to make and take delivery of the commodity immediately, but the price is fixed later. Title to the commodity passes to the merchant upon delivery. However, although the producer may receive some payment upon delivery, the final price is not set at that time. However, as in example 1, the merchant offers a minimum price guarantee on the commodity to the farmer in return for a premium. Thereafter, the producer has an agreed-upon period after delivery occurs in which to determine whether to elect the minimum price guaranteed by the merchant or a higher final price based on that contract's pricing formula or an

agreed-upon cash market price for the commodity.

The Office of General Counsel is of the opinion that this is a spot contract which is generally outside the Act's regulatory scheme.³⁸ As in example 1, both parties are obligated to perform under this type of contract, and delivery occurs at the time that the contract is entered. Both parties have performed upon the contract and transferred title to the commodity. However, the final determination of price may be delayed for a substantial period after delivery occurs.

This contract is a hybrid of a spot contract and a cash settled put option in which the strike price is equal to the minimum price guarantee. Nonetheless, this is an agricultural marketing vehicle under which both parties are obligated to perform under the contract. The producer actually delivers the crop before he or she can demand any price, under the minimum price guarantee or otherwise, for the commodity. Thus, the option component is inseparable from the actual delivery of the commodity between participants in normal marketing channels. In this Office's view, this example is generally exempt from Commission regulation as a spot contract.

3. The contract establishes a minimum contract price determined when the contract is written, and a premium is collected, either at the initiation of the contract, during the life of the contract or, together with interest accumulated over the life of the contract, at the time of settlement. In return for the premium, the producer has the right to require the merchant to accept delivery of and pay a minimum contract price for the crop. However, the producer may forfeit the premium and seek a higher price for, and deliver, the crop elsewhere.

This instrument is a "trade" option. For the payment of a premium, the buyer has the right, but not the obligation, to sell his crop to the merchant who must accept delivery and pay the minimum contract price. The producer, however, can determine not to exercise the option and sell the crop to another buyer. The producer thereby forfeits the premium, but that is the limit of his or her liability. Thus, unlike the examples above, this contract does not require delivery. This type of contract is currently not permitted under the Commodity Exchange Act and the rules thereunder.

The Office of the General Counsel hopes that these examples will provide useful guidance to participants in

³⁶ Basis is defined as the difference between the price of a particular futures contract and the price for the same or similar commodity for spot delivery at a particular location. Farmers' Use of Forward Contracts and Futures Markets at iv.

³⁷ 1 Williston, Contracts section 61B at 199 [3d ed. 1957].

³⁸ See n.5f *supra*.

agricultural commerce and to interested members of the public as to the types of agricultural marketing instruments which are permitted under the Act. The staff will continue to provide its views on specific instruments if written requests are submitted to the Office of the General Counsel, Commodity Futures Trading Commission, 2033 K Street NW, Washington, DC 20581.

Issued in Washington, DC on September 23, 1985 by the Office of the General Counsel.

Kenneth M. Raisler,

General Counsel.

[FR Doc. 85-23270 Filed 9-27-85; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF LABOR

Employment Standards Administration

20 CFR Parts 701, 702 and 703

Longshore and Harbor Workers' Compensation Act and Related Statutes

AGENCY: Employment Standards Administration, Labor.

ACTION: Extension of interim final rule.

SUMMARY: This notice extends the interim final rules published in the *Federal Register* on January 3, 1985 (50 FR 384) until December 31, 1985. These rules, which implement the Longshore and Harbor Workers' Compensation Act Amendments of 1984, Pub. L. 98-426, 98 Stat. 1693, were effective on December 27, 1984, and were to remain in effect until October 1, 1985, unless extended. The Department has determined that additional time is necessary to evaluate the procedures established by the interim final regulations in light of the concerns expressed in the written comments submitted to the Department.

EFFECTIVE DATE: September 30, 1985. The interim final rules will remain in effect until December 31, 1985, unless extended or suspended by another issuance.

FOR FURTHER INFORMATION CONTACT: Richard A. Staufenberger, Deputy Director, Office of Workers' Compensation Programs, Employment Standards Administration, U.S. Department of Labor, Washington, DC, 20210, telephone (202) 523-7503.

Signed at Washington, DC., this 26th day of September 1985.

William E. Brock,

Secretary of Labor.

[FR Doc. 85-23366 Filed 9-27-85; 8:45 am]

BILLING CODE 4510-27-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

(T.D. 8053)

Reduction of Tax Overpayments by Amount of Past-due Legally Enforceable Debt Owed to Federal Agency

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary Regulations; final regulations.

SUMMARY: This document contains temporary regulations and final regulations relating to the reduction of a taxpayer's overpayment (i.e., tax refund) by the amount of any past-due legally enforceable debt owed to a Federal agency and referred by that agency to the Internal Revenue Service for offset. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the *Federal Register*. Changes to the applicable law were made by the Spending Reduction Act of 1984. The regulations affect any taxpayer who owes a past-due legally enforceable debt to any Federal agency identified as eligible to participate in the tax refund offset program by the Commissioner of Internal Revenue and who has made an overpayment of taxes, and such Federal agency to which the past-due legally enforceable debt is owed.

DATES: The regulations apply to refunds payable under section 6402 of the Internal Revenue Code of 1954 after December 31, 1985 and before January 1, 1988 and are effective upon publication.

FOR FURTHER INFORMATION CONTACT: Sharon L. Hall 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, 202-566-3288 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document amends the Procedure and Administration Regulations (26 CFR Part 301) to provide rules under section 6402 (d) and (e) of the Internal Revenue Code of 1954, and section 3720A of subchapter II of chapter 37 of title 31, United States Code. Section 6402 (d) and (e) was added to the Internal Revenue Code, and section 3720A was added to title 31 of the United States Code, by section 2653 of the Spending Reduction Act of 1984 (Pub. L. 98-369, 98 Stat.

1153). The temporary regulations contained in this document will remain in effect until superseded by additional temporary or final regulations published in the *Federal Register*.

Explanation of Statutory Provisions

Section 6402(d) of the Internal Revenue Code requires the Internal Revenue Service (1) to reduce the amount of any overpayment (i.e., tax refund) otherwise payable to a taxpayer by the amount of any past-due legally enforceable debt owed to a federal agency of which the Service has been notified, (2) to pay the amount of the reduction to the agency to which the debt is owed, and (3) to notify the taxpayer that the overpayment has been reduced. That subsection also provides that before reduction for past-due legally enforceable debt, an overpayment shall be reduced for an outstanding liability for past-due support assigned to a State under section 402(a)(26) or 471(a)(17) of the Social Security Act, and in case more than one debt is owed by a taxpayer, the reduction of the overpayment shall be applied to the debts in order in which they accrued.

Section 6402(e) provides that no court of the United States shall have jurisdiction to hear any action brought to restrain or review a reduction of an overpayment for past-due support under 6402(c) or past-due legally enforceable debt under 6402(d), and that no such reduction can be reviewed by the Service in an Administrative proceeding.

Section 3720A(a) of title 31 provides that any Federal agency that is owed a past-due legally enforceable debt shall notify the Internal Revenue Service of the amount of the debt. Under section 3720A(b), a Federal agency must, before notifying the Service, notify the taxpayer who is responsible for the debt that the agency plans to refer the taxpayer's debt to the Service for offset of any Federal tax refund; determine that the debt is past-due and legally enforceable after providing the taxpayer at least 60 days in which to present evidence to the contrary; and make reasonable efforts to collect the debt. Section 3720A(c) requires the Service to reduce the tax refund, if any, payable to a taxpayer by the amount of the past-due legally enforceable debt owed to the creditor agency and to pay the amount of the reduction to the agency. Under section 3720A(d), the Service is directed to issue regulations providing the time and manner of submission of notification. Section 3720A(e) requires any Federal agency which has received

an erroneous payment from the Service to repay such amount to the Service.

Explanation of Regulatory Provisions

The temporary regulations under section 6402 (d) and (e) and section 3720A provide that, for purposes of the pilot tax refund offset program, the Commissioner of Internal Revenue will identify those creditor Federal agencies which are eligible to enter into an agreement with the Service with regard to their participation in this offset program. In addition, the regulations provide guidance as to which past-due legally enforceable debts qualify for offset. The regulations include the statutory requirements that prior to referral of a debt to the Service, an agency must give the debtor at least 60 days to present evidence that all or part of the debt is not past due or legally enforceable, consider any evidence presented, and determine that the debt is past due and legally enforceable. The regulations also require that debts to be offset after 1986 first must be referred to a consumer reporting agency under 31 U.S.C. 3711(f), which includes a similar 60-day period for notice and administrative review prior to referral to a consumer reporting agency. Agencies will not be required to duplicate such administrative review to the extent they have previously complied with identical requirements under 31 U.S.C. 3711(f).

The regulations set forth requirements relating to time of notification to the Service, the content of the notification, and procedures for correction of notification after submission of the initial information. The regulations describe the disposition of the amounts collected and provide that a fee sufficient to cover the Service's cost of the offset procedure shall be billed to, and collected from, the participating agencies.

The final regulations conform existing regulations under section 6402 to the changes made to 6402 (c) and (d) by section 2653 of the Spending Reduction Act of 1984 and section 21 of the Child Support Enforcement Amendments of 1984.

Executive Order 12291 and Regulatory Flexibility Act

The Commissioner of Internal Revenue has determined that these temporary and final rules are not major rules as defined in Executive Order 12291 and, therefore, a Regulatory Impact Analysis is not required. A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations or for final regulations subject to 5 U.S.C. 553(b)(3). Accordingly, these temporary and 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 Sharon L. Hall 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 on matters of both substance and style.

List of Subjects in 26 CFR Part 301

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

PART 301—[AMENDED]

Amendments to the Regulations

The amendments to 26 CFR Part 301 are as follows:

Paragraph 1. The authority for Part 301 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Section 301.6402-6T also issued under 31 U.S.C. 3720A.

Par. 2. Section 301.6402-1 is revised to read as follows:

§ 301.6402-1 Authority to make credits or refunds.

The Commissioner, within the applicable period of limitations, may credit any overpayment of tax, including interest thereon, against any outstanding liability for any tax (or for any interest, additional amount, addition to the tax, or assessable penalty) owed by the person making the overpayment and the balance, if any, shall be refunded, subject to sections 6402 (c) and (d) and the regulations thereunder, to that person by the Commissioner.

Par. 3. Section 301.6402-3(a)(6) is revised to read as follows:

§ 301.6402-3 Special rules applicable to income tax.

(a) * * *

(6) Notwithstanding paragraph (a)(5) of this section, the Internal Revenue Service, within the applicable period of limitations, may credit any overpayment of individual, fiduciary, or corporation income tax, including interest thereon, against—

(i) First, any outstanding liability for any tax (or for any interest, additional

amount, additions to the tax, or assessable penalty) owed by the taxpayer making the overpayment;

(ii) Second, in the case of an individual taxpayer, amounts of past-due support assigned to a State under section 402(a)(26) or 471(a)(17) of the Social Security Act under procedures set forth in the regulations under section 6402(c);

(iii) Third, past-due and legally enforceable debt under procedures set forth in the regulations under section 6402(d); and

(iv) Fourth, qualifying amounts of past-due support not assigned to a State under procedures set forth in the regulations under section 6402 (c). Only the balance, if any, of the overpayment remaining after credits described in this paragraph (a)(6) shall be treated in the manner so elected.

Par. 4. The following new section is added immediately after § 301.6402-5 to read as follows:

§ 301.6402-6T Offset of past-due legally enforceable debt against overpayment (temporary).

(a) *General rule.* (1) A Federal agency (as defined in section 6402(f)) that has entered into an agreement with the Internal Revenue Service with regard to its participation in the tax refund offset program and that is owed a past-due legally enforceable debt may notify the Internal Revenue Service, pursuant to the terms of such agreement, of past-due legally enforceable debts owed to such agency that are to be collected by tax refund offset. The Service shall, after making appropriate credits as provided by § 301.6402-3(a)(6) (i) and (ii), reduce the amount of any overpayment payable to a taxpayer by the amount of any past-due legally enforceable debt owed to such agency of which the Service has been properly notified. This section does not apply to any debt incurred by an overpayment of benefits to a taxpayer under Title II of the Social Security Act (OASDI overpayment) or debt subject to section 464 of the Social Security Act (past-due support).

(2) For purposes of the pilot tax refund offset program, the Commissioner of Internal Revenue will identify those Federal agencies eligible to enter into the agreement with the Service described in paragraph (a)(1) of this section.

(b) *Past-due legally enforceable debt eligible for refund offset.* For purposes of this section, a past-due legally enforceable debt which may be referred by a Federal agency to the Service for offset is a debt—

(1) Which, except in the case of a judgment debt, has been delinquent for at least three months but has not been delinquent for more than ten years at the time the offset is made;

(2) Which cannot be currently collected pursuant to the salary offset provisions of 5 U.S.C. 5514(a)(1);

(3) Which is ineligible for administrative offset under 31 U.S.C. 3716(a) by reason of 31 U.S.C. 3716(c) (2), or cannot be currently collected by administrative offset under 31 U.S.C. 3716(a) by the referring agency against amounts payable to the debtor by the referring agency;

(4) With respect to which the agency has given the taxpayer at least 60 days to present evidence that all or part of the debt is not past-due or legally enforceable, has considered evidence presented by such taxpayer, and determined that an amount of such debt is past-due and legally enforceable;

(5) Which has been disclosed by such agency to a consumer reporting agency as authorized by 31 U.S.C. 3711(f), in the case of a debt to be referred to the Service after June 30, 1986;

(6) With respect to which the agency has notified, or has made a reasonable attempt to notify, the taxpayer that—

(i) The debt is past due, and

(ii) Unless repaid within 60 days thereafter, will be referred to the Service for offset against any overpayment of tax; and

(7) Which is at least \$25.

(c) *Time and content of notification of liability for past-due legally enforceable debt.* (1) A Federal agency must submit a notification of a taxpayer's liability for past-due legally enforceable debt to the Service on magnetic tape by December 1 of each year. Such notification must contain—

(i) The name and identifying number (as defined in section 6109) of the taxpayer who is responsible for the debt;

(ii) The amount of such past-due and legally enforceable debt;

(iii) The date on which the debt became past-due;

(iv) The designation of the Federal agency or subagency submitting the notification of liability and identification of the agency program under which the debt was incurred.

(2) Accompanying each magnetic tape, the agency must submit a statement certifying that, with respect to each debt reported on the tape, all of the requirements of § 301.6402-6 (b) have been satisfied.

(d) *Correction of notification.* If, after submitting to the Service notification of liability for past-due legally enforceable

debt as provided by paragraph (c), an agency determines that an error has been made with respect to the information contained in the notification, or if an agency receives a payment or credits a payment to the account of a taxpayer named in this notification, the agency shall promptly notify the Service, which shall make the appropriate correction of its records. However, this paragraph does not apply to a subsequent increase in the amount of past-due legally enforceable debt owed by a taxpayer named in an agency's original notification to the Service.

(e) *Priorities for offset.* (1) An overpayment shall be reduced first by the amount of an outstanding liability for any tax under section 6402(a); second, by the amount of any past-due support assigned to a State under section 402(a)(26) or 471(a)(17) of the Social Security Act which is to be offset under section 6402(c) and the regulations thereunder; third, by the amount of any past-due legally enforceable debt owed to a Federal agency under section 6402(d) and this section; and fourth, by the amount of any qualifying past-due support not assigned to a State which is to be offset under section 6402(c) and the regulations thereunder.

(2) If a taxpayer owes more than one past-due legally enforceable debt to a Federal agency or agencies, the overpayment shall be credited against the debts in the order in which the debts accrued. A debt shall be considered to have accrued at the time at which the debt became past due.

(3) Reduction of the overpayment pursuant to section 6402 (a), (c) and (d) shall occur prior to crediting of the overpayment to any future liability for an internal revenue tax. Any amount remaining after offset under section 6402 (a), (c) and (d) shall be refunded to the taxpayer, or applied to estimated tax, if elected by the taxpayer.

(f) *Notice of offset.* The Service shall notify the taxpayer in writing of the amount and date of the offset for past-due legally enforceable debt and of the Federal agency to which this amount has been paid or credited. Such notice shall include a notification to any other person who may have filed a joint return with the taxpayer of the steps which such other person may take in order to secure his or her proper share of the refund. The Service shall advise each agency on a monthly basis of the names, mailing addresses and identifying numbers of the taxpayers from whom amounts of past-due legally enforceable debt were collected and of the amounts collected from each taxpayer. If the

refund from which an amount of past-due legally enforceable debt is to be withheld is based upon a joint return, the Service shall so notify the agency, and furnish the names and address of each taxpayer filing such joint return.

(g) *Offset made with regard to refund based upon joint return.* If the person filing the joint return with the taxpayer owing the past-due legally enforceable debt takes appropriate action to secure his or her proper share of a refund from which a withholding was made, the Service shall pay such person his or her share of the refund and shall deduct that amount from amounts subsequently payable to the agency to which the amount withheld was originally paid.

(h) *Disposition of amounts collected.* Amounts collected under this section shall be transferred to a special account maintained by the Bureau of Financial Management Services for each Federal agency. If an erroneous payment is made to any agency, the Service shall deduct the amount of such payment from amounts subsequently payable to the agency to which the amount withheld was originally paid.

(i) *Fees.* Refund offset fees in amounts determined to be sufficient to reimburse the Service for the full cost of the offset procedure prescribed by this section shall be billed to, and collected from, the participating Federal agencies. The fees shall be deposited in the United States Treasury and credited to the appropriation accounts of the Service which bore all or part of the costs involved in administering the refund offset procedures.

(j) *Review of offset of refunds.* Any reduction of a taxpayer's refund made pursuant to section 6402(c) or (d) shall not be subject to review by any court of the United States or by the Service in an administrative proceeding. No action brought against the United States to recover the amount of any such reduction shall be considered to be a suit for refund of tax. Any legal, equitable or administrative action by any person seeking to recover the amount of the reduction of the overpayment must be taken against the Federal agency to which the amount of the reduction was paid.

(k) *Effective date.* This section applies to refunds payable under section 6402 of the Internal Revenue Code after December 31, 1985, and before January 1, 1988.

There is need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impractical to issue this Treasury decision with notice and public procedure under subsection (b) of

section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

James L. Owens,

Acting Commissioner of Internal Revenue.

Approved: September 19, 1985.

Ronald A. Pearlman,

Assistant Secretary of the Treasury.

[FR Doc. 85-23285 Filed 9-27-85; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Part 1

[T.D. 8042]

Income Tax—Taxable Years Beginning After December 31, 1953; Property Transferred in Connection With the Performance of Services; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to the *Federal Register* publication beginning at 50 FR 31712. The regulations to which this correction applies were the subject of Treasury Decision 8042 and relate to property transferred in connection with the performance of services.

EFFECTIVE DATE: The regulations that are the subject of this correction became effective August 6, 1985. The correction is effective as of the same date.

FOR FURTHER INFORMATION CONTACT: Bruce Jurist of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attn: CC:LR:T). Telephone 202-566-3238 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On August 6, 1985, the *Federal Register* published final income tax regulations relating to property transferred in connection with the performance of services. The regulations were published at 50 FR 31712. The regulations affect taxpayers performing services and taxpayers transferring property in connection with the performance of such services. Changes were made to the applicable tax law by the Economic Recovery Tax Act of 1981.

Need for Correction

As published, Treasury Decision 8042 inadvertently contained unintended language and omitted some language that was intended to be included. These errors and omissions occurred on page

31713, in the third column, in *Example (1)* of paragraph (j)(2).

Correction of Publication

Accordingly, the publication of Treasury Decision 8042 which was the subject of FR Doc. 85-18455 is corrected as follows:

§ 1.83-3 [Corrected]

Paragraph 1. In the third column on page 31713, in *Example (1)* of paragraph (j)(2) of § 1.83-3, the first sentence thereof, the language "a principal officer of X" is removed and the language "a beneficial owner of 12% of X corporation stock" is added in its place.

Par. 2. In the third column on page 31713, in *Example (1)* of paragraph (j)(2) of § 1.83-3, the first sentence thereof, the language "as a principal officer of X" is removed and the language "as a beneficial owner of more 10% of X corporation stock" is added in its place.

Par. 3. In the third column on page 31713, in *Example (1)* of paragraph (j)(2) of § 1.83-3, the conclusion of the fourth sentence, which incorrectly reads "P's per share.", is removed and the following language is added in its place: "P's rights in the 100 shares of stock purchased on January 1, 1983, are treated as subject to a substantial risk of forfeiture and as not transferable through June 29, 1983. P chooses not to make an election under section 83 (b) and therefore does not include any amount with respect to the stock purchase in gross income as compensation on the date of purchase. On June 30, 1983, the fair market value of X corporation stock is \$250 per share."

Peter K. Scott,

Director, Legislation and Regulations Division.

[FR Doc. 85-23287 Filed 9-27-85; 8:45 am]

BILLING CODE 4830-01-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2644

Notice and Collection of Withdrawal Liability; Adoption of New Interest Rate

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Notice and Collection of Withdrawal Liability. That regulation incorporates by reference certain interest rates published by another

federal agency. The effect of this amendment is to add to the appendix of that regulation a new interest rate to be effective from October 1, 1985, to December 31, 1985.

EFFECTIVE DATE: October 1, 1985.

FOR FURTHER INFORMATION CONTACT:

John Carter Foster, Attorney, Multiemployer Regulations Group, Corporate Policy and Regulations Department (611), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, D.C. 20006; telephone 202-254-4860 (202-254-8010 for TTY and TDD).

SUPPLEMENTARY INFORMATION: On May 31, 1984, the Pension Benefit Guaranty Corporation (the "PBGC") published a final regulation on Notice and Collection of Withdrawal Liability. That regulation, codified at 29 CFR Part 2644, deals with the rate of interest to be charged by multiemployer pension plans on withdrawal liability payments that are overdue or in default on or after July 2, 1984 (the effective date of the regulation), or to be credited by such plans on overpayments of withdrawal liability made on or after that date. The regulation allows plans to set such rates, subject to certain restrictions. Where a plan does not set such rates, § 2644.3(b) of the regulation provides that the rate to be charged or credited for any calendar quarter is the average quoted prime rate on short-term commercial loans for the fifteenth day (or next business day if the fifteenth day is not a business day) of the month preceding the beginning of the quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 ("Selected Interest Rates").

Since the regulation incorporates by reference interest rates published in Statistical Release H.15, that release is the authoritative source for the rates that are to be applied under the regulation. As a convenience to persons using the regulation, however, the PBGC collects the applicable rates and republishes them in an appendix to Part 2644. See 50 FR 12790 (April 1, 1985) and 50 FR 26707 (June 28, 1985). This amendment adds to this appendix a new interest rate of 9½ percent, which will be effective from October 1, 1985, to December 31, 1985. This rate is based on the prime rate in effect on September 16, 1985, as reported by the Federal Reserve in Statistical Release H.15.

The appendix to 29 CFR Part 2644 does not prescribe interest rates under the regulation; the rates prescribed by the regulation are those in Statistical Release H.15. The appendix merely