

Sufficient Plans. See PBGC regulations, 29 CFR 2617.13(b) for rules concerning these commitments. Such payments shall not exceed an amount necessary to provide for, and used to fund, the benefits guaranteed under section 4022 of ERISA.

(3) Any payment to a multiemployer plan for withdrawal liability imposed under part 1 of subtitle E of title IV of ERISA. Any bond or escrow payment furnished under such part shall not be considered as a payment of liability until applied against the liability of the employer.

(c) *Limitations, etc.*—(1) *Permissible expenses.* A payment shall be deductible under section 404(g) and this section only if the payment satisfies the conditions of section 162 or section 212. Payments made by an entity which is liable for such payments because it is a member of a commonly controlled group of corporations, or trades or businesses, within the meaning of section 414 (b) or (c), shall not fail to satisfy such conditions merely because the entity did not directly employ participants in the plan with respect to which the liability payments were made.

(2) *Qualified plan.* A payment shall be deductible under section 404(g) and this section only if the payment is made in a taxable year of the employer ending within or with a taxable year of the trust for which the trust is exempt under section 501(a). For purposes of this paragraph, the payment timing rules of section 404(a)(6) shall apply.

(3) *Full funding limitation.* (i) If the employer liability payment is to a plan, the total amount deductible for such payment and for other plan contributions may not exceed an amount equal to the full funding limitation as defined in section 412(c)(7) for the taxable year with respect to which the contributions are deemed made under section 404.

(ii) If the total contributions to the plan for the taxable year including the employer liability payment exceed the amount equal to this full funding limitation, the employer liability payment shall be deductible first.

(iii) Any amount paid in a taxable year in excess of the amount deductible in such year under the full funding limitation shall be treated as a liability payment and be deductible in the succeeding taxable years in order of time to the extent of the difference between the employer liability payments made in each succeeding year and the maximum amount deductible for such year under the full funding limitation.

(4) *Maximum deduction allowable under section 404.* The amount

deductible under section 404 is limited to the higher of the maximum amount deductible by the employer under section 404(a) or the amount otherwise deductible under section 404(g). If the contributions are to a plan to which more than one employer contributes, this limit shall apply to each employer separately rather than all employers in the aggregate. Thus, each employer may deduct the greater of its allocable share of the deduction determined under sections 404(a) and 413(b)(7) or 413(c)(6) or its allocable share of the amount deductible under section 404(g).

However, pursuant to the rule in subdivision (ii) of subparagraph (3), in determining each employer's allocable share under section 404(a), the total amount deductible under section 404(a) by all employers shall not exceed the difference between the full funding limitation and the total amount deductible by all employers under section 404(g).

(5) *Example.* The provisions of this paragraph may be illustrated by the following example:

Example. In the 1983 taxable year, Employer A makes a withdrawal liability payment of \$700,000 to multiemployer Plan X to which Employer A and Employer B are required to contribute. Employer A's allocable share of the deduction allowable under sections 404(a) and 413(b)(7) in the 1983 taxable year is \$600,000. Employer B's allocable share of the deduction allowable under section 404(a) and 413(b)(7) in the 1983 taxable year is \$400,000.

The full funding limitation for the 1983 taxable year is \$1,000,000. Based on paragraph (c)(4) of this section, Employer A may deduct \$700,000, the amount of the withdrawal liability payment. However, the deduction of Employer B is limited to \$300,000, the difference between the full funding limitation and the amount deductible under section 404(g).

(d) *Effective date etc.*—(1) *General rule.* This section is effective for employer payments made after September 25, 1980.

(2) *Transitional rule.* For employer payments made before September 26, 1980, for purposes of section 404, any amount paid by an employer under section 4062, 4063, or 4064 of the Employee Retirement Income Security Act of 1974 shall be treated as a contribution to which section 404 applies by such employer to or under a stock bonus, pension, profit-sharing, or annuity plan.

[FR Doc. 86-9953 Filed 5-1-86; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Parts 1 and 602

[T.D. 8086]

Income Taxes; Election of \$10 Million Limitation on Exempt Small Issues of Industrial Development Bonds; Supplemental Capital Expenditure Statements

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: This document contains regulatory amendments that change the existing regulatory requirement for electing the \$10 million limitation for exempt small issues of industrial development bonds and eliminate the existing regulatory requirement to file certain supplemental capital expenditure statements with respect to certain small issues of tax-exempt industrial development bonds. The amendments also conform the regulations on exempt small issues to the increase in the limit on the size of such small issues, enacted by the Revenue Act of 1978, and clarify rules regarding capital expenditures. The amendments affect issuers and holders of the exempt small issues, and principal users of facilities financed with the proceeds of these issues.

DATES: The elimination of the requirement to file capital expenditure statements implemented by the amendments to § 1.103-10(b)(2)(vi) is effective on and after September 3, 1971. The amendments relating to the time for and manner of making the \$10 million small issue election under § 1.103-10(b)(2)(vi) are effective after May 2, 1986 except that issuers who, before October 29, 1986, make the election in the manner prescribed by § 1.103-10(b)(2)(vi) as in effect prior to amendment by this Treasury decision will be treated as having made the election at the time and in the manner prescribed by § 1.103-10(b)(2)(vi) as amended by this Treasury decision. The amendments to § 1.103-10 relating to the increase in the limit on the size of small issues of industrial development bonds are effective for obligations issued after December 31, 1978, in taxable years ending after such date, and for capital expenditures made after December 31, 1978, with respect to obligations issued before January 1, 1979.

FOR FURTHER INFORMATION CONTACT: John A. Tolleris of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington,

DC. 20224 (Attention: CC:LR:T) (202-566-3590).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR Part 1) under section 103(b)(6)(D) of the Internal Revenue Code of 1954. These amendments revise the present requirements of § 1.103-10(b)(2)(vi) relating to elections and supplemental capital expenditure statements with respect to certain small issues of tax-exempt industrial development bonds.

The Treasury decision was not preceded by a notice of proposed rulemaking soliciting public comments because the Treasury Department has determined that the rules promulgated herein will not adversely affect any taxpayer. Accordingly, it is found unnecessary 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.

Explanation of Provisions

This Treasury decision eliminates the requirement that issuers of exempt small issues of industrial development bonds file a statement with the Service in order to elect the \$10 million small issue limitation; however, bond issuers would be required to make the election under section 103(b)(6) by timely making a notation thereof on their books or records with respect to the issue.

This Treasury decision also eliminates the requirement that principal users of facilities financed by certain small issues of tax-exempt industrial development bonds (with respect to which the \$10 million limitation has been elected under section 103(b)(6)(D)) file annual supplemental capital expenditure statements concerning such facilities and copies of the election statement with certain income tax returns.

This Treasury decision also contains a provision to conform the Income Tax Regulations to the increase in the limitation, from \$5 million to \$10 million, in the size of certain exempt small issues, enacted by section 331(a) of the Revenue Act of 1978 (92 Stat. 2839). This document also contains amendments to clarify rules regarding capital expenditures.

Nonapplicability of Executive Order 12291

The Commissioner of Internal Revenue has determined that this rule is not a major rule as defined in Executive

Order 12291 and that a regulatory impact analysis therefore is not required.

Regulatory Flexibility Act

A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for final regulations subject to 5 U.S.C. 553(b)(B). Therefore, 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 proposed amendments is John A. Tolleris 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.

Paperwork Reduction Act

The elimination of the collection of information contained in this regulation has been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. This reduction in the requirements had been approved by OMB under control number 1545-0940.

List of Subjects

26 CFR 1.61-1-1.281-4

Income taxes, Taxable income, Deductions, Exemptions.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

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

PART I—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953—[AMENDED]

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

Authority: 26 U.S.C. 7805. * * * Section 1.103-10 also issued under 26 U.S.C. 103(b)(6).

Par 2. Section 1.103-10 (relating to exemption for certain small issues of industrial development bonds) is amended as follows:

(1) The phrase "section 103(c)" is removed each place it appears as a reference or part of a reference and the phrase "section 103(b)" is inserted in

lieu thereof as a reference or part of a reference.

(2) Paragraph (a) is amended by adding the following new sentence at the end thereof: "For bonds issued before January 1, 1979, in taxable years ending before such date, and for capital expenditures made before January 1, 1979, with respect to such bonds, paragraphs (b), (c), and (d) of this section shall be applied by substituting \$5 million for \$10 million."

(3) Paragraph (c)(2) is amended by revising the caption to read "10 million or less refinancing issue." and by removing "\$5" each place it appears and inserting in lieu thereof "\$10".

(4) Paragraph (d)(1) is amended by removing "\$5" and inserting in lieu thereof "\$10".

(5) Paragraph (d)(3)(ii) is amended by removing "\$5" each place it appears and inserting in lieu thereof "\$10".

(6) Paragraph (b)(2) is amended by revising the heading and subdivisions (i), (ii)(a), and (vi) thereof, to read as follows:

§ 1.103-10 Exemption for certain small issues of industrial development bonds.

(b) *Small issue exemption.* * * *

(2) *\$10 million or less.* (i) Under section 103(b)(6)(D), the issuing State or local governmental unit may elect to have an aggregate authorized face amount of \$10 million or less, in lieu of the \$1 million exemption otherwise provided for in section 103(b)(6)(A), with respect to issues of obligations that are industrial development bonds (within the meaning of section 103(b)(2)) issued after October 24, 1968. If the election is made in a timely manner, the bonds will be treated as obligations of a State or local governmental unit described in section 103(a)(1) and § 1.103-1 if the sum of—

(a) The aggregate face amount of the issue including the aggregate outstanding face amount of any prior \$1 million or \$10 million exempt small issues taken into account under section 103(b)(6)(B) and paragraph (d) of this section, and

(b) The aggregate amount of "section 103(b)(6)(D) capital expenditures" (within the meaning of paragraph (b)(2)(ii) of this section), is \$10 million or less. In the case of an issue of obligations that qualified for exemption under section 103(b)(6)(A) and this paragraph, if a section (b)(6)(D) capital expenditure made after the date of issue has the effect of making taxable the interest on the issue, under section 103(b)(6)(C) the loss of tax exemption for the interest shall begin only with the

date on which the expenditure that caused the issue to cease to qualify under the \$10 million limit was paid or incurred. See paragraph (b)(2)(vi) of this section for the time and manner in which the issuer may elect the \$10 million exemption. See section 103(b)(6)(H) and paragraph (c)(2) of this section for the treatment of certain refinancing issues of \$10 million or less.

(ii) * * *

(a) The capital expenditure was financed other than out of the proceeds of issues to the extent such issues are taken into account under paragraph (b)(2)(i)(a) of this section.

(vi) The issuer may make the election provided by section 103(b)(6)(D) and this paragraph (b)(2) (assuming that the bonds otherwise qualify under section 103(b)(6)) by noting the election affirmatively at or before the time of issuance of the issue in question on its books or records with respect to the issue. The term "books or records" includes the bond resolution or other similar legislation for the issue in question as well as the bond transcript or other compilation of bond and bond-related documents. If the issuer fails to make an election at the time and in the manner prescribed in this paragraph (b)(2), the issue will not be treated as described in section 103(b)(6)(D), and interest thereon will be includible in gross income.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT—[AMENDED]

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

Authority: 26 U.S.C. 7805.

Par. 4. Section 602.101(c) is amended by inserting in the appropriate place in the table "\$ 1.103-10(b)(2)(vi) . . . 1545-0940".

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: March 28, 1986.

J. Roger Mentz,

Acting Assistant Secretary of the Treasury.

[FR Doc. 86-9951 Filed 5-1-86; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Parts 53, 54, 141, 301 and 602

[T.D. 8084]

Excise Taxes; Second Tier Excise Taxes

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations relating to second tier excise taxes. Changes to the applicable tax law were made by Pub. L. 96-596. The regulations will affect private foundations, black lung benefit trusts, pension plans, and disqualified persons with respect to the foregoing who may become liable for second tier taxes within the meaning of section 4963(b) of the Internal Revenue Code of 1954.

DATES: The amendments to the CFR are effective upon publication in the *Federal Register*. The amendments to §§ 53.4941(e)-1(a)(1), 53.4942(a)-1(c)(1)(ii), 53.4943-9(a)(1), 53.4944-5(a)(1), and 53.4963-1(e)(7) apply to first tier taxes imposed under sections 4941, 4942, 4943, and 4944 after December 31, 1969. Under § 53.4951-1(a) and (f), the amendment to § 53.4941(e)-1(a)(1) applies to first tier taxes imposed under section 4951 after December 31, 1977. The amendments to §§ 54.4971-1(e) and § 53.4963-1(e)(7) apply to first tier taxes imposed under section 4971 after September 2, 1974. The amendments to § 54.4975-1(d) apply to first tier taxes imposed under section 4975 after December 31, 1974. The amendments relating to second tier taxes (as defined in section 4963(b)) apply to second tier taxes assessed after December 24, 1980.

FOR FURTHER INFORMATION CONTACT: George B. Baker of the Employee Plans and Exempt Organizations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Attention: GC:LR:T:EE-16-81, 202-566-3422 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On February 13, 1984, the *Federal Register* published proposed amendments to the Foundation and Similar Excise Taxes Regulations (26 CFR Part 53), to the Pension Excise Taxes Regulations (26 CFR Part 54), to the Temporary Excise Tax Regulations under the Employee Retirement Income Security Act of 1974 (26 CFR Part 141), and to the Procedure and Administration Regulations (26 CFR Part 301), under sections 4941, 4942, 4943, 4944, 4945, 4961, 4962, 4971, 4975, 6213, 6503, 6861, and 7422. One correction was published in the issue of Friday, March 2, 1984, at page 7836. The amendments were proposed to conform the regulations to section 2 of the Act of December 24, 1980 (Pub. L. No. 96-596, 94 Stat. 3469). No comments were received; no public hearing was requested or held. The amendments are

therefore adopted as revised by this Treasury decision.

Explanation of Provisions

Final Regulations

The amendments conform the regulations to the changes to the Internal Revenue Code made by section 2 of Pub. L. 96-596. The Code imposes excise taxes in two tiers to insure compliance with certain provisions of the Code by private foundations, black lung benefit trusts, pension trusts, and disqualified persons with respect to the foregoing entities. A first tier excise tax is imposed automatically if the foundation, trust, or disqualified person engages in a prohibited act (such as self-dealing between a disqualified person and a private foundation), or fails to perform a required act (such as a private foundation's failure to distribute the amount described in section 4942). The Code provides for a much larger second tier excise tax which is imposed at the end of a "taxable period," which begins with the event giving rise to the tax and ends on the earliest of (i) the date a notice of deficiency with respect to the first tier tax is mailed, or (ii) the date the first tier tax is assessed if no deficiency notice is mailed, or (iii) (in some cases) the date the taxable act is corrected. Although the second tier tax is imposed at the end of the taxable period, it is not assessed until after a notice of deficiency is mailed (see sections 6211 through 6216) unless a termination assessment (section 6851) or jeopardy assessment (section 6861) is made.

Under new section 4961, if the taxpayer corrects the act (or failure to act) giving rise to the second tier tax within a "correction period," the tax is not to be assessed, and if assessed, it is to be abated, and if collected, it is to be credited or refunded as an overpayment. See § 53.4961-1. The correction period begins on the day the taxable event occurs and ends 90 days after the date of mailing of a notice of deficiency with respect to the second tier tax, but may be extended in certain cases. See § 53.4963-1.

Other provisions relate to court proceedings concerning the amount of tax and the timeliness of correction, as well as deferral of assessment or collection during certain court actions. See § 53.4961-2.

Changes to Notice of Proposed Rulemaking

The notice of proposed rulemaking proposed deleting or revising a special rule for determining the end of the taxable period and invited comments on

this aspect of the proposal. Although no comments were received, upon reconsideration, the Internal Revenue Service has determined to retain the existing special rule. The rule is also incorporated explicitly in regulations for chapter 43 excise taxes (relating to pension plans) in light of the revision of § 141.4975-13 and in the interest of promoting procedural uniformity between chapter 42 and 43 taxes.

Under the special rule, the taxable period ends upon filing of a waiver of the restrictions on assessment and collection of a deficiency in first tier tax. This rule does not apply under section 4945 because the taxable period does not affect the amount of the first or second tier tax under section 4945.

Thus, the following provisions are not deleted or revised, as originally proposed: § 53.4941 (e)-1(a)(3); Example 3 of § 53.4941 (e)-1(a)(4); § 53.4942(a)-1(c)(1)(ii); § 53.4943-9(a)(2); and § 53.4944-5(a)(2). In addition, a clarifying change has been made to § 53.4961-2, proposed new section 53.4963-1 has been adopted as § 53.4963-1, and cross references to section 4963 have been adopted as cross references to section 4963.

Study of § 53.4943-9(a)(1)(ii)

The Internal Revenue Service believes that § 4943-9(a)(1)(ii), which provides that the taxable period ends upon elimination of excess business holdings, may not be consistent with the statute. The Service is studying the provision and expects to propose a conforming change.

Regulatory Flexibility Act

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).

Non-Applicability of Executive Order 12291

The Commissioner of Internal Revenue has determined that this final rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Paperwork Reduction Act

The collection of information requirements contained in these regulations have been submitted to the Office of Management and Budget

(OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB under control number 1545-0024.

Drafting Information

The principal author of these regulations was George B. Baker of the Employee Plans and Exempt Organizations 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 53

Excise taxes, Foundations, Investments, Trusts and trustees, Black Lung benefit trusts.

26 CFR Part 54

Excise taxes, Pensions.

26 CFR Part 141

Excise taxes, pensions, Employee Retirement Income Security Act of 1974.

26 CFR Part 301

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

26 CFR Part 602

OMB control numbers under the Paperwork Reduction Act, Reporting and recordkeeping requirements.

Adoption of Amendments of the Regulations

Accordingly, amendments to 26 CFR Parts 53, 54, 141, 301, and 602 are adopted as set forth below:

PART 53—FOUNDATION AND SIMILAR EXCISE TAXES—[AMENDED]

Paragraph 1. The authority for Part 53 continues to read in part:

Authority: 26 U.S.C. 7805. * * *

§ 53.4941 [Amended.]

Par. 2. In § 53.4941(b)-1, paragraph (a) is amended by removing the language "correction period (as defined in § 53.4941(e)-1(d))." and adding in its place the language "taxable period (as defined in § 53.4941(e)-1(a))."

Par. 3. Section 53.4941 (e)-1 is amended as follows:

1. In paragraph (b)(3) and in Example (2) of paragraph (e)(ii), the words "correction period" are removed and the words "taxable period" are added in their place; and

2. Paragraph (a)(1), Example (4) of paragraph (b)(4), and paragraph (d) are revised to read as set forth below.

§ 53.4941(e)-1 Definitions.

(a) *Taxable period*—(1) *In general.* For purposes of any act of self-dealing, the term "taxable period" means the period beginning with the date on which the act of self-dealing occurs and ending on the earliest of:

(i) The date of mailing of a notice of deficiency under section 6212 with respect to the tax imposed by section 4941(a)(1).

(ii) The date on which correction of the act of self-dealing is completed, or

(iii) The date on which the tax imposed by section 4941(a)(1) is assessed.

(b) *Amount involved.* * * *

(4) *Examples.* * * *

Example (4). D, a disqualified person with respect to private foundation T, purchases 100 shares of stock from T for \$5,000 on June 15, 1982. The fair market value of the 100 shares of stock on that date is \$4,800. D sells the 100 shares of stock on December 20, 1983, for \$6,000. On December 27, 1983, a notice of deficiency with respect to the taxes imposed under subsections (a) and (b) of section 4941 is mailed to D and the taxable period ends. D fails to correct during the taxable period. Between June 15, 1982, and the end of the taxable period, the stock was quoted on the New York Stock Exchange at a high of \$67 per share. The amount involved with respect to the tax imposed under subsection (a) is \$5,000, and the amount involved with respect to the tax imposed under subsection (b) for failure to correct is \$6,700 (100 shares at \$67 per share), the highest fair market value during the taxable period.

(d) *Cross reference.* For rules relating to taxable events that are corrected within the correction period, defined in section 4963 (e), see section 4961 (a), and the regulations thereunder.

Par. 4. Section 53.4942(a)-1 is amended as follows:

1. In paragraph (a)(2), the language "correction period" and "paragraph (c)(3)" is removed and the language "taxable period" and "paragraph (c)(1)", respectively, is added in its place;

2. In paragraph (c)(4), Example (3) is removed; and

3. Paragraph (a)(4), paragraph (c)(1)(i), and paragraph (c)(3) are revised to read as set forth below.

§ 53.4942(a)-1 Taxes for failure to distribute income.**(a) Imposition of tax. * * ***

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

Example (1). M, a private foundation which uses the calendar year as its taxable year, has at the end of 1981, \$50,000 of undistributed income (as defined in paragraph (a) of § 53.4942 (a)-2) for 1981. As of January 1, 1983, \$40,000 is still undistributed. On August 15, 1983, a notice of deficiency with respect to the excise taxes imposed by section 4942 (a) and (b) is mailed to M under section 6212 (a) and the taxable period ends. Thus, under these facts, an initial excise tax of \$6,000 (15 percent of \$40,000) is imposed upon M. An additional excise tax of \$40,000 (100 percent of \$40,000) is imposed by section 4942(b). Under section 4961(a), however, if the undistributed income is reduced to zero during the correction period, this latter tax will not be assessed, and if assessed, it will be abated, and if collected, it will be credited or refunded as an overpayment.

Example (2). Assume the facts as stated in example (1), except that the notice of deficiency is mailed to M on September 7, 1984, and as of January 1, 1984, only \$10,000 of the \$50,000 of undistributed income with respect to 1981 is undistributed. Therefore, initial excise taxes of \$6,000 (15 percent of \$40,000, M's undistributed income from 1981, as of January 1, 1983) and \$1,500 (15 percent of \$10,000, M's undistributed income from 1981 as of January 1, 1984) are imposed by section 4942(a). If the \$10,000 remains undistributed as of September 7, 1984, the end of the taxable period, an additional excise tax of \$10,000 (100 percent of \$10,000, M's undistributed income from 1981, as of September 7, 1984) is imposed by section 4942(b).

(c) Certain periods. For purposes of this section—

(1) *Taxable period.* (i) The term "taxable period" means, with respect to the undistributed income of a private foundation for any taxable year, the period beginning with the first day of the taxable year and ending on the earlier of:

(A) The date of mailing of a notice of deficiency under section 6212(a) with respect to the initial excise tax imposed under section 4942(a), or

(B) The date on which the initial excise tax imposed under section 4942(a) is assessed.

For example, assume M, a private foundation which uses the calendar year as the taxable year, has \$15,000 of undistributed income for 1981. A notice of deficiency is mailed to M under section 6212(a) on June 1, 1983. With respect to the undistributed income of M for 1981, the taxable period began on

January 1, 1981, and ended on June 1, 1983.

(3) *Cross reference.* For rules relating to taxable events that are corrected within the correction period, defined in section 4963(e), see section 4961 (a) and the regulations thereunder.

Par. 5. In § 53.4942(a)-3, Example (2) of paragraph (d)(3) is revised to read as follows:

§ 53.4942(a)-3 Qualifying distributions defined.**(d) Treatment of qualifying distributions. * * *****(3) Examples. * * ***

Example (2). M, a private foundation which uses the calendar year as the taxable year, has undistributed income of \$300 for 1981, \$200 for 1982, and \$400 for 1983. On January 14, 1983, M makes its first qualifying distribution in 1983 when it sets aside (within the meaning of paragraph (b) of this section) \$700 for construction of a hospital. On February 24, 1983 a notice of deficiency with respect to the excise taxes imposed by section 4942 (a) and (b) in regard to M's undistributed income for 1981 is mailed to M under section 6212(a). M notifies the Commissioner in writing on March 24, 1983, that it is making an election under subparagraph (2) of this paragraph to have its distribution of January 14th applied first against its undistributed income for 1982, next against its undistributed income for 1981, and last against its undistributed income for 1983. Thus, \$200 of the \$700 qualifying distribution is treated as made out of the undistributed income for 1982; \$300, out of undistributed income for 1981; and \$200 (\$700 less the sum of \$200 and \$300), out of the undistributed income for 1983. Thus, an initial excise tax of \$45 (15 percent of \$300) is imposed under section 4942(a). Since M made the election described above, the \$300 (treated as distributed out of undistributed income for 1981) corrects (within the meaning of section 4963(d)(2)) the taxable act because the undistributed income for 1981 is reduced to zero. Furthermore, correction is effected within the correction period (as defined in section 4963(e)(1) and § 53.4963-1(e)). Therefore, under the provisions of section 4961(a), the additional tax imposed by section 4942(b) will not be assessed.

Par. 6. In § 53.4943-2, paragraph (b) is revised to read as follows:

§ 53.4943-2 Imposition of tax on excess business holdings of private foundations.

(b) *Additional tax.* In any case in which the initial tax is imposed under section 4943(a) with respect to the holdings of a private foundation in any business enterprise, if, at the close of the taxable period (as defined in section 4943(d)(2) and § 53.4943-9) with respect

to such holdings the foundation still has excess business holdings in such enterprise, there is imposed a tax under section 4943(b) equal to 200 percent of the value of such excess holdings as of the last day of the taxable period.

Par. 7. In § 53.4943-9, paragraph (a)(1) and paragraph (b) are revised to read as set forth below.

§ 53.4943-9 Business holdings; certain periods.

(a) *Taxable period*—(1) *In general.* For purposes of section 4943, the term "taxable period" means, with respect to any excess business holdings of a private foundation in a business enterprise, the period beginning with the first day on which there are such excess business holdings and ending on the earliest of:

(i) The date of mailing of a notice of deficiency under section 6212 with respect to the tax imposed on the holdings by the section 4943(a);

(ii) The date on which the excess is eliminated; or

(iii) The date on which the tax imposed by section 4943(a) is assessed.

For example, M, a private foundation, first has excess business holdings in X, a corporation, on February 5, 1972. A notice of deficiency is mailed under section 6212 to M on June 1, 1974. With respect to M's excess business holdings in X, the taxable period begins on February 5, 1972, and ends on June 1, 1974.

(b) *Cross reference.* For rules relating to taxable events that are corrected within the correction period, defined in section 4963(e), see section 4961(a) and the regulations thereunder.

§ 53.4944-2 [Amended]

Par. 8. Section 53.4944-2 is amended as follows:

1. In paragraph (a), the words "correction period" are removed from the first and third sentences and the words "taxable period" are added in their place, and the language "4944(e)(3)" is removed from the first sentence and the language "4944(e)(1)" is added in its place; and

2. At the end of paragraph (b), in the fourth sentence of Example (1) in paragraph (c), and in the first and second sentence of Example (3) in paragraph (c), the words "correction period" are removed and the words "taxable period" are added in their place.

Par. 9. In § 53.4944-5, paragraphs (a)(1) and (d) are revised to read as set forth below.

§ 53.4944-5 Definitions.

(a) *Taxable period*—(1) *In general.* For purposes of section 4944, the term "taxable period" means, with respect to any investment which jeopardizes the carrying out of a private foundation's exempt purposes, the period beginning with the date on which the amount is invested and ending on the earliest of:

(i) The date of mailing of a notice of deficiency under section 6212 with respect to the tax imposed on the making of the investment by section 4944(a)(1);

(ii) The date on which the amount invested is removed from jeopardy; or

(iii) The date on which the tax imposed by section 4944(a)(1) is assessed.

(d) *Cross reference.* For rules relating to taxable events that are corrected within the correction period, defined in section 4963(e), see section 4961(a) and the regulations thereunder.

Par. 10. Section 53.4945-1 is amended as follows:

1. In the first sentence of paragraph (b)(1), the words "correction period" are removed and the words "taxable period" are added in their place; and

2. Example (2) in paragraph (c)(3) and paragraph (e) are revised to read as set forth below.

§ 53.4945-1 Taxes on taxable expenditures.

(c) *Special rules.* * * *

(3) *Examples.* * * *

Example (2). Assume the same facts as in example (1). Further assume that within the taxable period A makes a motion to correct the taxable expenditure at a meeting of the board of directors. The motion is defeated by a two-to-one vote, A voting for the motion and B and C voting against it. In these circumstances an additional tax is imposed on the private foundation in the amount of \$100,000 (100 percent of \$100,000). The additional tax imposed on B and C is \$10,000 (50 percent of \$100,000 subject to a maximum of \$10,000). B and C are jointly and severally liable for the \$10,000, and this sum may be collected by the Service from either of them.

(e) *Certain periods*—(1) *Taxable period.* For purposes of section 4945, the term "taxable period" means, with respect to any taxable expenditure, the period beginning with the date on which the taxable expenditure occurs and ending on the earlier of:

(i) The date of mailing of a notice of deficiency under section 6212 with respect to the tax imposed on taxable expenditures by section 4945(a)(1); or

(ii) The date on which the tax imposed by section 4945(a)(1) is assessed.

(2) *Cross reference.* For rules relating to taxable events that are corrected within the correction period, defined in section 4963(e), see section 4961(a) and the regulations thereunder.

Par. 11. Sections 53.6001-1 through 53.7101-1 (Subpart K) of Part 53 are redesignated Subpart L, and a new subpart K is added to read as follows:

Subpart K—Second Tier Excise Taxes

Sec.

53.4961-1 Abatement of second tier taxes for correction within correction period.

53.4961-2 Court proceedings to determine liability for second tier tax.

53.4963-1 Definitions.

Subpart K—Second Tier Excise Taxes**§ 53.4961-1 Abatement of second tier taxes for correction within correction period.**

If any taxable event is corrected during the correction period for the event, then any second tier tax imposed with respect to the event shall not be assessed. If the tax has been assessed, it shall be abated. If the tax has been collected, it shall be credited or refunded as an overpayment. For purposes of this section, the tax imposed includes interest, additions to the tax and additional amounts. For definitions of the terms "second tier tax," "taxable event," "correct," and "correction period," see § 53.4963-1.

§ 53.4961-2 Court proceedings to determine liability for second tier tax.

(a) *Introduction.* Under section 4961 (b) and (c), the period of limitations on collection may be suspended and assessment or collection of first or second tier tax may be prohibited during the pendency of administrative and judicial proceedings conducted to determine a taxpayer's liability for second tier tax. This section provides rules relating to the suspension of the limitations period and the prohibitions on assessment and collection. In addition, this section describes the administrative and judicial proceedings to which these rules apply.

(b) *Initial proceeding*—(1) *Defined.* For purposes of subpart K, an initial proceeding means a proceeding described in subparagraph (2) or (3).

(2) *Tax Court proceeding before assessment.* A proceeding is described in this subparagraph (2) if it is a proceeding with respect to the taxpayer's liability for second tier tax and is commenced in accordance with section 6213 (a).

(3) *Refund proceeding commenced before correction period ends.* A proceeding is described in this subparagraph (3) if it is a proceeding

commenced under section 7422, in accordance with the provisions of § 53.4963-1(e) (4) and (5) (relating to prerequisites to extension of the correction period during certain refund proceedings), and with respect to the taxpayer's liability for second tier tax.

(c) *Supplemental proceeding*—(1) *Jurisdiction.* If a determination in an initial proceeding that a taxpayer is liable for a second tier tax has become final, the court in which the initial proceeding was commenced shall have jurisdiction to conduct any necessary supplemental proceeding to determine whether the taxable event was corrected during the correction period.

(2) *Time for beginning proceeding.* The time for beginning a supplemental proceeding begins on the day after a determination in an initial proceeding becomes final and ends on the 90th day after the last day of the correction period.

(d) *Restriction on assessment during Tax Court proceeding.* If a supplemental proceeding described in section 4961 (b) and § 53.4961-2(c) is commenced in the Tax Court, the provisions of the second and third sentences of section 6213(a) and the first and third sentences of § 301.6213-1(a)(2) apply with respect to a deficiency in second tier tax until the decision of the Tax Court in the supplemental proceeding is final.

(e) *Suspension of period of collection for second tier tax*—(1) *Scope.* Except as provided in subparagraph (6), this paragraph (e) applies to the second tier tax assessed with respect to a taxable event if a claim described in subparagraph (2) is filed.

(2) *Claim for refund.* A claim for refund is described in this subparagraph (2) if, no later than 90 days after the day on which the second tier tax is assessed with respect to a taxable event, the taxpayer—

(i) Pays the full amount of first tier tax for the taxable period, and

(ii) Files a claim for refund of the amount paid.

(3) *Collection prohibited.* No levy or proceeding in court for the collection of the second tier tax shall be made, begun, or prosecuted until the end of the collection prohibition period described in subparagraph (5). Notwithstanding section 7421(a), the collection by levy or proceeding may be enjoined during the collection prohibition period by a proceeding in the proper court.

(4) *Suspension of running of period of limitations on collection.* With respect to a second tier tax to which this paragraph (e) applies, the running of the period of limitations provided in section 6502 (relating to collection of tax by levy

or by a proceeding in court) shall be suspended for the collection prohibition period described in subparagraph (5).

(5) *Collection prohibition period.* The collection prohibition period begins on the day the second tier tax is assessed and ends on the latest of:

(i) The day a decision in a refund proceeding commenced before the 91st day after denial of the claim described in subparagraph (2) of this paragraph (including any supplemental proceeding under § 53.4961-2(c)) becomes final;

(ii) The 90th day after the claim referred to in subparagraph (2) is denied; or

(iii) The 90th day after the second tier tax is assessed.

(6) *Jeopardy collection.* If the Secretary makes a finding that the collection of the second tier tax is in jeopardy, nothing in this paragraph (e) shall prevent the immediate collection of such tax.

(f) *Finality.*—(1) *Tax Court proceeding.* For purposes of this subpart K, section 7481 applies in determining when a decision in a Tax Court proceeding becomes final.

(2) *Refund proceeding.* For purposes of this subpart K, § 301.7422-1 applies in determining when a decision in a refund proceeding becomes final.

§ 53.4963-1 Definitions.

(a) *First tier tax.* For purposes of this subpart K, the term "first tier tax" means any tax imposed by subsection (a) of section 4941, 4942, 4943, 4944, 4945, 4951, 4952, 4971, or 4975. A first tier tax may also be referred to as an "initial tax" in parts 53 and 54.

(b) *Second tier tax.* For purposes of this subpart K, the term "second tier tax" means any tax imposed by subsection (b) of section 4941, 4942, 4943, 4944, 4945, 4951, 4952, 4971, or 4975. A second tier tax may also be referred to as an "additional tax" in parts 53 and 54.

(c) *Taxable event.* For purposes of this subpart K, the term "taxable event" means any act, or failure to act, giving rise to liability for tax under section 4941, 4942, 4943, 4944, 4945, 4951, 4952, 4971, or 4975.

(d) *Correct.*—(1) *In general.* Except as provided in subparagraph (2), the term "correct" has the same meaning for purposes of this subpart K as in the section which imposes the second tier tax or the regulations thereunder.

(2) *Special rules.* The term "correct" means—

(i) For a second tier tax imposed by section 4942(b), reducing the amount of the undistributed income to zero,

(ii) For a second tier tax imposed by section 4943(b), reducing the amount of

the excess business holdings to zero, and

(iii) For a second tier tax imposed by section 4944(b), removing the investment from jeopardy.

(e) *Correction period.*—(1) *In general.* The correction period with respect to any taxable event shall begin with the date on which the taxable event occurs and shall end 90 days after the date of mailing of a notice of deficiency under section 6212 with respect to the second tier tax imposed with respect to the taxable event.

(2) *Extensions of correction period.* The correction period referred to in subparagraph (1) of this paragraph shall be extended by any period in which a deficiency cannot be assessed under section 6213(a). In addition, the correction period referred to in subparagraph (1) of this paragraph (e) shall be extended in accordance with subparagraph (3), (4), and (5) of this paragraph except that subparagraph (4), or (5) shall not operate to extend a correction period with respect to which a taxpayer has filed a petition with the United States Tax Court for redetermination of a deficiency within the time prescribed by section 6213(a).

(3) *Extensions by Commissioner.* The correction period referred to in subparagraph (1) of this paragraph may be extended by any period which the Commissioner determines is reasonable and necessary to bring about correction (including, for taxes imposed by section 4975, equitable relief sought by the Secretary of Labor) of the taxable event. The Commissioner ordinarily will not extend the correction period unless the following factors are present.

(i) The taxpayer on whom the second tier tax is imposed, the Secretary of Labor (for taxes imposed by section 4975), or an appropriate State officer (as defined in section 6104(c)(2)) is actively seeking in good faith to correct the taxable event;

(ii) Adequate corrective action cannot reasonably be expected to result during the unextended correction period;

(iii) For taxes imposed by section 4975, the Secretary of Labor requests the extension because subdivision (ii) applies; and

(iv) For taxes imposed by chapter 42 (other than taxes imposed by section 4904), the taxable event appears to have been an isolated occurrence so that it appears unlikely that similar taxable events will occur in the future.

(4) *Extension for payment of first tier tax.* If, within the unexpected correction period, the taxpayer pays the full amount of the first tier tax imposed with respect to the taxable event the

Commissioner shall extend the correction period to the later of—

(i) Ninety days after the payment of the first tier tax, or

(ii) The last day of the correction period determined without regard to this paragraph.

(5) *Extensions for filing claim for refund or refund suit.* If prior to the expiration of the correction period (including extensions) a claim for refund is filed with respect to payment of the full amount of the first tier tax imposed with respect to the taxable event, the Commissioner shall extend the correction period during the pendency of the claim plus an additional 90 days. If within that time a suit or proceeding referred to in section 7422(g) with respect to the claim is filed, the Commissioner shall extend the correction period until the determination in the suit for refund (determined without regard to a supplemental proceeding under section 4861(b)) is final, determined under § 301.7422-2(a).

(6) *End of correction period if waiver accepted.* If the notice of deficiency referred to in paragraph (1) is not mailed because there is a waiver of the restrictions on assessment and collection of the deficiency or because the deficiency is paid, the correction period will end with the end of the collection prohibition period described in § 53.4961-2(e)(5).

(7) *Date on which taxable event occurs.* For purposes of subparagraph (1), the taxable event shall be treated as occurring—

(i) Under section 4942, on the first day of the taxable year for which there is undistributed income,

(ii) Under section 4943, on the first day on which there are excess business holdings,

(iii) Under section 4971, on the last day of the plan year in which there is an accumulated funding deficiency, and

(iv) In all other cases, the date on which the event occurred.

(f) *Effective date.* The provisions of this subpart K are effective with respect to second tier taxes assessed after December 24, 1980. The preceding sentence shall not be construed to permit the assessment of a tax in a case to which, on December 24, 1980, the doctrine of res judicata applied.

PART 54—PENSION EXCISE TAX REGULATIONS—[AMENDED]

Par. 12. The authority for Part 54 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 13. Section 54.4971-1 is added immediately after the authority citation for Part 54 to read as follows:

§ 54.4971-1 General rules relating to excise tax on failure to meet minimum funding standards.

(a) [Reserved]

(b) [Reserved]

(c) *Additional tax.* Section 4971(b) imposes an excise tax in any case in which an initial tax is imposed under section 4971(a) on an accumulated funding deficiency and the accumulated funding deficiency is not corrected within the taxable period (as defined in section 4971(c)(3)). The additional tax is 100 percent of the accumulated funding deficiency to the extent not corrected.

(d) [Reserved]

(e) *Definition of taxable period—(1) In general.* For purposes of any accumulated funding deficiency, the term "taxable period" means the period beginning with the end of the plan year in which there is an accumulated funding deficiency and ending on the earlier of:

(i) The date of mailing of a notice of deficiency under section 6212 with respect to the tax imposed by section 4971(a), or

(ii) The date on which the tax imposed by section 4971(a) is assessed.

(2) *Special rule.* Where a notice of deficiency referred to in paragraph (e)(1)(i) of this section is not mailed because a waiver of the restrictions on assessment and collection of a deficiency has been accepted or because the deficiency is paid, the date of filing of the waiver or the date of such payment, respectively, shall be treated as the end of the taxable period.

Par. 14. Section 54.4975-1 is added immediately after § 54.4974-1 to read as follows:

§ 54.4975-1 General rules relating to excise tax on prohibited transactions.

(a) *Scope.* This section provides general rules for the imposition of the excise taxes on prohibited transactions.

(b) *Initial tax.* Section 4975(a) imposes an initial tax on each prohibited transaction. The initial tax is 5 percent of the amount involved with respect to the prohibited transaction for each year (or part thereof) in the taxable period.

(c) *Additional tax.* Section 4975(b) imposes an excise tax in any case in which an initial tax is imposed under section 4975(a) on a prohibited transaction and the prohibited transaction is not corrected within the taxable period (as defined in paragraph (d) of this section). The additional tax is 100 percent of the amount involved with respect to the prohibited transaction.

(d) *Taxable period—(1) In general.* For purposes of any prohibited transaction, the term "taxable period" means the period beginning with the date on which the prohibited transaction occurs and ending on the earliest of:

(i) The date of mailing of a notice of deficiency under section 6212 with respect to the tax imposed by section 4975(a);

(ii) The date on which correction of the prohibited transaction is completed; or

(iii) The date on which the tax imposed by section 4975(a) is assessed.

(2) *Special rule.* Where a notice of deficiency referred to in paragraph (d)(1)(i) of this section is not mailed because a waiver of the restrictions on assessment and collection of a deficiency has been accepted or because the deficiency is paid, the date of filing of the waiver or the date of such payment, respectively, shall be treated as the end of the taxable period.

PART 141—TEMPORARY EXCISE TAX REGULATIONS UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974—[AMENDED]

Par. 15. The authority for Part 141 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 16. In § 141.4975-13, the title is revised to read as set forth below, and the language "4975(f) (2), (4), (5) and (6)" is removed and the language "4975(f) (4) and (5)" is added in its place.

§ 141.4975-13 Definition of "amount involved" and "correction".

PART 301—PROCEDURE AND ADMINISTRATION—[AMENDED]

Par. 17. The authority for Part 301 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 18. In § 301.6212-1 the following two sentences are added at the end of paragraph (c):

§ 301.6212-1 Notice of deficiency.

(c) *Further deficiency letters restricted.* * * * Solely for purposes of applying the restriction of section 6212(c), a notice of deficiency with respect to second tier tax under chapter 43 shall be deemed to be a notice of deficiency for the taxable year in which the taxable event occurs. See § 53.4963-1(e)(7) (iii) or (iv) for the date on which the taxable event occurs.

Par. 19. In § 301.6213-1, the first sentence of paragraph (e) is revised to read as follows:

§ 301.6213-1 Restrictions applicable to deficiencies; petition to Tax Court.

(e) *Suspension of filing period for certain chapter 42 and chapter 43 taxes.* The period prescribed by section 6213 (a) for filing a petition in the Tax Court with respect to the taxes imposed by section 4941, 4942, 4943, 4944, 4945, 4951, 4952, 4971, or 4975, shall be suspended for any other period which the Commissioner has allowed for making correction under § 53.4963-1(e)(3).

Par. 20. Paragraph (a) of § 301.6503 (a)-1 is amended by adding a new subparagraph (3) to read as follows:

§ 301.6503 (a)-1 Suspension of running of period of limitation; issuance of statutory notice of deficiency.

(a) *General rule.* * * *

(3) For provisions relating to suspension of the running of the period of limitation with respect to collection of "second tier" excise taxes (as defined in section 4963) until final resolution of a refund proceeding described in sections 4961 and 7422 for the determination of the taxpayer's liability for the second tier taxes, see § 53.4961-2 (e) (4).

§ 301.6503 [Amended]

Par. 21. Section 301.6503 (g)-1 is amended by removing all of the text that follows the word "correction" and adding the language "under section 4963 (e) (1) (B)." in its place.

§ 301.6861-1 [Amended]

Par. 22. In § 301.6861-1, paragraph (g) is amended by removing the last sentence.

Par. 23. Section 301.7422-1 is revised to read as follows:

§ 301.7422-1 Special rules for certain excise taxes imposed by chapter 42 or 43.

(a) *Finality of refund proceeding.* For purposes of sections 4941, 4942, 4943, 4944, 4945, 4951, 4952, 4961, 4963, 4971, and 4975, and the regulations thereunder, a decision in a suit for refund instituted under the provisions of this section shall be final—

(1) Upon the expiration of the time allowed for filing a notice of appeal from a decision of the United States Claims Court or of the United States District Court, if no timely notice of appeal is filed; or

(2) Upon the expiration of the time allowed for filing a petition for certiorari from a decision of the United States Claims Court, or from a decision of the United States District Court, which has been affirmed or the appeal dismissed by the United States Court of Appeals, if

no timely petition for certiorari is filed; or

(3) If a petition for certiorari has been filed, thirty days from the denial of such petition; or

(4) Thirty days from the date of a decision of the United States Supreme Court if no timely petition for rehearing is filed; however, if a timely petition for rehearing from such a decision is filed, and is denied, thirty days from the denial thereof; or

(5) If a decision is entered upon a rehearing or if a decision is modified or reversed as the result of a decision of a higher court, upon the expiration, with respect to the decision on rehearing or the modified or reversed decision, of periods similar to those provided in subparagraphs (1) through (4).

(b) *Right to bring action.* With respect to any taxable event, payment of the full amount of first tier tax for the taxable period shall constitute sufficient payment in order to maintain an action under this section with respect to the second tier tax.

(c) *Limitation on suit for refund.* No suit may be maintained under this section for the credit or refund of any tax imposed under section 4941, 4942, 4943, 4944, 4945, 4951, 4952, 4971, or 4975 with respect to any taxable event unless—

(1) No other suit has been maintained for credit or refund of any tax imposed by such sections with respect to such taxable event; and

(2) No petition has been filed in the Tax Court with respect to a deficiency in any tax imposed by such sections with respect to such taxable event.

(d) *Final determination of issues.* For purposes of this section, any suit for the credit or refund of any tax imposed under section 4941, 4942, 4943, 4944, 4945, 4951, 4952, 4971, or 4975, together with a supplemental proceeding (if any) under section 4961 (b), with respect to any taxable event, shall constitute a suit to determine all questions with respect to any other tax imposed with respect to such taxable event under such sections. Consequently, failure by the parties to the suit to bring before the Court any question described in the preceding sentence shall constitute a bar to the question.

(e) *Definitions.* For definitions of the terms "taxable event," "first tier tax," and "second tier tax," see § 53.4963-1.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT—[AMENDED]

Par. 24. Part 602 is amended as follows:

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

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

2. Section 602.101(c), is amended by inserting in the appropriate places in the tables.

"53.4961-2 (e) (2).....1545-0024," and
"53.4963-1 (e) (5).....1545-0024".

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: April 3, 1986.

J. Roger Mentz,

Assistant Secretary of the Treasury.

[FR Doc. 86-9954 Filed 5-1-86; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 117 and 118

[CGD 84-022]

Bridge Lighting and Other Signals

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule revises the bridge lighting regulations by adding standards for retroreflectors, daymarks, fog signals, vertical clearance gauges, radar reflectors, racons, and other signals. Due to a history of accidents involving vessels hitting bridges, the old regulations, which refer only to bridge lighting, needed to be expanded to include means of signalling in daylight or fog and of informing vessel operators of the vertical clearance at bridges. These amendments are intended to promote safe navigation through bridges across the navigable waters of the United States.

DATES: This rule is effective on June 2, 1986. The incorporation by reference of the material listed in the rule is approved by the Director of the Federal Register as of June 2, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Alfred T. Meschter, (202) 426-0942.

SUPPLEMENTARY INFORMATION: On January 31, 1985, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) in the *Federal Register* (50 FR 4529) proposing to revise 33 CFR Parts 117 and 118. Opportunity for comment on the proposal was given until March 18, 1985.

Forty-four comments were received directly in response to the NPRM from government agencies, railroads, boat owners and associations, and private individuals. Several of the responses did

not contain any substantive comments. In addition to the comments submitted directly in response to the NPRM, 36 comments were received at Coast Guard district offices. These comments, along with the views of various Coast Guard officials, have been included in the public docket.

One writer hoped a public hearing would be held but did not indicate a reason why. After considering all comments received, the Coast Guard determined that the opportunity to make oral presentations would not substantially aid the rulemaking process. Therefore, a public hearing was not held.

Drafting Information

The principal persons involved in drafting these regulations are Mr. Alfred T. Meschter, Project Manager, and Mr. Stephen H. Barber, Project Counsel.

Discussion of Comments

Several states and most railroad companies objected on the grounds that, because the proposed signals, such as racons, radar reflectors, lateral lighting, and retroreflective materials, were navigation aids, their cost should be borne by the users or the Federal Government. Bridge owners are allowed to construct bridges over navigable waters of the United States as long as the navigation through or under them is not unreasonably obstructed. The statutes which provide this privilege are clear in requiring the owner to provide lighting and other signals necessary to render the navigation free and reasonably unobstructed. The high frequency and cost of vessel/bridge accidents indicate that additional and standardized signals to reduce or prevent these accidents are necessary.

Several bridge owners stated that the rule is unnecessary and burdensome and questioned the Coast Guard's assessment of economic impact and costs. Coast Guard records show that from 1981 through 1984 there were 401 vessel/bridge accidents totaling \$22,030,081 in damage to vessels, \$18,827,163 in damage to bridges, and \$9,384,112 in damage to cargo. The number of accidents varied between 81 to 111 annually. The cost estimate of \$19,000 per bridge assumes a bridge which presently has no signals and which would be required to install all the signals addressed in this rule, including racons. Without racons, which would be required on very few bridges, the cost is estimated to be \$4,000. Even if these estimates are low, the cost to the bridge owner would be far less than the

cost of a single, typical vessel/bridge accident.

Several comments concerned the increase in bridge owner's liability resulting from failure of required signals, especially high maintenance items such as racons. There would be an increase in liability only if the bridge owner fails to take reasonable measures to maintain required devices. It would be irresponsible for the Coast Guard to allow continued inadequate marking of bridges and continued accidents for this reason. Most of the additional marking required by these rules will require minimum maintenance. Racons will only be required on those few bridges where installation of these devices will be a clear benefit. As discussed more fully below, even racons have a high degree of reliability when properly installed.

One comment suggested an appeal from the decision of the District Commander concerning the markings or signals required. This suggestion has not been adopted. The District Commander is in the best position to determine the needs of navigation and the cost of even the most expensive equipment does not justify an administrative appeal. The District Commander's decision is final agency action.

One comment suggested that lateral red and green lighting would tend to create confusion if used to mark a main channel span where red pier lights were in use. Section 118.110 has been changed to provide for the marking of adjacent piers with fixed yellow lights in those instances. This provision conforms to the U.S. Aids to Navigation System.

One comment stated that electronic depth gauges should be required to provide real time vertical clearances. This suggestion was not adopted because electronic depth gauges for use as bridge clearance gauges are relatively new. The Coast Guard has no information on their reliability, cost, and accuracy. Furthermore, information from nautical charts and other publications, as well as visual gauges giving vertical clearances of bridges is more than adequate for the needs of navigation.

Many of the comments objecting to costs were by states or railroad companies owning numerous bridges and indicated an expectation that the owners would be required to install many, if not all, of the various signals upon the effective date of the rule. However, as noted in one comment, the signals are required only on a case-by-case, site-specific basis in response to the particular navigational problems presented by the bridge. Because of the site-specific intent of the regulations, we do not expect significant numbers of immediate changes to be required. In the

event that new signal equipment was recently installed, the Coast Guard would consider this factor in determining the need for replacement.

A number of comments raised specific questions concerning the effectiveness of retroreflective material. Retroreflective material has been in common use on bridges, aids to navigation structures, and buoys over a number of years and has proven effective.

Several comments asked what color specifications for lights under § 118.60 are required. Though no color specifications are prescribed, § 118.60 has been changed to recommend the use of the chromaticity standards for vessel navigation lights in Annex I, Appendix A of 33 CFR Part 81.

A number of comments suggested that flashing lights be required in § 118.65 instead of fixed lights. The Coast Guard considers the use of flashing lights as more appropriately limited to those instances where they conform to the standard aids to navigation system and have lateral significance; particularly as they relate to the location of the main navigation channel through a bridge. Under § 118.110, the District Commander may require the use of flashing lights in appropriate cases.

A number of comments raised specific questions concerning the reliability of racons under § 118.120. Very few racons are in use or are anticipated to be used on bridges. Because of their solid state construction, racons are considered to be maintenance free for three to five years, if operated within the design standards and installed with anti-vibration mounting properly matched to the intended environment.

A number of comments raised specific questions concerning cost of reflective material and other signals. The economic impact of these rules is discussed in the following Regulatory Evaluation section.

As a result of the comments received, several minor changes were made to the information in Appendix A of Part 117 to correct erroneous locations, names, spellings, call signs, and VHF channels of the listed bridges. In addition, editorial changes have been made in §§ 117.24(b)(2), 118.100(c), and 118.116(d) to clarify the rules.

Incorporation by Reference

The following material has been approved for incorporation by reference by the Director of the Federal Register under 5 U.S.C. 552 and 1 CFR Part 51:

Standard Alphabets for Highway Signs, Federal Highway Administration (FHWA), 1966. (Reprinted April 1984.)

Copies of the material incorporated by reference may be obtained from the sources indicated in § 118.3(c).

If substantive changes are made to the material incorporated, those changes may be considered for incorporation. However, before taking final action, the Coast Guard will publish a separate notice in the *Federal Register* for public comment.

Regulatory Evaluation

These rules are considered to be nonmajor under Executive Order 12291 and nonsignificant under the Department of Transportation Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of May 22, 1980). The economic impact of this rule has been found to be so minimal that a full regulatory evaluation is unnecessary.

These rules would not automatically require all bridges to have all of the various devices considered. Only when the District Commander determines on a case-by-case basis that a particular bridge needs one or more of the devices for reasons of safe navigation would the device or devices be required. In the event the bridge owner voluntarily chooses to comply with one or more of these rules, the owner would still have to receive the District Commander's approval in order to determine whether the measures taken will improve safety of navigation and conform to the regulations.

Because any requirement for installation is on a case-by-case basis and because many bridge owners would prefer to comply with one or more rules even though not required to, it is not known how many bridges would be required to install any of this equipment.

Retroreflective material costs less than \$10 a square foot, the maximum size required. The cost for painting, day boards, lateral lighting, radar reflectors, traveller lighting, and fog signals range in cost from \$100 to \$4,000 depending on which are required. The Coast Guard anticipates that the most costly device, racons at \$15,000 a unit, would be needed only on large bridges crossing busy waterways. These large bridges, the type owned by railroads and governmental bodies, could, therefore, require up to a \$19,000 outlay, though this cost would be exceptional.

We do not have data to estimate accurately the total number of bridges affected. However, that number is unlikely to exceed five or six major bridges and 40 to 50 minor bridges annually for a total cost of less than \$224,000 per year. If one accident can be avoided, such as one of the two recent

collisions with the Popular Street Bridge across the Mississippi River at St. Louis, Missouri, which resulted in damages totalling \$9,000,000 and \$3,000,000 respectively, these improvements would be cost effective.

Therefore, based upon these estimates, the benefits of these rules are anticipated to exceed their costs.

Regulatory Flexibility Act

These rules would apply mostly to major bridges across busy waterways, the type of bridge usually owned by a railroad or local governmental agency. Smaller bridges affected, ones that might be owned by small entities, would number about 40 to 50 a year. At the most, costs for required equipment for the smaller bridges would not exceed \$4,000 per bridge and would probably be considerably less. Therefore, for the above reasons, it is certified, in accordance with section 605(d) of the Regulatory Flexibility Act (94 Stat. 1164; 5 U.S.C. 601), that these rules will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rulemaking contains no information collection or recordkeeping requirements.

Environmental Assessment

These rules are limited to actions by the Coast Guard to protect public safety by authorizing or requiring the installation of approved warning devices to reduce the likelihood of vessels striking bridges. Therefore, the rules are of the category that would not significantly affect the environment and do not require an Environmental Assessment, Finding of No Significant

Impact, or Environmental Impact Statement (Section 2-B-3-g, COMDTINST M16475.1A).

List of Subjects

33 CFR Part 117

Bridges.

33 CFR Part 118

Bridges, Incorporation by reference. In consideration of the foregoing, Parts 117 and 118 of Title 33, Code of Federal Regulations, are amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 is revised to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46(c)(5).

2. By adding a note at the end of paragraph (d)(1) of § 117.15 to read as follows:

§ 117.15 Signals.

(d) * * *

(1) * * *

Note.—Call signs and radio channels for drawbridges with radiotelephones are listed in Appendix A to this part.

3. By adding a new § 117.24 to read as follows:

§ 117.24 Radiotelephone installation identification.

(a) The Coast Guard authorizes, and the District Commander may require the installation of a sign on drawbridges, on the upstream and downstream sides, indicating that the bridge is equipped with and operates a VHF radiotelephone in accordance with § 117.23.

(b) The sign shall give notice of the radiotelephone and its calling and working channels—

(1) In plain language; or

(2) By a sign consisting of the outline of a telephone handset with the long axis placed horizontally and a vertical three-legged lightning slash superimposed over the handset. The slash shall be as long vertically as the handset is wide horizontally and normally not less than 27 inches and no more than 36 inches long. The preferred calling channel should be shown in the lower left quadrant and the preferred working channel should be shown in the lower right quadrant.

Note.—It is recommended that the radiotelephone sign be similar in design to the Service Signs established by the Federal Highway Administration (FHWA) in U.S. Road Symbol Signs using Reflective Blue and Reflective White colors. Color and design information is available from the District Commander of the Coast Guard District in which the bridge is located.

4. By revising paragraph (b) in § 117.47, not including the note, to read as follows:

§ 117.47 Clearance gauges.

(b) Except for provisions in this part which specify otherwise for particular drawbridges, clearance gauges shall be designed, installed, and maintained according to the provisions of § 118.160 of this chapter.

5. By adding a new Appendix A at the end of Part 117 to read as follows:

Appendix A to Part 117—Drawbridges Equipped with Radiotelephones.

Waterway	Mile	Location	Bridge name and owner	Call sign	Calling channel	Working channel
Alabama						
Alabama River	105.3	Coy	Burlington Northern Railroad	WXY 960	16	13
Black Warrior River	267.8	Eutaw	Southern Railway System	KQ 7158	16	13
Chickasaw Creek	0	Pritchard	Seaboard System RR	KQ 7197	16	13
Mobile River	13.3	Mobile	Seaboard System RR	KQ 7197	16	13
Three Mile Creek	0.3	Mobile	Seaboard System RR	KQ 7197	16	13
Tombigbee River	44.9	Jackson	Southern Railway	KQ 9072	16	13
Tennessee River	259.4	East Florence	Wilson Lock, U.S. Army Engineer District, Nashville	WUE 612	16	13
	304.4	Decatur	Southern Railway System	KQ 8999	16	13
	305.0	Decatur	Keller Highway Bridge, AL, US-3	KYH 502	16	13
	414.4	Bridgeport	Seaboard System RR	KC 9430	16	13
Arkansas						
Arkansas River	67.4	Rob Roy	St. Louis Southwestern Railroad	KTA 435	16	
	118.2	Little Rock	Chicago, Rock Island and Pacific Railroad	KSK 392	16	13
	118.7	Little Rock	Junction Bridge—Missouri Pacific RR	KSK 392	16	13
	119.6	Little Rock	Baring Cross—Missouri Pacific RR	KSK 392	16	13
White River	98.9	Clarendon	St. Louis Southwestern Railroad	KUF 653	16	14
	196.3	Clarendon	Missouri Pacific RR	KVY 684	13	13
	254.8	Clarendon	Missouri Pacific RR	KIZ 553	16	13
California						
Carquinez Strait	7.0	Martinez	Southern Pacific RR	KQ 7193	16	13
Cerritos Channel	4.4	Long Beach	Henry Ford (Badger) Avenue, Port of Los Angeles	KVY 723	13	13
	4.5	Long Beach	Schuyler Heim CA DOT	KXJ 749	16	13

Waterway	Mile	Location	Bridge name and owner	Call sign	Calling channel	Working channel
Channel Street.....	0	San Francisco	3rd Street, San Francisco	KR 4864	16	9
Connection Slough.....	2.5	Mandeville Island	South Real Estate Company	WHV 225	16	9
Little Potato Slough.....	1.0	Terminus	Potato Slough, CA DOT, SR12	KSK 278	16	9
Mokelumne River.....	3.0	Isleton	CA DOT, SR12	KMJ 382	16	9
Napa River.....	2.8	Vallejo	Mare Island Causeway, Navy	Military license only, No FCC	16	13
Oakland Inner Harbor Tidal Canal.....	7.3	Oakland	Park Street, Alameda County	WHV 263	16	9
	7.7	Oakland	Fruitvale Avenue, Alameda County	WHV 271	16	9
	8.1	Oakland	High Street, Alameda County	WHV 259	16	9
Sacramento River.....	12.8	Rio Vista	Rio Vista, CA DOT, SR12	KMJ 384	16	9
	15.7	Isleton	Isleton, CA DOT, SR160	KMJ 383	16	9
	26.7	Walnut Grove	Walnut Grove, Sacto Co., SR E-13	KMJ 491	16	9
	33.4	Paintersville	Paintersville, CA DOT, SR160	KMJ 381	16	9
	46.0	Freeport	Freeport Sacto Co., SR E-9	KMJ 490	16	9
	59.0	Sacramento	Tower Bridge, CA DOT	KDO 739	16	9
	59.4	Sacramento	I Street Southern Pacific RR	WHX 359	16	9
San Leandro Bay.....	0	Alameda	Bay Farm Island, CA DOT	WHV 267	16	9
Steamboat Slough.....	11.2	Courtland	Steamboat Slough, CA DOT, SR160	WHX 295	16	9
Three Mile Slough.....	0.1	Rio Vista	Three Mile Slough, CA DOT, 160	KMJ 385	16	9
Connecticut						
Connecticut.....	3.4	Old Saybrook	Amtrak	KT 5414	13	13
	16.8	Haddam	Connecticut, SR82	KXR 913	13	13
Housatonic River.....	3.5	Stratford	Stratford Avenue, CT	KXJ 695	13	13
	3.9	Devon	Devon RR	KU 6035	13	13
Mystic River.....	2.4	Mystic	Amtrak	KJA 842	13	13
	2.8	Mystic	Connecticut, US1	KXR 912	13	13
Niantic River.....	0	Niantic	Amtrak	KGA 511	13	13
	0.1	Niantic	Connecticut, SR156	KXR 911	13	13
Norwalk River.....	0	South Norwalk	Connecticut, SR136	KXJ 707	13	13
	0.1	South Norwalk	Conrail	KU 6035	13	13
Pequonock River.....	0.3	Bridgeport	Peck RR	KU 6033	13	13
Quinnipiac River.....	0	New Haven	Connecticut, US1	KXJ 688	13	13
Thames River.....	3.0	Groton	Amtrak	KT 5473	13	13
Florida						
Bayou Chico.....	0.3	Pensacola, Barrancas Avenue	FL DOT	WHF 855	16	9
Gulf County Canal.....	0.1	Port St. Joe	FL DOT	KBA 338	16	13
Gulf Intracoastal WW.....	119.0	Treasure Island	Treasure Island Causeway	WQZ 367 or KZU 970	16	
Gulf Intracoastal WW.....	126.0	Indian Rocks Beach	Park Blvd., Pinellas Co.	WHV 751	16	13
Gulf Intracoastal WW.....	132.0	Belleair Beach	Belleair Causeway, Pinellas Co.	WHV 752	16	13
Gulf Intracoastal WW.....	139.0	Bunedin	Dunedin Causeway, Pinellas Co.	WHV 750	16	13
Hillsboro Inlet.....	0.3	Hillsboro	FL DOT		16	13
Intracoastal Waterway.....	1,050	Deerfield Beach	Hillsboro Blvd., FL DOT		13	
	1,055	Pompano Beach	NE 14th St., FL DOT		13	
	1,056	Pompano Beach	Atlantic Blvd., FL DOT		13	
	1,059	Ft. Lauderdale	Commercial Blvd., FL DOT		13	
	1,060.5	Ft. Lauderdale	Oakland Park Blvd., FL DOT		13	
	1,062.6	Ft. Lauderdale	Sunrise Blvd.		13	
	1,064	Ft. Lauderdale	Las Olas Blvd., FL DOT		13	
	1,066	Ft. Lauderdale	17th Street, FL DOT		13	
	1,069.4	Dania	Dania Bch. Blvd., FL DOT		13	
	1,070.5	Hollywood	Sheridan Street, FL DOT		13	
	1,072.2	Hollywood	Hollywood Blvd., FL DOT		13	
	1,074	Hallandale	Hallandale Blvd., FL DOT		16	13
	1,089.4	Miami	Dodge Island, Port of Miami	KCE 254	16	13
Johns Pass.....	0.1	St. Petersburg	FL DOT	WQZ 213	16	13
New River.....	1.4	Ft. Lauderdale	Southeast 3rd Ave., Broward Co.		13	
New River.....	2.3	Ft. Lauderdale	Andrews Ave., Broward Co.		13	
New River.....	2.7	Ft. Lauderdale	Marshall Bridge, Broward Co.		13	
New River, South Fork.....	0.9	Ft. Lauderdale	Davie Blvd., FL DOT		13	
St. Johns River.....	24.7	Jacksonville	Main St., FL DOT	WHV 528	16	17
St. Johns River.....	24.9	Jacksonville	Acosta, FL DOT, SR13	WHV 529	16	17
St. Johns River.....	24.9	Jacksonville	FEC RR	KXR 936	16	13
St. Johns River.....	25.4	Jacksonville	Fuller Warren, JTA	WHV 527	16	17
	126.0	Astor	FL DOT	WXY 904	16	13
Georgia						
Savannah River.....	21.6	Savannah	Houlihan, GA DOT, US17	WHV 879	16	13
Savannah River.....	60.9	Clyo	Seaboard System RR	WKB 679	16	13
Intracoastal WW.....	583	Savannah	Thunderbolt, GA DOT	WHH 007	16	13
Intracoastal WW.....	592.9	Skidaway Island	Skidaway, Chatham Co, US80		16	13
Intracoastal WW.....	684.3	Brunswick	Jekyll Creek, GA DOT	WHD 794	16	13
Idaho						
Clearwater River.....	0.6	Lewiston	Camas Prairie RR	KU 9788	16	13
Illinois						
Illinois River.....	21.6	Hardin	Illinois DOT, SR16	WQZ 8761	16	14
	43.2	Grand Pass	Illinois Central Gulf RR	KLU 797	16	14
	56.0	Florence	Illinois DOT, US36	WQZ 8761	16	14
	61.4	Valley City	Norfolk and Western RR	KTR 857	16	14
	88.8	Beardstown	Burlington Northern RR	KLU 801	16	14
	151.2	Pekin	Chicago and Northwestern RR	KVF 831	16	14
	152.9	Pekin	Illinois DOT, SR9	WQZ 8761	16	14
	160.7	Peoria	Peoria and Pekin Union Railway Co	WOX 651	16	14
	162.3	Peoria	Franklin Street, Illinois DOT	WQZ 8761	16	13
	224.7	La Salle	Illinois DOT, US51	WQZ 8761	16	13
	239.4	Ottawa	Burlington Northern RR	WRD 810	16	14
(Des Plaines River).....	285.8	Rockdale	Brandon Road, Illinois DOT	WQZ 8761	16	13
	287.3	Joliet	McDonough Highway, Illinois DOT	WQZ 8761	16	13
	287.6	Joliet	Chicago, Rock Island and Pacific RR	KUF 907	16	14
	288.7	Joliet	Ruby Street, Illinois DOT	WQZ 8761	16	13
Upper Mississippi River.....	202.7	Alton	Burlington Northern RR	KXS 240	16	13
	481.4	Rock Island	Crescent RR	WUD 715	16	14

Waterway	Mile	Location	Bridge name and owner	Call sign	Calling channel	Working channel
Iowa						
Mississippi River	482.9	Rock Island	Department of the Army	AAF 274	16	14
	364.0	Keokuk	City of Keokuk US136	KLK 365	16	14
	383.9	Fort Madison	Atchison, Topeka and Santa Fe RR	KRS 859	13	13
	403.1	Burlington	Burlington Northern RR	KJC 779	16	13
	518.0	Clinton	Chicago and Northwestern RR	KUF 735	16	13
	535.0	Sabula	Chicago, Milwaukee, St. Paul and Pacific RR	KEA 997	16	13
Missouri River	579.9	Dubuque	Illinois Central Gulf RR	KQ 9042	16	14
	618.3	Council Bluffs	Illinois Central Gulf RR	KD 2870	16	13
Kansas						
Missouri River	396.7	Leavenworth	Chicago and Northwestern RR	KTA 436	16	14
	422.5	Atchison	Missouri Pacific RR	KTD 426	16	14
Kentucky						
Green River	8.3	Spottsville	Seaboard System RR	KT 4181	16	13
Ohio River	604.4	Louisville	Conrail	KUZ 381	13	13
	606.8	Louisville	27th St., McAlpine Lock, Louisville Gas and Electric Co.	WUE 241	16	14
	606.8	Louisville	27th St., McAlpine Lock (Bascule), U.S. Army Engineer District, Louisville	WUE 241	16	14
Louisiana						
Algiers Canal (GIWW Alternate Route)	1.8	New Orleans	State Highway 407, Louisiana	WDT 574		13
	3.8	Belle Chasse	Judge Perez Bridge Louisiana SR23	WDT 572		13
Atchafalaya River	17.5	Morgan City	Southern Pacific RR	KW 4440		13
	95.7	Krotz Spring	Missouri Pacific RR	KUF 702		13
	107.4	Melville	Missouri Pacific RR	KUF 701		13
Bayou Grosse Tete (GIWW-Port Allen Alternate Route)	0.8	Indian Village	Louisiana, SR77	KTD 559		13
GIWW (Larose-Bourg Cutoff)	35.6	Larose	Louisiana, SR1	KTD 550		13
GIWW (Bayou Blue Pontoon)	49.8	Bourg	Louisiana, SR315	KJA 544		13
GIWW	57.6	Houma	East Park, LA, Main Street	KTD 557		13
GIWW	59.9	Houma	Bayou du Large Bridge Louisiana, SR315	KTD 548		13
GIWW	134.0	Cypremont	Louisiana, SR319	KTD 551		13
GIWW	231.4	Grand Lake Ridge	Louisiana	KJA 560		13
GIWW	237.5	Moss Lake	Black Bayou Pontoon, Louisiana	WXY 918		13
GIWW	243.6	Hackberry	Ellender Ferry, Louisiana, SR27	KTD 558		13
Harvey Canal	2.8	Harvey	Lapalco Boulevard, Jefferson Parish Council	DTR 859	16	13
Houma Navigation Canal	36.0	Houma	Louisiana, SR661	WDT 573		13
Inner Harbor Navigation Canal	0.5	New Orleans	ST. Claude Bridge, Port of New Orleans	WG 401	16	13
	1.7	New Orleans	Florida Avenue Bridge, Port of New Orleans	WUG 409	16	13
	2.9	New Orleans	Old Gentilly Road, Port of New Orleans	KZV 719	16	13
	3.1	New Orleans	Danziger Bridge, LA, US90	KRS 864		13
	4.5	New Orleans	Seabrook, Port of	WDF 838		13
	4.6	New Orleans	Seabrook, New Orleans Levee Board	KZV 819	16	13
Lake Pontchartrain	0.6	Stidell	Highway 11—North Draw	KMC 226		13
Ouachita—Black Waterway	40.9	Jonesville	Louisiana, US84	KJA 538	16	13
	57.5	Harrisonburg	Louisiana, SR8	KJA 575	16	13
	110.2	Columbia	Louisiana, US165	KJA 566	16	13
	114.4	Riverton	Missouri Pacific RR	KCE 334	16	6
	191.8	Sterlington	Louisiana	WXZ 3279	16	12
Pass Manchac	6.7	Pass Manchac	Illinois Central Gulf RR	KC 9501	16	13
Port Allen Canal	56.0	Morley	Missouri Pacific RR	KVY 556		13
	64.0	Port Allen	Missouri Pacific RR	KVY 557		13
Rigolets Pass	0	Dunbar	Family Lines Rail System	KQ 7197	16	13
	6.2	Fort Pike	Louisiana, US90	KYZ 723		13
West Pearl River	7.9	Indian Village	Louisiana, US90	KTD 552	16	13
Maryland						
Cambridge Creek	0.5	Cambridge	Maryland, SR343	KZA 695	16	13, 68
Cheptank River	15.6	Cambridge	Maryland, US50	KYQ 894	16	13, 68
Fishing Creek	0	Hooper Island	Maryland, US335	KYU 695	16	13, 68
Kent Island Narrows	0.5	Grasonville	Maryland, SR50/301	KXE 254	16	13, 68
Knapps Narrows	0	Tilghman Island	Maryland, SR33	KZA 868	16	13, 68
Nanticoke River	22.0	Vienna	Maryland, US50	KYQ 895	16	13, 68
	28.0	Sharptown	Maryland, SR348	KYQ 896	16	913, 68
Sassafras River	9.0	Georgetown	Maryland, SR213	KYU 699	16	13, 68
Seyvern River	1.5	Annapolis	Maryland, SR450	KZA 872	16	13, 68
Isle of Wight Bay	1.0	Ocean City	Maryland	KYU 698	16	13, 68
Spa Creek	0.5	Annapolis	Maryland, SR181	KZA 871	16	13, 68
Stoney Creek	1.0	Rivera Beach	Maryland, SR173	KAJ 667	16	13, 68
Wicomico River, North Prong	22.4	Salisbury	Main St., MD	KYA 869	16	13, 68
	22.5	Salisbury	Route 50, MD	KYU 697	16	13, 68
Maine						
Portland Harbor (Fore River)	1.5	Portland	Ocean Avenue DOT ME	KQU 653	16	13
Massachusetts						
Acushnet River	0	New Bedford	MA DPW, US6	WHH 238	16	13
Annisquam River	2.5	Blynnan Canal	MA DPW, SR127	WOA 834	16	13
	3.8	Gloucester	Boston & Maine RR		18	13
Chelsea River	0.3	Boston	McArdle Bridge, Boston		16	13
	1.2	Boston	Chelsea St., Boston		16	13
Danvers River	0	Salem-Beverly	MA DPW, SR1A		16	6
	0	Salem-Beverly	MBTA	WRD 626	16	6
	1.0	Salem-Beverly	Kernwood Avenue Bridge, MA DPW	WRD 625	16	6
Merrimack River	3.4	Newburyport	MA DPW, US1	WOA 806	16	13

Waterway	Mile	Location	Bridge name and owner	Call sign	Calling channel	Working channel
Taunton River	1.8	Fall River	Brightman Street Bridge, MA DPW	WOA 633	16	13
Weymouth-Fore River	3.5	Quincy	MA DPW, SR3A	WRD 634	16	13
Michigan						
Rouge River	0.40	Detroit	National Steel Corp	KUZ 371	16	12
	1.48	Detroit	Conrail		16	12
Minnesota						
Mississippi River	813.7	Hastings	Chicago, Milwaukee, St. Paul and Pacific RR	KTD 538	16	14
	835.7	Newport	Chicago and Northwestern RR	KUZ 544	16	14
	839.2	St. Paul	Chicago and Northwestern RR	KUZ 546	16	14
	841.4	Omaha	Chicago and Northwestern RR	KUZ 545	16	14
Duluth-Superior Harbor, MN-WI	0.25	Duluth	Minnesota Avenue, Duluth	KAN 388	16	13
Mississippi						
Back Bay of Biloxi	8.0	Biloxi	Popps Ferry Road, Harrison County	WXZ 590	16	13
Biloxi Bay	0	Biloxi	Seaboard System RR	KQ 7197	16	13
	0.4	Biloxi	Mississippi, US 90	KUF 720	16	13
Escatawpa River	1.0	Moss Point	Mississippi, SR613	KUF 719	16	13
Pascagoula River	1.5	Pascagoula	Seaboard System RR	KQ 7197	16	13
	1.8	Pascagoula	Mississippi, US90	KUF 722	16	13
St. Louis Bay	1.0	St. Louis	Harrison & Hancock Counties, US90	KUF 721	16	13
Missouri						
Mississippi River	282.1	Louisiana	Illinois Central Gulf RR	KLU 798	16	14
	309.9	Hannibal	Norfolk and Western RR	KUZ 448	16	14
Missouri River	359.4	Kansas City	Harry S. Truman, Chicago, Milwaukee, St. Paul and Pacific RR	KVY 575	16	13
	365.6	Kansas City	A-S-B, Burlington Northern RR	KQU 500	16	14
	366.1	Hannibal	Burlington Northern RR	KQU 500	16	14
	448.2	St. Joseph	Union Pacific RR	KTD 403	16	14
New Hampshire						
Piscataqua River	3.5	Portsmouth	Memorial Bridge, US1, NH DPW	KBK 472	16	13
	4.0	Portsmouth	US1 Bypass, NH DPW	KAW-766	16	13
New Jersey						
Cheesequake Creek	0.2	Morgan	NJTRO-Morgan Draw	KT 3859	13	13
Delaware River	107.2	Palmyra	Tacona Palmyra Burlington Co	KBA 328	13	13
	117.8	Bristol	Tacona Palmyra Burlington-Bristol	KBA 339	13	13
Great Egg Inlet	0.3	Ocean City	Cape May County	WQZ 343	13	13
Hackensack River	3.0	Jersey City	PATH-Hack Freight	KQ 7196	13	13
	3.1	Jersey City	Hack Freight, Conrail	KQ 7198	13	13
	3.1	Jersey City	Witt-Penn, NJDOT		13	13
	3.4	Jersey City	NJTRO-Laurel Hill (Lower Hack)	KR 6939	13	13
	5.0	Snake Hill	Amtrak-Portal	KMC 297	13	13
	5.4	Snake Hill	NJTRO-DB (Erie Swing)	KR 6972	13	13
	6.9	Secaucus	NJTRO-Erie Lift (Upper Hack)	KR 7035	13	13
	7.7	Secaucus	NJTRO-Jackknife (HX)	KR 7034	13	13
Manasquan River	0.9	Bricktownship	NJTRO-Brielle	KT 4203	13	13
Middle Thorofare	0.2	Strathmere	Cape May County	WQZ 342	13	13
Nowark Bay	4.3	Port Newark	Lehigh Valley, Conrail	KS 9958	13	13
Passaic River	2.6	Newark	Point-No-Point Conrail	KR 6938	13	13
	5.0	Newark	Amtrak Dock	WRY 593	13	13
	5.8	Newark	Morristown Line	Pending	13	13
	8.0	West Arlington	Erie Lackawanna RR	Pending	13	13
	11.7	Lynhurst	Erie Lackawanna RR	Pending	13	13
Raritan River	0.5	Perth Amboy	NJTRO	KT 4204	13	13
Shark River	0.1	Belmar	Ocean Avenue Monmouth County	KMD 281	13	13
	0.9	Avon	NJTRO	KT 4202	13	13
	0.9	Avon	New Jersey, SR35	KXR 952	13	13
New York						
Arthur Kill	11.6	Staten Island	S.I. Rapid Transit	KXS 237	13	13
Bronx River	1.1	Bronx	Bruckner Expressway	KX 8189	13	13
East River	6.4	Roosevelt Island	New York City (36 Avenue)	KX 8184	13	13
Flushing Creek	0.4	Flushing	Northern Blvd.	KX 8182	13	13
Gowanus Canal	1.2	Brooklyn	Hamilton Avenue, New York City	KX 8183	13	13
	1.4	Brooklyn	Ninth Street, New York City	KX 8186	13	13
Harlem River	0	New York City	103rd Street, New York City	KIL 820	13	13
	1.3	New York City	Triboro Bridge and Tunnel	KGW 326	13	13
	2.1	New York City	Park Avenue, Amtrak Authority	KA 5059	13	13
Hutchinson River	7.9	New York City	Spuyten Duvvill, Conrail	KU 9797	13	13
	0.4	New York City	Pelham Parkway, New York City	KU 9758	13	13
	0.5	New York City	Amtrak-Pelham Bay, New York City	KU 6095	13	13
	2.2	Eastchester	New England Thruway, 195	KXS 298	13	13
Jamaica Bay	3.0	Rockaway Inlet	Marine Parkway, New York City	KIL 819	13	13
Mill Basin	0.8	New York City	Mill Basin, New York City	KX 8185	13	13
Newtown Creek	0.6	New York City	Pulaski	KX 8178	13	13
	1.3	New York City	Greenpoint Avenue, New York City	KX 8182	13	13
	3.4	New York City	Metropolitan Avenue	KX 8179	13	13
Niagara River-Black Rock Canal	2.6	Buffalo	Ferry Street, Buffalo City	WHV 559	16	12
Reynolds Channel	0.4	Atlantic Beach	Nassau County	KFL 348	13	13
Westchester Creek	1.7	Unionport	Bruckner Expressway	KX 8289	13	13
North Carolina						
Albemarle Sound	47.7	Edenton	NCDOT, SR32	KU 6047	16	13
Cape Fear River	26.8	Wilmington	NCDOT, US17	KQU 609	16	13
Intracoastal VVW	84.2	Columbia	NCDOT, US64	KU 9448	16	13
	206.7	Atlantic Beach	NCDOT, SR58	KU 6064	16	13
	260.7	Sears Landing	NCDOT, SR50	KU 6044	16	13
	283.1	Wrightsville Beach	NCDOT, US74	KU 6043	16	13
	323.7	Holden Beach	NCDOT, SR130	KU 6042	16	13

Waterway	Mile	Location	Bridge name and owner	Call sign	Calling channel	Working channel
	333.7	Ocean Isles	NCDOT, SR904	KJ 6050	16	13
	337.9	Sunset Beach	NCDOT	KU 6040	16	13
Northeast Cape Fear River	0.5	Wilmington	NCDOT, US17	KU 6041	16	13
Ohio						
Cuyahoga River	0.8	Cleveland	Conrail	KUF 618	16	13
Oregon						
Coos Bay	9.0	North Bend	Southern Pacific RR	KT 2006	18A	13
Willamette River	6.9	St. Johns	Burlington Northern RR	KQ 9050	16	13
	11.7	Portland	Broadway, Multnomah Co.	KLU 724	16	13
	12.1	Portland	Steel Union Pacific RR	KQU 534	16	13
	12.4	Portland	Burnside, Multnomah Co.	KTD 520	16	13
	12.8	Portland	Morrison, Multnomah Co.	KTD 522	16	13
	13.1	Portland	Hawthorne, Multnomah Co.	KTD 521	16	13
Youngs Bay	0.7	Astoria	OR DOT, US26	WHG 914	16	13
Pennsylvania						
Delaware River	104.8	Philadelphia	Delair, Conrail	KS 9970	13	13
	107.2	Tacony	Tacony Palmyra Burlington Co.	KBA 328	13	13
	117.8	Bristol	Burlington-Bristol	KBA 339	13	13
Schuylkill River	5.1	Philadelphia	Tasker Street, B&O Railroad	KXS 238	13	13
South Carolina						
Intracoastal WW	347.3	Myrtle Beach Little River	SC, US17	KT 5433	16	13
	371.0	Socastee	SC, SR544	KT 5438	16	13
	462.2	Sullivan's Island	Ben Sawyer, SC, SR703	KT 5438	16	13
	470.8	Charleston	Wappoo Creek, SC, SR171	KT 5438	16	13
	536.0	Beaufort	Lady's Island, SC, US21	KT 5439	16	13
Savannah River	21.6	Savannah	Houlihan, GA DOT	WHV 879	16	13
Savannah River	60.9	Clyo	Seaboard System RR	WKB 679	16	13
Tennessee						
Cumberland River	126.5	Clarksville	Seaboard System RR	KF 2204	16	13
	185.2	Bordeau	Illinois Central Gulf RR (Nashville and Ashland City Railroad (Lessee))	KX 6366	16	13
	190.4	Nashville	Seaboard System RR	KQ 7197	16	13
Tennessee River	100.5	New Johnsonville	Seaboard System RR	KC 9465	16	13
Texas						
Clear Creek	1.0	Kemah	Texas, SR146	KXS 361	16	13
Gulf Intracoastal WW (Pelican Island Causeway)	356.1	Galveston	Galveston County Navigation District	KYH 532	16	13
Galveston Causeway RR	357.2	Galveston	Southern Pacific RR	KUF 652	16	13
Gulf Intracoastal WW	397.6	Freeport	Texas, SR1495	KQU 648	16	13
Caney Creek Bridge	418.0	Sargent	Texas, FR457	KQU 644	16	13
Gulf Intracoastal WW	440.7	Matagorda	Texas, FR2031	KQU 645	16	13
San Bernard River	20.7	Brazo Ria	MOPAC RR	KI 2524		12
Virginia						
James River	5.0	Isle of Wight County	Virginia, US17	KQ 7169	13	13
Potomac River	65.0	Prince George County	Virginia, SR156	KQ 7167	13	13
York River	6.0	York County	Virginia, US17	KQ 7166	13	13
Pamunkey River	1.0	King William County	Virginia, SR33	KQ 7168	13	13
Washington						
Blair Waterway	0.3	Tacoma	WA DOT, 11th Street	KZN 573	16	13
Chehalis River	0.1	Aberdeen	WA DOT, US101	KJA 289	16	13
Columbia River	105.6	Vancouver/Portland	Burlington Northern RR	KQ 9049	16	13
	106.5	Vancouver/Portland	OR DOT, 15	KBM Interstate	16	13
	169.8	Hood River, OR	Port of Hood River	KTD 562	16	13
	201.2	Celilo, OR	Burlington Northern RR	KQ 9048	16	13
	323.4	Pasco/Kennewick	Union Pacific RR	KTD 561	16	13
	328.0	Pasco/Kennewick	Burlington Northern RR	KQ 9046	16	13
Duwamish Waterway	0.4	Seattle	Spokane St., City of Seattle	KSK 285	13	13
	2.5	Seattle	1st Ave. So., City of Seattle	WHU 200	13	13
Ebey Slough	1.6	Marysville	WA DOT, US529	KZ 2475	13	13
Hood Canal		Port Gamble	WA DOT, Hood Canal Bridge	KZJ 376	16	13
Hylebos Waterway	1.1	Tacoma	WA DOT, 11th Street	KZN 574	16	13
Lake Washington Ship Canal	0.1	Seattle	Burlington Northern RR	KCE 201	16	13
	1.1	Seattle	Ballard, City of Seattle	KJA 445	13	13
	2.6	Seattle	Fremont, City of Seattle	KJA 442	13	13
	4.3	Seattle	University, City of Seattle	KJA 441	13	13
	5.2	Seattle	Montlake, City of Seattle	KJA 438	13	13
Snake River	1.5	East Pasco/Burbank	Burlington Northern RR	KQ 9047	16	13
Wisconsin						
Mississippi River	699.8	LaCrosse	Chicago, Milwaukee, St. Paul and Pacific RR	KVY 831	16	13
St. Croix River	0.2	Prescott	Burlington Northern, Inc.	KJC 782	16	14
	0.3	Prescott	Wisconsin and Minnesota	KD 2829	7	14
	17.3	Hudson	Chicago and Northwestern RR	KUZ 549	16	14

1 Effective April 15, 1983, all state-owned highway drawbridges in Louisiana need not monitor channel 16 (Emergency Channel).

6. By revising the title of Part 118 to read as follows:

PART 118—BRIDGE LIGHTING AND OTHER SIGNALS

7. The authority citation for Part 118 is

revised to read as follows and all section authority citations are removed:

Authority: 33 U.S.C. 494; 14 U.S.C. 85, 633; 49 CFR 1.46 (b) and (c).

8. By revising § 118.1 to read as follows:

§ 118.1 General requirements.

All persons owning or operating bridges over the navigable waters of the United States or any international bridge constructed after March 23, 1906, shall maintain at their own expense the

lights and other signals required by this part.

9. By adding a new § 118.3 to read as follows:

§ 118.3 Incorporation by reference.

(a) In this part, portions or the entire text of certain standards and specifications are incorporated by reference as the governing requirements for materials, equipment, tests, or procedures to be followed. These standards and specification requirements specifically referred to in this part are the governing requirements for the subject matters covered, unless specifically limited, modified, or replaced by the regulations.

(b) These materials are incorporated by reference into this part under 5 U.S.C. 552(a) with the approval of the Director of the Federal Register. The Office of the Federal Register publishes a table, "Material Approved for Incorporation by Reference," which appears in the Finding Aids section of this volume. In that table are found citations to the particular sections of this part where the material is incorporated. To enforce any edition other than the one listed in paragraph (c) of this section, notice of the change must be published in the *Federal Register* and the material made available. All approved material is on file at the Office of the Federal Register, Washington, D.C. 20408 and at U.S. Coast Guard, Room 1410, 2100 Second Street, SW., Washington, D.C. 20593. Copies may be obtained from the sources indicated in paragraph (c) of this section.

(c) The materials approved for incorporation by reference in this part are:

Federal Highway Administration (FHWA), 400 Seventh Street, SW., Washington, D.C. 20590

Standard Alphabets for Highways Signs, 1966. (Reprinted April 1984).

10. By revising § 118.40 to read as follows:

§ 118.40 Modification of requirements.

(a) The District Commander may modify the requirements for the display of lights and other signals on any bridge when a change in local conditions warrants the modification.

(b) The District Commander may exempt bridges over waterways with no significant nighttime navigation from the lighting or other signal requirements in this part.

(c) The District Commander may prescribe special lighting or other signals in specific cases when the lighting or other signals in this part may

not provide adequately for the safe passage of vessels.

(d) While a bridge is under construction, the District Commander prescribes the temporary lights and other signals to be displayed for the protection of navigation.

11. By revising § 118.50 to read as follows:

§ 118.50 Inspection.

Lights and other signals required or authorized under this part are subject to inspection at any time by Coast Guard personnel or authorized agents.

12. By revising § 118.60 to read as follows:

§ 118.60 Characteristics of lights.

All lights required or authorized under this part must be securely attached to the structure and of sufficient candlepower as to be visible against the background lighting at a distance of at least 2,000 yards 90 percent of the nights of the year. Lights must meet the requirements of this part. Lights shall be fixed lights excepting as provided in §§ 118.95, 118.110 and 118.150 of this part. Color specifications are not prescribed for bridge lights, however, the chromaticity standards for navigation lights in Annex I, Appendix A of 33 CFR Part 81 are recommended.

13. By revising § 118.95 to read as follows:

§ 118.95 Lights on structures not part of a bridge or approach structure.

Lights on sheer booms, isolated piers, obstructions, and other structures not part of a bridge or approach structure must meet the requirements for aids to navigation in Subpart 66.01 of Part 66 of this chapter.

14. By revising § 118.100 to read as follows:

§ 118.100 Retroreflective panels on bridge piers.

The District Commander may require or authorize the display of high intensity red or green retroreflective panels when the District Commander finds it necessary:

(a) To better identify a hazardous pier.

(b) To provide a backup for red pier lights, red channel margin lights, and green mid channel lights, which are subject to vandalism or otherwise difficult to properly maintain. If the District Commander determines that the nominal nighttime visibility required is less than one-half mile, the panels must be at least six inches square. If the visibility required is more than one-half mile, the panels must be at least 12 inches square.

(c) To mark bridge piers or channel sides on bridges not required to have bridge lighting. Lateral significant red triangles and green square retroreflective panels shall be used. The panels shall be at least 36 square inches in area to provide a nominal nighttime visibility distance of at least one-half mile.

§ 118.105 [Removed]

15. By removing § 118.105, Bridges infrequently used and unusual cases.

16. By adding new §§ 118.110, 118.120, 118.130, 118.140, 118.150 and 118.160 to read as follows:

§ 118.110 Daymarks and lateral lighting on bridges.

(a) The District Commander may require or authorize the marking of the margins of navigation channels through bridges with U.S. aids to navigation system lateral marks and lights installed on the superstructure or on the channel piers. The District Commander may also require or authorize the use of quick flashing, flashing, isophase or occulting red and green lights to mark the main channels.

(b) If lateral system lights are required or authorized to mark the main navigation channels, fixed yellow lights shall be used to mark the adjacent piers and the centerline of the channel shall be marked with the standard lateral system safe water mark and occulting white light, instead of the lights prescribed in § 118.65.

(c) The District Commander may require or authorize the marking of the centerline of the navigation channel drawspan of floating drawbridges with a special mark, diamond in shape, yellow in color, and with a high intensity retroreflective material border. The District Commander may require or authorize the mark to exhibit a flashing yellow light Morse Code "B" characteristic. The mark may not be visible when the drawspan is in the open position.

§ 118.120 Radar reflectors and racons.

The District Commander may require or authorize the installation of radar reflectors and racons on bridge structures, stakes, or buoys. Radar reflectors are used to mark the location of the edge of the navigation channel or bridge channel piers. Racons are used to mark the centerline of the channel.

§ 118.130 Fog signals.

On waterways where visibility is frequently reduced due to fog or other

causes, the District Commander may require or authorize the installation of one or more fog signals to warn the navigator of the presence of the bridge. The fog signals must conform to the installation, range, and sound frequencies provisions in Subpart 67.10 of Part 67 of this chapter. If more than one fog signal is installed on a bridge or in the vicinity, their characteristics must be different to distinguish each signal. The fog signals must be directional to the fullest extent possible to minimize adverse impact on local residents.

§ 118.140 Painting bridge piers.

The District Commander may require painting the sides of bridge channel piers below the superstructure facing traffic white or yellow when they are significantly darkened by weathering or other causes so as to be poorly visible against a dark background.

§ 118.150 Traveller platforms.

The District Commander may require under deck traveller platforms which may significantly reduce the vertical clearance when operated over navigation channels at night to be lighted with quick flashing red lights on each of the four lower corners.

§ 118.160 Vertical clearance gauges.

(a) When necessary for reasons of safety of navigation, the District Commander may require or authorize the installation of clearance gauges. Except as specified in § 117.47(b) of this chapter for certain drawbridges, clearance gauges must meet the requirements of this section.

(b) Clearance gauges must indicate the vertical distance between "low steel" of the bridge channel span and the level of the water, measured to the bottom of the foot marks, read from top to bottom. Each gauge must be installed on the end of the right channel pier or pier protection structure facing approaching vessels and extend to a reasonable height above high water so as to be meaningful to the viewer. Other or additional locations may be prescribed by the District Commander if particular conditions or circumstances warrant.

(c) *Construction.* Each gauge must be permanently fixed to the bridge pier or pier protection structure and made of a durable material of sufficient strength to provide resistance to weather, tide, and current. Gauges may be painted directly on the bridge channel pier or pier protection structure if the surface is suitable and has sufficient width to accommodate the foot marks (graduations) and numerals.

(d) *Numerals.* (1) Each gauge must be marked by black numerals and foot marks on a white background. Paint, if used, must be of good exterior quality, resistant to excessive chalking or bleeding. Manufactured numerals and background material may be used.

(2) The size, type, and spacing of numerals must conform to the Standard Alphabets for Highway Signs and the following table. The nominal day visibility distance is the distance at which the clearance information needs to be ascertained by approaching vessel operators. The District Commander determines this distance for each bridge.

Nominal day visibility distance (feet)	Height of numeral (inches)	Type of numeral	Vertical spacing of numerals (feet)
Less than 500	12	Series C	2
500 to 750	18	Series C	2
750 to 1,000	24	Series D	5
1,000 to 2,000	30	Series E	5
More than 2,000	36	Series E	10

(3) The length of the foot marks must be no less than the width of a single numeral used (except numerals 1 and 4), be the same thickness as the width of stroke of the numeral, and extend to the nearest margin of the white background. Foot marks must be spaced every foot for nominal day visibility of less than 500 feet, every two feet for a nominal day visibility of more than 500 feet but less than 1,000 feet, and every five feet for nominal day visibility of more than 1,000 feet.

(4) Intermediate foot marks may be used when more precise determination of actual clearance is necessary. Such intermediate foot marks must have a width of stroke one-half the width of the stroke required for the numeral and shall be three-quarters as long as the primary foot marks.

(5) The horizontal distance between the numeral and nearest edge of the white background shall be no less than one-half the width of a single numeral (excepting numerals 1 and 4).

(6) The minimum width of the white background shall be no less than three times the width of a single numeral (excepting numerals 1 and 4) plus the widths of each additional numeral (when multiple numerals are used plus numeral spacing).

(e) *Maintenance.* The owner or operator of the bridge shall maintain each gauge in good repair and legible condition. The bridge owner or operator is responsible for the accuracy of the gauge and shall remeasure the vertical distance of the numerals and foot marks below "low steel" of the bridge whenever the gauge is repainted or the structure is repaired.

Dated: April 14, 1986.

T.J. Wojnar,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation.

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VETERANS ADMINISTRATION

38 CFR Part 21

Veterans Education; Adjustments in the G.I. Bill Resulting From the Veterans' Educational Assistance Act of 1984

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: These regulations implement provisions of the Veteran's Educational Assistance Act of 1984 which affect people eligible to receive benefits under the dependents' educational assistance program or the G.I. Bill. Some regulations which deal primarily with the G.I. Bill are amended to show that they also apply to the new educational program for members of the Armed Forces or to the new educational program for members of the Selected Reserve, or both. These regulations will acquaint the public with the way in which the VA (Veterans Administration) will implement these provisions of law.

EFFECTIVE DATES: The amendment to 38 CFR 21.4005(c) is effective April 14, 1986. In keeping with the Veterans' Educational Assistance Act of 1984, the rest of the regulations are effective October 19, 1984.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: On pages 47066 through 47068 of the Federal Register of November 14, 1985, it was proposed to amend 38 CFR Part 21 to make it consistent with the Veterans' Educational Assistance Act of 1984. Interested people were given 28 days to submit comments, suggestions or objections.

The VA received one letter from an educational organization. The letter writer commented that he had no problem with the proposal. Accordingly, the VA is making the proposal final without change.

The VA is making these regulations retroactively effective on October 19, 1984. Retroactive effect is justified for