

approved OMB control number to read as follows:

§ 371.16 [Amended]

"(The recordkeeping requirements contained in paragraph (b) were approved by the Office of Management and Budget under control number 0625-0154)"

PART 377—SHORT SUPPLY CONTROLS AND MONITORING

3. The authority citation for 15 CFR Part 377 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503, 50 U.S.C. app. 2401 *et seq.*, as amended by Pub. L. 97-145 of Dec. 29, 1981 and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); sec. 103, Pub. L. 94-163, as amended, (42 U.S.C. 6212) as amended by Pub. L. 99-58 of July 2, 1985; sec. 28 Pub. L. 93-153, (30 U.S.C. 185); sec. 28 Pub. L. 95-372, (43 U.S.C. 1354); E.O. 11912 of April 3, 1976 (41 FR 15825, as amended); sec. 101 and 201(11)(e) Pub. L. 94-258, (10 U.S.C. 7420(e)); and Presidential Findings (50 FR 25189, June 18, 1985).

§ 377.6 [Amended]

4. Section 377.6 is amended by adding, at the end of the section, the approved OMB control number to read as follows:

Approved by the Office of Management and Budget under control numbers 0625-0154 and 0625-0155)

§ 377.7 [Amended]

5. Section 377.7 is amended by adding, at the end of the section, the approved OMB control number to read as follows:

(The reporting requirements contained in paragraph (h) were approved by the Office of Management and Budget under control number 0625-0153)

Dated: July 8, 1986

Paul Freedenberg,

Assistant Secretary for Trade Administration.

[FR Doc. 86-15761 Filed 7-11-86; 8:45 am]

BILLING CODE 3510-DT-M

15 CFR Part 399

[Docket No. 60611-6111]

Validated License Controls on Automatic Sawing Equipment

AGENCY: Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: Export Administration maintains the Commodity Control List (CCL), which identifies those items subject to Department of Commerce export controls.

This rule amends the validated export license controls on certain automatic sawing equipment described in entry

1355A of the CCL pursuant to a finding of foreign availability under section 5(f) of the Export Administration Act of 1979, as amended. Automatic sawing equipment, specially designed for the processing of semiconductor wafers and capable of slicing ingots of 3 inches (76.2 mm) or greater in diameter, now requires a validated license for export only to destinations in Country Groups Q, S, W, Y and Z, the People's Republic of China, and Afghanistan.

Notice of the foreign availability determination on this equipment has been previously published (51 FR 24736).

EFFECTIVE DATE: July 14, 1986.

FOR FURTHER INFORMATION CONTACT: John Pastore, Office of Foreign Availability, Department of Commerce, Washington, DC 20230, Telephone: (202) 377-3564.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a military affairs function of the United States, it is not a rule or regulation within the meaning of Section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has been or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of notice of proposed rulemaking, an opportunity for public comment and a delay in effective date. This rule is also exempt from APA requirements because it involves a military affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Comments should be submitted to Betty Ferrell, Office of Technology and Policy Analysis, Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory

Flexibility Analysis has to be or will be prepared.

4. This rule mentions a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0625-0001.

List of Subjects in 15 CFR Part 399

Exports, Reporting and recordkeeping requirements.

PART 399—[AMENDED]

Accordingly, the Export Administration Regulations 15 CFR Part 399 is amended as follows:

1. The authority citation for Part 399 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.*, as amended by Pub. L. 97-145 of December 29, 1981 and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223, 50 U.S.C. 1701 *et seq.*; E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985).

Supplement No. 1 to § 399.1 [Amended]

2. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment), ECCN 1355A is amended by revising the *Validated License Required* paragraph to read "Country Groups QSTVWYZ, except that automatic sawing equipment described in paragraph (b) (1) (xi) requires a validated license only for Country Groups QSWYZ, the People's Republic of China, and Afghanistan."

Dated: July 9, 1986.

James K. Pont,

Acting Director, Office of Foreign Availability.

[FR Doc. 86-15734 Filed 7-11-86; 8:45 am]

BILLING CODE 3510-DT-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 240, 249 and 260

[Release No. 33-6652; 34-23406; 39-2022]

Reporting by Small Issuers

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission announces the adoption of revisions to Rules 12g-1, 12g-4 and 12h-3 under the Securities Exchange Act of 1934 (the "Exchange Act")¹ which would increase the

¹ 15 U.S.C. 78a *et seq.*

number of issuers outside the scope of the registration and reporting requirements of the Exchange Act by adjusting the total assets threshold from \$3 million to \$5 million. These revisions represent a part of the continuing effort by the Commission to reduce the burdens to the smallest issuers of complying with such registration and reporting provisions to the greatest extent possible consistent with the protection of investors. Conforming changes also are being made to Form 15 and to certain of the Commission's definitions of a small entity for purposes of the Regulatory Flexibility Act.²

EFFECTIVE DATE: August 15, 1986.

FOR FURTHER INFORMATION CONTACT: Richard K. Wulff or Karen O'Brien, (202) 272-2644, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: On September 30, 1985, the Commission published for comment several proposed amendments to its rules to increase the number of issuers classified as exempt from the registration and reporting provisions of the Exchange Act by changing the total asset threshold from \$3 million to \$5 million.³ The proposals were a continuation of the Commission's efforts to reduce the costs to small issuers of complying with the registration and reporting provisions under the Exchange Act.⁴ Having considered the comments received from the public, the Commission is adopting the revisions substantially as proposed.

I. Present Requirements and the Revisions

Section 12(g) provides that an issuer which has 500 or more record holders of a class of equity securities and total assets of \$1 million must register its securities under the Exchange Act.⁵

Rule 12g-1 exempts from that registration requirement any issuer whose total assets do not exceed \$3 million. Rules 12g-4 and 12h-3 allow for termination of registration of a class of securities under section 12(g) and suspension of the duty to file reports under section 15(d)⁶ when such class of securities is held of record by less than 300 persons or by less than 500 persons where the total assets of the issuer have not exceeded \$3 million on the last day of each of the issuer's three most recent fiscal years.⁷

Under today's revisions to Rule 12g-1, an issuer is not required to register under section 12(g) of the Exchange Act until it has 500 or more record holders of a class of equity securities and total assets of \$5 million or more.⁸ The revisions to Rules 12g-4 and 12h-3 allow for the termination of registration of a class of securities under section 12(g) of the Exchange Act and suspension of the duty to file reports under section 15(d) of the Exchange Act when such class of securities is held of record by less than 300 persons or by less than 500 persons where the total assets of the issuer have not exceeded \$5 million on the last day of each of the issuer's three most recent fiscal years.⁹

In addition, the description of Form 15 is amended to indicate that the total assets criterion is \$5 million and the definition of a small entity for purposes of the Regulatory Flexibility Act is conformed to the total assets criterion of \$5 million in Rules 12g-1, 12g-4 and 12h-3.¹⁰

² Section 15(d) of the Exchange Act requires every issuer which has had a registration statement declared effective under the Securities Act, 15 U.S.C. 77a et seq. to comply with the periodic reporting requirements of section 13 of the Exchange Act.

³ Release No. 34-20263 (October 5, 1983) (48 FR 48245) and Release No. 34-20784 (March 22, 1984) (49 FR 12688). The suspension provided by Rule 12h-3 from section 15(d) of the Exchange Act does not apply to an issuer with respect to any fiscal year in which the registration statement became effective or is required to be updated pursuant to section 10(a)(3) of the Securities Act.

⁴ The proposed modification to Rule 12g-1 would retain the standard with respect to foreign private issuers which provides that if a foreign private issuer has securities quoted in an automated interdealer quotation system it would remain subject to registration under section 12(g) of the Exchange Act.

⁵ In the case of foreign issuers the criteria for security holders is based on the number of security holders resident in the United States.

¹⁰ It should be noted that the actions taken today raising the asset threshold requirements will affect the transfer agent registration requirement in section 17A(c)(1) of the Exchange Act. Issuers are reminded that registration under section 12 of the Exchange Act continues to be a prerequisite for including their securities on the NASDAQ system, and that only transfer agents registered pursuant to Section 17A(c)(1) may perform transfer agent functions for such securities.

II. Public Comments Regarding the Proposals

The Commission received six comment letters regarding the proposals, five of which supported the concept of classifying small issuers and exempting certain of them from Exchange Act reporting and other obligations.¹¹ Some commentators also offered general views on the concept of classification and proposed additional classification criteria. The Commission is today publishing an advance notice of proposed rulemaking elsewhere in today's issue seeking comments from the public with respect to these and other suggested criteria for governing entry into and exit from the Exchange Act disclosure system.¹²

The one opposing commentator viewed the proposals as harmful to the investing public because approximately 430 current issuers would no longer be subject to the Exchange Act disclosure system and in his view, the securities markets would be unable to price these issuers' securities in an accurate manner.¹³ The Commission does not agree with the position that there would not be sufficient information for trading markets or for these markets to accurately price issuers securities. Issuers whose securities are quoted in the NASDAQ inter-dealer quotation system still have to register these securities pursuant to Section 12(g) of the Exchange Act. Issuers whose securities would trade in the ordinary over-the-counter market would have to publicly provide certain information because of the Commission's Rule 15c2-11.¹⁴ Moreover, exemption from the reporting provisions does not relieve these companies from the application of the anti-fraud provisions of the federal securities law.

III. Availability of Final Regulatory Flexibility Analysis

A final Regulatory Flexibility Analysis in accordance with the Regulatory Flexibility Act regarding the amendments has been prepared. A summary of the corresponding Initial Regulatory Flexibility Analysis was included in the proposing release.

¹¹ The comment letters and a Summary of Comments (File No. S7-43-85) are available for public inspection and copying at the Commission's Public Reference Room, 450 5th Street, NW., Washington, DC 20549.

¹² Release No. 34-23407 (July 8, 1986).

¹³ The Commission estimated that of the 700 companies which could be relieved of the Exchange Act reporting obligations, approximately 270 would continue to voluntarily report to maintain their NASDAQ listing.

¹⁴ Rule 15c2-11, 17 CFR 240.15c2-11.

² 5 U.S.C. 604 et seq.

³ Release Nos. 33-6605; 34-22483; 39-1038 (September 30, 1985) (50 FR 41162).

⁴ These efforts are complementary to those required by the Small Business Investment Incentive Act of 1980, Pub. L. 96-477 (October 21, 1980), to remove unnecessary and burdensome regulatory restraints on the capital raising efforts of the small business community consistent with the purposes of investor protection. That statute principally amended the Securities Act of 1933 (the "Securities Act"), the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940 and the Securities Investor Protection Act of 1970.

⁵ If an issuer has a class of securities registered under section 12 of the Exchange Act, the issuer and, where applicable, specified persons are required to comply with the periodic reporting provisions of section 13, the proxy and tender offer requirements of section 14, and the short swing profit provisions of section 16 of the Exchange Act.

Members of the public who wish to obtain a copy of the Final Regulatory Flexibility Analysis should contact Richard K. Wulff or Karen O'Brien as specified above.

IV. Certain Findings

As required by section 23(a) of the Exchange Act, the Commission has specifically considered the impact that these rulemaking actions would have on competition and has concluded that they would not impose a significant burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

V. Statutory Basis and Text of the Amendments

The amendments to the Commission's rules and forms are being adopted by the Commission pursuant to section 19 of the Securities Act; Sections 12, 13, 15 and 23(a) of the Exchange Act; and Section 319 of the Trust Indenture Act of 1939.

List of Subjects in 17 CFR Parts 230, 240, 249 and 260

Reporting and recordkeeping requirements, Securities.

Text of Amendments

Accordingly, Parts 230, 240 and 260 of Chapter II of Title 17 of the Code of Federal Regulations are hereby amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for Part 230 continues to read, in part, as follows:

Authority: Sec. 230.100 to 230.174 issued under section 19, 48 Stat. 85, as amended: 15 U.S.C. 77s * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

2. The authority citation for Parts 240 and 249 continues to read as follows:

Authority: Sec. 23, 48 Stat. 901, as amended: 15 U.S.C. 78w.

PARTS 230, 240 and 249—[AMENDED]

3. 17 CFR Parts 230, 240, and 249 are amended by removing the reference to "\$3,000,000" and replacing it with "\$5 million" in the following sections:

- (a) 17 CFR 230.157(a)
- (b) 17 CFR 240.0-10(a)
- (c) 17 CFR 240.12g-1
- (d) 17 CFR 240.12g-4(a)(1) and 240.12g-4(a)(2)

- (e) 17 CFR 240.12h-3(b)(1) and 240.12h-3(b)(2)
- (f) 17 CFR 249.323(a).

PART 260—GENERAL RULES AND REGULATIONS, TRUST INDENTURE ACT OF 1939

4. The authority citation for Part 260 continues to read, in part, as follows:

Authority: Sec. 319, 53 Stat. 1149, as amended: 15 U.S.C. 77aaa * * *

§ 260.0-7 [Amended]

5. By amending § 260.0-7 by removing the reference to "\$3 million" and replacing it with "\$5 million".

By the Commission.

Jonathan G. Katz,

Secretary.

July 8, 1986.

[FR Doc. 86-15796 Filed 7-11-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 11, 13 and 375

[Docket No. RM83-57-000; Order No. 453]

Payments for Benefits From Headwater Improvements

Correction

In FR Doc. 86-14930 beginning on page 24308 in the issue of Thursday, July 3, 1986, make the following correction:

On page 24310, in the first column, in footnote 8, the second line should read:

$$P_n = C_n \times (V_n/V_i + v_n)$$

BILLING CODE 1505-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 160

[Docket No. 85P-0028/CP]

Lysozyme and Avidin Reduced Dried Egg Whites; Amendment of the Standard of Identity; Confirmation of Effective Date

AGENCY: Food and Drug Administration.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date for compliance with the final rule amending the standard of

identity for dried egg whites published in the Federal Register of April 3, 1986 (51 FR 11434).

EFFECTIVE DATE: Effective July 1, 1987, for all affected products initially introduced or initially delivered for introduction into interstate commerce on or after this date. Voluntary compliance may have begun June 2, 1986.

FOR FURTHER INFORMATION CONTACT: Arthur R. Johnson, Center for Food Safety and Applied Nutrition (HFF-214), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0112.

SUPPLEMENTARY INFORMATION: In the Federal Register of April 3, 1986 (51 FR 11434), FDA issued a final rule amending the standard of identity for dried egg whites (21 CFR 160.145) to provide for the optional reduction of lysozyme and avidin content by cation exchange procedures before drying. The final rule was promulgated in consideration of a petition dated January 17, 1985, filed on behalf of Societa Prodotti Antibiotici and Henningsen Foods, Inc. The final rule provided that any person who would be adversely affected by the regulation could at any time on or before May 5, 1986, file written objections and request a hearing on the specific provisions to which there were objections. No objections or requests for a hearing were filed in regard to the final rule.

List of Subjects in 21 CFR Part 160

Eggs; Food standards.

PART 160—EGGS AND EGG PRODUCTS

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 401, 701(e), 52 Stat. 1046, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Food Safety and Applied Nutrition (21 CFR 5.62), notice is given that Part 160, as amended in the Federal Register of April 3, 1986 (51 FR 11434), will become effective July 1, 1987. Voluntary compliance may have begun June 2, 1986.

Dated: July 2, 1986.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86-15727 Filed 7-11-86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 669

[FHWA Docket No. 85-8]

Certification of Enforcement of Heavy Vehicle Use Tax

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rulemaking.

SUMMARY: This notice sets forth procedures to be followed by each state for certifying that it is obtaining evidence of proof of payment of the Federal heavy vehicle use tax in accordance with 23 U.S.C. 141(d) for vehicles subject to the use tax imposed by Section 4481 of the Internal Revenue Code of 1954, as amended, before such vehicles are lawfully registered in the state. An annual certification of compliance is required. Procedures are specified for reducing a state's apportionment of highway funds in accordance with 23 U.S.C. 141(d) in the event a state fails to meet the requirements of this regulation.

EFFECTIVE DATE: July 14, 1986.

FOR FURTHER INFORMATION CONTACT:

Mr. Thomas R. Weeks, Chief, Highway Users and Funding Division, (202) 426-0170; or Mr. David C. Oliver, Office of the Chief Counsel (202) 426-0825, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: Section 143 of the Surface Transportation Assistance Act of 1982 (23 U.S.C. 141(d)) provides that a state's apportionment of funds under 23 U.S.C. 104(b)(5) shall be reduced in an amount up to 25 percent of the amount to be apportioned in any fiscal year beginning after September 30, 1984, during which vehicles, subject to the Federal heavy vehicle use tax imposed by Section 4481 of the Internal Revenue Code of 1954, as amended, are lawfully registered without having presented proof of payment of the use tax. On August 8, 1985, the FHWA published a notice of proposed rulemaking (Docket No. 85-8) for purposes of obtaining comments on proposed procedures for determining state compliance with the provisions of 23 U.S.C. 141(d). (Also see regulations issued by the Internal Revenue Service on May 23, 1985, at 50 FR 21243, which specify the circumstances under which a state must require evidence of proof of payment of the Federal heavy vehicle

use tax and the required manner in which proof of payment must be received by the state as a condition of registering vehicles subject to the tax.)

Twelve responses were received within the 45-day comment period provided by the notice of proposed rulemaking, and eight responses were received within a few days after the close of the comment period. All comments have been included in the docket and considered in this final rulemaking action.

Most of the comments stated that the procedures contained in the notice of proposed rulemaking are reasonable and can be implemented without undue difficulty. Several comments, however, questioned the proposed certification procedure on the basis that no specific language is included in the statute requiring a certification. This factor was carefully considered by FHWA in preparing the notice of proposed rulemaking, and it was determined that (1) FHWA has sufficient legal authority for establishing a certification procedure under the broad rulemaking authority provided under 23 U.S.C. 315, (2) the certification procedure is a reasonable means for administering the requirements of 23 U.S.C. 141(d) without undue administrative burdens being placed on the states and FHWA, and (3) the certification procedure is necessary to meet the responsibility of the Department of Transportation to make a determination that the policies and procedures of the states are consistent with the requirements of 23 U.S.C. 141(d). In light of the comments to the docket, however, FHWA has again reviewed the legal authority for administratively establishing a certification requirement. As a result, FHWA is satisfied that strong legal authority exists for promulgating this requirement and that the procedure is the most reasonable and practical means for FHWA to administer this statute without burdening the states with inordinate recordkeeping and subjecting the states to frequent compliance reviews.

Congress has clearly expressed its intent to impose conditions on the grant of Federal funds so that the states can knowingly decide whether to accept these funds. As a general matter, Federal administrative agencies have the power to oversee a cooperative Federal-state venture. But even where an agency has the power to cut off Federal funds, there is a shared perception that this is a remedy with possible injurious consequences to the proposed beneficiaries of the legislative scheme.

The states always retain the option of not participating in a Federal program, whereas here Congress authorizes conditions upon the granting of aid for that program.

This regulation sets forth what we think is necessary to comply with the Act, and allows each state the opportunity to decide in advance whether it wishes to give up the Federal funds and go its own way, or, if not, to articulate its plan for achieving compliance. Certification provides the state with the opportunity to incorporate its own procedures for registering vehicles and monitoring that registration with the least obtrusive Federal presence.

Although the statutory language does not create an express requirement for a state certification, the provisions of 23 U.S.C. 315 (1982) authorize the Secretary to prescribe and promulgate all needful rules and regulations to carry out the provisions of Title 23. The proven effectiveness of the certification as a device for monitoring a Federally assisted program is underscored by the other similar programs in Title 23, i.e., speed limit and size and weight. Without a certification and state assistance in this effort, there would be a need to set forth Federal standards governing the factual process of registration. Review criteria would be unnecessarily complex in order to establish a minimum uniformity.

One comment questioned the need for an annual certification and periodic compliance reviews by FHWA. The notice of proposed rulemaking stated that the state certification and supporting documentation, such as applicable laws, administrative procedures, and guidelines will serve as the principal means for determining the state compliance with the statute. The FHWA believes, however, that independent reviews on a periodic basis are not only necessary to meet its program management responsibilities, but are desirable and can help strengthen the state procedures by providing an independent assessment of implementation practices and procedures. This approach is based on a shared responsibility by the states and FHWA to implement congressional intent.

One comment stated that it is inappropriate for FHWA to base a determination of nonconformity on the failure of a state to certify. The FHWA disagrees with this contention. The certification procedure is the critical feature in establishing a manageable and reasonable procedure for determining state compliance with the

statute. Disregard for the certification would severely weaken the procedure and place the full burden of determining state compliance on FHWA.

Another comment questioned the appropriateness of FHWA initiating procedures for a reduction of funds based on a "proposed" determination of nonconformity. This comment further stated that the agency (FHWA) should complete its fact-finding and reach a "final" determination before a state is informed by FHWA. We have revised the procedures for reduction of funds to simplify the entire procedure. The statute does not provide for a hearing; however, it is FHWA's policy to provide a state faced with the potential loss of funds an opportunity to "show cause" why such action should not be taken. If a state is found in noncompliance, the Administrator with the concurrence of the Secretary, shall issue a decision; if a state is found in compliance, the Administrator shall issue a final decision. In the event that a Final Decision in a particular case has not been made before October 1, the beginning of a fiscal year, states subject to such proceedings are notified that the Department will apportion Federal-aid funds for the state, but reserve from obligation up to 25 percent of the funds. This process preserves the Department's ability to impose sanctions if they are deemed appropriate.

Several comments pointed out an apparent inconsistency between the notice of proposed rulemaking and the May 23, 1985, final regulation issued by the Internal Revenue Service (IRS). The IRS regulations allow a state to implement a suspension registration system; however, the scope and purpose (§ 669.1) and policy (§ 669.3) statements in the FHWA notice of proposed rulemaking did not recognize this provision. The FHWA agrees that the IRS provisions for a suspension registration system should be reflected in the final procedures, and §§ 669.1 and 669.3 have been revised accordingly.

Three comments proposed that additional alternatives for recordkeeping be provided. Specifically, two comments proposed the use of microfilm and microfiche, and the other proposed a more flexible approach to permit other methodologies specifically authorized and approved by FHWA. The FHWA agrees that microfilm and microfiche will provide suitable documentation and this alternative has been added to § 669.21. Other alternatives will be considered by the FHWA as they are devised and if they appear practicable. The FHWA intends to provide maximum flexibility to the

states in this area; however, it believes that basic parameters for recordkeeping should be established on a national basis. Within these parameters, FHWA will work with individual states to implement variations where needed.

Several comments pertained to the procedures for implementing the proof of payment requirements established by the May 23, 1985, IRS final regulation. Specifically, one comment stated that the IRS procedures covering proof of payment for more than 21 vehicles eliminated the effective use of automated files since vehicle identification numbers (VIN) are not required. Two comments addressed difficulties of monitoring fleet registrations within VIN's, and one comment recommended that the states and the IRS exchange computer tapes for use in determining proof of payment of the heavy vehicle use tax. These comments have been brought to the attention of the IRS for consideration in possible amendments to the May 23, 1985, final regulation.

Finally, to allow the states adequate time to comply with § 669.7, which requires an annual certification that it is obtaining evidence of proof of payment before July 1, the initial certification will be accepted if submitted within thirty days of the publication date of this rulemaking.

Therefore, based upon further review and consideration of public comments, the FHWA is adopting the proposal published on August 8, 1985, subject to the revisions discussed herein.

The FHWA has determined that this document contains neither a major rule under Executive Order 12291 nor a significant regulation under DOT regulatory policies and procedures. The procedures in this document are being issued in order to implement a statutory mandate. A regulatory evaluation has not been prepared because of the ministerial nature of this action.

Since this rule will primarily impact the states under the criteria of the Regulatory Flexibility Act, it is certified that this action will not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511), the reporting or recordkeeping provisions that are included in this regulation are being submitted to the Office of Management and Budget (OMB) for approval.

List of Subjects in 23 CFR Part 669

Grants programs—transportation, Highways and roads, Taxes, Motor vehicles.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

In consideration of the foregoing, FHWA amends Chapter I of Title 23, Code of Federal Regulations, by adding a new Part 669 to read as set forth below:

Issued on July 8, 1986.

Ray Barnhart,

Federal Highway Administrator.

PART 669—ENFORCEMENT OF HEAVY VEHICLE USE TAX

Sec.

- 669.1 Scope and purpose.
- 669.3 Policy.
- 669.5 Objective.
- 669.7 Certification requirement.
- 669.9 Certification content.
- 669.11 Certification submittal.
- 669.13 Effect of failure to certify or to adequately obtain proof of payment.
- 669.15 Procedure for the reduction of funds.
- 669.17 Compliance finding.
- 669.19 Reservation and reapportionment of funds.
- 669.21 Procedure for evaluating state compliance.

Authority: 23 U.S.C. 141(d) and 315; 49 CFR 1.48(b).

§ 669.1 Scope and purpose.

To prescribe requirements for certification by the states that evidence of proof of payment is obtained either before vehicles subject to the Federal heavy vehicle use tax are lawfully registered or within 4 months after being lawfully registered if a suspension registration system is implemented.

§ 669.3 Policy.

It is the policy of the FHWA that each state require registrants of heavy trucks as described in 26 CFR Part 41 to provide proof of payment of the vehicle use tax either before lawfully registering or within 4 months after lawfully registering such vehicles as provided for under a suspension registration system.

§ 669.5 Objective.

The objective of this regulation is to establish realistic and workable procedures for an annual certification process to provide suitable evidence that an effective program is being conducted by the states and to ensure that the states are not registering vehicles which have not been accounted for under the tax collection procedures instituted by the Internal Revenue Service (IRS).

§ 669.7 Certification requirement.

The Governor of each state, or his or her designee, shall certify to the FHWA before July 1 of each year that it is obtaining proof of payment of the heavy vehicle use tax as a condition of registration in accordance with 23 U.S.C. 141(d). The certification shall cover the 12-month period (8 months for the initial certification period) ending May 31.

§ 669.9 Certification content.

The certification shall consist of the following elements:

(a) A statement by the Governor of the state or a state official designated by the Governor, that evidence of payment of the heavy vehicle use tax is being obtained as a condition of registration for all vehicles subject to such tax. The statement shall include the inclusive dates of the period during which payment of the heavy vehicle use tax was verified as a condition of registration.

(b) The certifying statement required by paragraph (a) of this section shall be worded as follows: I (name of certifying official), (position, title), of the State of (), do hereby certify that evidence of payment of the heavy vehicle use tax pursuant to Section 4481 of the Internal Revenue Code of 1954, as amended, is being obtained as a condition of registration for vehicles subject to such tax in accordance with 23 U.S.C. 141(d) and applicable IRS rules. This certification is for the period () to ().

(c) For the initial certification, submit a copy of any state law or regulation pertaining to the implementation of 23 U.S.C. 141(d); for subsequent certifications, submit a copy of any new or revised laws and regulations pertaining to the implementation of 23 U.S.C. 141(d).

§ 669.11 Certification submittal.

The Governor or an official designated by the Governor, shall each year submit the certification, including the supporting material specified in § 669.9 to the FHWA Division Administrator prior to July 1.

§ 669.13 Effect of failure to certify or to adequately obtain proof of payment.

Beginning July 1, 1986, if a state fails to certify as required by this regulation or if the Secretary of Transportation determines that a state is not adequately obtaining proof of payment of the heavy vehicle use tax as a condition of registration notwithstanding the state's

certification, Federal-aid highway funds apportioned to the state under 23 U.S.C. 104(b)(5) for the next fiscal year shall be reduced in an amount up to 25 percent as determined by the Secretary.

§ 669.15 Procedure for the reduction of funds.

(a) If it appears to the Federal Highway Administrator that a state has not submitted a certification conforming to the requirements of this regulation or that the state is not adequately obtaining proof of payment of the heavy vehicle use tax under 23 U.S.C. 141(d), the Federal Highway Administrator shall make in writing a proposed determination of nonconformity, and shall notify the Governor of the state of the proposed determination by certified mail. The notice shall state the reasons for the proposed determination and inform the state that it may, within 30 days from the date of the notice, request a conference to show cause why it should not be found in nonconformity.

(b) The conference will be informal in nature and conducted by the Administrator, or his/her designee. In all instances where the state proceeds on this basis, a transcript will be made and furnished to the state by FHWA. The state may offer any information which it considers helpful to a resolution of the matter, and the scope of review at the conference shall include, but not be limited to, state legislative actions (including those proposed to remedy deficiencies), budgetary considerations, judicial actions, and proposals for specific actions which will be implemented to bring the state into compliance.

(c) The state has the option to request such a conference, or it may submit such information in writing to the Administrator, who will make a determination on the basis of such materials and other available information.

§ 669.17 Compliance finding.

(a) If, following the conference or review of submitted materials described in § 669.15, the Administrator concludes that the state is in compliance, the Administrator shall issue a decision which is the final decision, and the matter shall be concluded.

(b) If, following the conference or review of information submitted under § 669.15, the Administrator, with the concurrence of the Secretary, concludes

that the state is in noncompliance, the Administrator shall issue a decision, which is the final decision, and the matter be concluded. The decision will be served on the Governor, or his/her designee.

§ 669.19 Reservation and reapportionment of funds.

(a) The Administrator may reserve from obligation up to 25 percent of a state's apportionment of funds under 23 U.S.C. 104(b)(5), pending a final determination.

(b) Funds withheld pursuant to a final administrative determination under this regulation shall be reapportioned to all other eligible states pursuant to the formulas of 23 U.S.C. 104(b)(5) and the apportionment factors in effect at the time of the original apportionments, unless the Secretary determines, on the basis of information submitted by the state, that the state has come into conformity with this regulation prior to the final determination. If the Secretary determines that the state has come into conformity, the withheld funds shall be released to the state subject to the availability of such funds under 23 U.S.C. 118(b).

(c) The reapportionment of funds under paragraph (b) of this section shall be stayed during the pendency of any judicial review of the Secretary's final determination of nonconformity.

§ 669.21 Procedure for evaluating state compliance.

The FHWA shall periodically review the state's procedures for complying with 23 U.S.C. 141(d), including an inspection of supporting documentation and records. The state shall retain a copy of the receipted IRS Schedule 1 (Form 2290), or an acceptable substitute prescribed by 26 CFR Part 41, § 41.60001-2, for a period of 1 year for purposes of evaluating state compliance with 23 U.S.C. 141(d) by the FHWA. In lieu of retention of Schedule 1, states may make an appropriate entry in an automated file or on registration documents retained by the state or retain a microfilm or microfiche copy of Schedule 1 or of the automated file as evidence that proof of payment has been received before vehicles subject to the Federal heavy vehicle use tax are registered.

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