Commodities Act, 1930" states:

(b) Bond required if complainant is nonresident. If formal complaint for reparation is filed by a nonresident of the United States, complainant shall first file a bond in double the amount of the claim either with a surety company approved by the Treasury Department of the United States as surety or with two personal sureties, each of whom shall be citizen of the United States and shall qualify as financially responsible for the entire amount of the bond. The bond shall run to the respondent and be conditioned upon the payment of costs, including reasonable attorney's fee, for the respondent if the respondent shall prevail, and of any reparation award that may be issued by the Secretary against the complainant on any counterclaim asserted by respondent: *Provided,* That the furnishing of a bond shall be waived if the complainant is a resident of a country which permits filing of a complaint by a resident of the United States against a citizen of that country without the furnishing of a bond.

The regulation makes no mention of the criterion that there must exist a comparable administrative forum in the complainant's country. Rather, without specifying the type of forum, it permits a waiver if the country of a nonresident who files a complain permits citizens of the United States to file complaints without furnishing a bond.

Since the publication of section 47.6(6) in its current form, commerce involving perishable agricultural commodities has changed dramatically. Businesses in many countries now buy from and sell produce to the United States. If a foreign complainant is not required to post a bond, a citizen of the United States who prevails in a PACA reparation proceeding may not be able to collect any judgment to which he or she is entitled since there would be no protective bond. Thus a prevailing party could be forced to bring another lawsuit in a judicial forum in the country of the non-citizen, where it might be necessary to incur the expense of employing foreign legal counsel and encounter significant delays. This would be inequitable and contrary to the intent of the PACA.

The PACA provides an administrative forum which allows the resolution of disputes without the necessity of a formal hearing or hiring counsel, utilizes relaxed rules of evidence, and provides for suspension of the license of the offending party for noncompliance with an award. Under the terms of the proposed amendment, residents of countries which have administrative forums or their equivalent which are substantially similar to that provided under PACA may apply to the Secretary for a waiver of the bond requirement.

List of Subjects in 7 CFR Part 47

Administrative practices and procedure, Agricultural Commodities, and Brokers.

For the reasons set forth in the preamble, 7 CFR part 47 is to be amended as follows.

PART 47—[AMENDED]

1. The authority citation for part 47 continues to read as follows:

Authority: 7 U.S.C. 4990; 7 CFR 2.17(a)(3)(xiii), 2.50(a)(3)(xiii).

2. Section 47.6 paragraph (b) is revised to read as follows:

§ 47.6 Formal complaints.

* * * * *

(b) *Bond Required if Complainant is Nonresident.* If formal complaint for reparation is filed by a nonresident of the United States, complainant shall first file a bond in double the amount of the claim either with a surety company approved by the Treasury Department of the United States as surety or with two personal sureties, each of whom shall be a citizen of the United States and shall qualify as financially responsible for the entire amount of the bond. The bond shall run to the respondent and be conditioned upon the payment of costs, including reasonable attorney's fees, for the respondent if the respondent shall prevail, and of any reparation award that may be issued by the Secretary against the complainant on any counterclaim asserted by respondent: *Provided,* That the furnishing of a bond may be waived at the discretion of the Secretary if the complainant is a resident of a country which permits the filing of a complaint in an administrative forum or its equivalent which is substantially similar to that provided under the Perishable Agricultural Commodities Act by a resident of the United States against a citizen of that country without the furnishing of a bond. Nothing in this section shall limit the discretion of the Secretary to deny such a waiver in order to effectuate the purposes of the Act or to protect the interests of the businesses concerned.

* * * * *

Dated: December 26, 1990.

Daniel Haley,

Administrator.

[FR Doc. 91-30554 Filed 1-2-91; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF COMMERCE

United States Travel and Tourism Administration

15 CFR Part 1201

[Docket No. 901237-0337]

RIN 0644-AA01

United States Travel and Tourism Administration Facilitation Fee

AGENCY: Department of Commerce, United States Travel and Tourism Administration.

ACTION: Final rule; imposition of United States Travel and Tourism Administration Facilitation Fee.

SUMMARY: As required by section 306(a) of the International Travel Act of 1961, as added by section 10301 of the Omnibus Budget Reconciliation Act of 1990, Public Law No. 101-508, the Under Secretary of Commerce for Travel and Tourism issues regulations assessing each commercial airline and passenger cruise ship line transporting passengers to the United States, a quarterly United States Travel and Tourism Administration (USTTA) Facilitation Fee. For each calendar quarter in 1991, such fee (which the Under Secretary is required to deposit in the general fund of the Treasury) is the amount of one dollar multiplied by the number of aliens described in section 101(a)(15)(B) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(B)) arriving at any port within the United States aboard a commercial aircraft or cruise ship of the commercial airline or passenger cruise ship line during that calendar quarter. Early in the first quarter of 1991, the Under Secretary will issue a notice of proposed rulemaking proposing detailed regulations governing determinations of the amount owed for each calendar quarter, methods and place of remittance, adjustment of the per alien multiplier in 1992 and in subsequent years, collection actions, the imposition of civil penalties and enforcement, and procedures for determining whether assessment of a fee with respect to a particular commercial airline or passenger cruise ship line is inconsistent with a specific treaty or international agreement entered into by the United States. The purpose of the final rule issued today is to provide notification to commercial airlines and passenger cruise ship lines beyond that already provided by section 10301 of the Omnibus Budget Reconciliation Act of 1990 of the imposition of the fee so that they may adjust their business practices, if they wish, to ensure that funds will be available to pay the fee.

EFFECTIVE DATE: January 1, 1991.

ADDRESSES: Hon. Rockwell A. Schnabel, Under Secretary of Commerce for Travel and Tourism, room 1863, HCHB, United States Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Lee J. Wells, Director, Office of Strategic Planning and Administration, U.S. Travel and Tourism Administration, HCHB Room 1524, United States Department of Commerce, Washington, DC 20230 (202) 377–3811.

SUPPLEMENTARY INFORMATION: Sections 306 of the International Travel Act of 1961, as added by section 10301 of the Omnibus Budget Reconciliation Act of 1990, Public Law No. 101–508, states:

(a) To the extent not inconsistent with treaties or international agreements entered into by the United States, the Secretary, on a calendar quarterly basis beginning January 1, 1991, shall charge and collect from each commercial airline and passenger cruise ship line transporting passengers to the United States, a United States Travel and Tourism Administration Facilitation Fee, in a amount determined under subsection (b).

(b)(1) During the period from January 1, 1991, through December 31, 1991, the Secretary shall charge each commercial airline and passenger cruise ship line an amount equal to one dollar multiplied by the number of aliens described in section 101(a)(15)(B) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(B)) arriving at any port within the United States aboard a commercial aircraft or cruise ship of such airline or passenger cruise ship line during that calendar quarter.

(2) Commencing in 1991, the Secretary shall each year determine and publish the amount of the fee described in subsection (a) for the 12-month period commencing on January 1 of the succeeding calendar year, as follows:

(A) The Secretary (in consultation with the Attorney General and the Secretary of State) shall estimate the number of aliens described in section 101(a)(15)(B) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(B)) expected to enter the United States during such succeeding calendar year, based upon the number of such aliens who entered the United States during the previous calendar year (as reported or estimated by the Attorney General) and such other available information as the Secretary deems reliable.

(B) The Secretary shall divide the amount appropriated to the United States Travel and Tourism Administration for the fiscal year during which such determination is made by the number of aliens described in subparagraph (A) expected by the Secretary to enter the United States during the calendar year described in such subparagraph, as estimated by the Secretary under such subparagraph, and shall round the result up to the nearest quarter-dollar.

(C) The Secretary shall publish in the **Federal Register** the estimate required by subparagraph (A), together with a description of the information supporting such estimate, and the amount of the fee determined under subparagraph (B) which shall be applicable during the 12-month period commencing on January 1 of the succeeding calendar year.

(D) For each calendar quarter beginning after December 31, 1991, the Secretary shall charge each commercial airline and passenger cruise ship line an amount equal to the fee amount determined under subparagraph (B) and applicable under subparagraph (C) multiplied by the number of aliens described in section 101(a)(15)(B) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(B)) arriving at any port within the United States abroad a commercial aircraft or cruise ship of such airline or passenger cruise ship line during that calendar quarter.

(3) Neither the estimate of the Secretary under paragraph (2)(A) nor the amount determined by the Secretary under paragraph (2)(B) shall be subject to judicial review.

(c) Each commercial airline and passenger cruise ship line shall remit the fee charged by the Secretary under subsection (b), in United States dollars, no later than 31 days after the close of the calendar quarter of the arrival of the aliens on which the calculation of the fee is based.

(d) The Secretary shall deposit the fees received pursuant to subsection (c) in the general fund of the Treasury as offsetting receipts and ascribed to the travel and tourism activities of the Secretary.

(e) Beginning on October 1, 1992, the aggregate amounts collected for the fee charged under this section shall at least equal the appropriations made for the travel and tourism activities of the Secretary under this Act, but at no time shall the aggregate of amounts collected for any fiscal year under this section exceed 105 percent of the aggregate of appropriations made for such fiscal year for activities to be funded by such fees.

(f) The Secretary may prescribe such rules and regulations as may be necessary to carry out the provisions of this section.

Sec. 307 of Public Law No. 101–508 states:

(a) Any commercial airline or commercial cruise ship line which is found by the Secretary or the Secretary's designee, after notice and an opportunity for a hearing, to have failed to pay to the Secretary, by the due date, the fee charged by the Secretary under section 306(a), may be ordered by the Secretary or the Secretary's designee to pay any fee amount outstanding plus interest on any late payment and, in addition, to pay a civil penalty not to exceed $5,000 for each day payment to the Secretary is not made or was made late. The amount of such civil penalty shall be assessed by the Secretary or the Secretary's designee by written notice. In determining the amount of such penalty, the Secretary or the Secretary's designee shall take into account the nature, circumstances, extent, and gravity of the violation, and, with respect to the violator, the degree of the culpability, and history of prior offenses, ability to pay, and such other matters as justice may require. Each day a payment to the Secretary required by this Act is late shall constitute a separate violation of this Act.

(b) If any commercial airline or cruise ship line fails to pay as ordered by the Secretary or the Secretary's designee, the Attorney General may, upon request of the Secretary, bring a civil action in any appropriate United States district court for the recovery of the amount ordered to be paid.

(c) Before requesting the Attorney General to bring a civil action, the Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under subsection (a).

(d) For the purpose of conducting any hearing under subsection (a), the Secretary or the Secretary's designee may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contempt or refusal to obey a subpoena served upon any person pursuant to this subsection, the United States district court for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or the Secretary's designee or to appear and produce papers, books, and documents before the Secretary or the Secretary's

designee, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

The regulations issued today merely repeat the language of section 306(a) and (b)(1) so as to assess each commercial airline and passenger cruise ship line transporting passengers to the United States, a quarterly USTTA Facilitation Fee. For each calendar quarter in 1991, such fee is the amount of one dollar multiplied by the number of aliens described in section 101(a)(15)(B) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(B)) arriving at any port within the United States aboard a commercial aircraft or cruise ship of the commercial airline or passenger cruise ship line during that calendar quarter. The Under Secretary of Commerce for Travel and Tourism is required to deposit fees received in the general fund of the United States Treasury.

Early in the first quarter of 1991, the Under Secretary will issue a notice of proposed rulemaking proposing detailed regulations governing determinations of the amount owed for each quarter, methods and place of remittance, adjustment of the per alien multiplier in 1992 and in subsequent years, collection actions, the imposition of civil penalties and enforcement, and procedures for determining whether assessment of a fee with respect to a particular commercial airline or passenger cruise ship line is inconsistent with a specific treaty or international agreement entered into by the United States. The Department of Commerce is working closely with the Department of Transportation to minimize the administrative burden on carriers. Section 306(b)(2) and (e) requires adjustment of the per alien multiplier in 1992 and in subsequent years so that the total fees collected for each fiscal year starting with fiscal year 1993 are at least equal to but do not exceed by more than 5 percent the amount appropriated for that fiscal year for the activities of USTTA. The purpose of the final rule issued today is to provide notification to commercial airlines and passenger cruise ship lines beyond that already provided by section 10301 of the Omnibus Budget Reconciliation Act of 1990 of the imposition of the fee so that they may adjust their business practices, if they wish, to ensure that funds will be available to pay the fee.

As presently envisioned, the Department of Commerce late in each calendar quarter will present each commercial airline and passenger cruise ship line with an estimate of the actual fee required to be remitted within 31 days after the end of that quarter. This estimate will be based on the number of aliens described in section 101(a)(15)(B) of the Immigration and Nationality Act (8 U.S.C. 1101 (a)(15)(B)) that arrived at any port within the United States aboard a commercial aircraft or cruise ship of such airline or passenger cruise ship line during that same calendar quarter one year earlier based, where available, on specific carrier figures supplied by the United States Immigration and Naturalization Service (INS) from its INS Form I–94 surveys of arriving aliens by carrier. The reason for the use of figures from one year earlier is that INS is not able to supply figures until approximately three months after the end of a calendar quarter. Given the seasonal nature of travel, the Department of Commerce intends to use the same quarter one year earlier for purposes of estimation. When accurate figures become available, the estimated charge will be adjusted for each carrier and the carrier debited or credited without penalty or interest for the amount of the adjustment. For countries for which INS does not conduct a Form I–94 survey the proposed rules will proposes using the best statistics available and appropriate assumptions and interpolations.

The USTTA Facilitation Fee is assessed against carriers based on the number of section 101(a)(15)(B) aliens carried by them and is not a fee or tax placed or to be placed on such aliens themselves. Unlike customs inspection fees, which carriers collect on behalf of the United States Customs Service from persons arriving in the United States, no carrier should collect a USTTA Facilitation Fee from an alien as a tax or fee or indicate on a ticket or elsewhere that it is doing so.

Any carrier which believes that assessment of the USTTA Facilitation Fee against it is inconsistent with a specific treaty or international agreement entered into by the United States should write the Under Secretary of Commerce for Travel and Tourism enclosing a copy of the applicable treaty or international agreement and outlining the reasons for its belief.

Miscellaneous Rulemaking Requirements

Executive Order 12291

Under Executive Order 12291, the Department of Commerce must judge whether the regulation proposed in this notice is "major" within the meaning of section 1 of the Order, and therefore subject to the requirement that a Regulatory Impact Analysis be prepared. The Under Secretary of Commerce for Travel and Tourism has determined that the regulation issued in this notice is not major because it is not likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or,

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Therefore, preparation of a Regulatory Impact Analysis is not required and neither a preliminary nor final Regulatory Impact Analysis has been or will be prepared.

Administrative Procedure Act

The Under Secretary of Commerce for Travel and Tourism, pursuant to sections 553(b)(B) and (d)(3) of the Administrative Procedure Act, finds that because this rule merely imposes a statutorily-specified fee on a statutorily-specified group (commercial airlines and passenger cruise ship lines transporting passengers to the United States) as of the date specified in the statute (Jan. 1, 1991), and in the amount specified in the statute (one dollar multiplied by the number of aliens described in section 101(a)(15)(B) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(B)) arriving at any port within the United States aboard a commercial aircraft or cruise ship of such airline or passenger cruise ship line during that calendar quarter), that notice and public procedure thereon are impracticable and contrary to the public interest and that, because the fee must be imposed as of January 1, 1991, good cause exists for making the fee effective on the statutorily-required date. As to the initial imposition of the fee, the amount, and the date, there is no discretion vested in the Under Secretary. Details of certain determinations (the amount owed for each quarter, methods and place of remittance, adjustment of the per alien multiplier in 1992 and in subsequent years so that the total fees collected for a fiscal year starting with the fiscal year beginning on October 1, 1992, at least equal but do not exceed by more than 5 percent the amount appropriated for that fiscal year for the activities of the USTTA, collection actions, the imposition of civil penalties and enforcement, and procedures for determining whether assessment of a fee with respect to a particular commercial

airline or passenger cruise ship line is inconsistent with a specific treaty or international agreement entered into by the United States) will be the subject of a notice-and-comment rulemaking.

Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because the rule was not required to be promulgated as a proposed rule by section 553 of the Administrative Procedure Act or by any other law. Accordingly, neither an initial nor final Regulatory Flexibility Analysis has been or will be prepared.

Paperwork Reduction Act

This final rule does not contain a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12612

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

Executive Order 12630

This final rule does not have takings implications within the meaning of Executive Order 12630 because it would not appear to have an effect on private property sufficiently severe as effectively to deny economically viable use of any distinct legally potential property interest to its owner or to have the effect of, or result in, a permanent or temporary physical occupation, invasion, or deprivation.

List of Subjects in 15 CFR Part 1201

Administrative practice and procedure, Air carriers, Passenger vessels, Travel.

Dated: December 27, 1990.

Wylie H. Whisonant, Jr.,

Acting Under Secretary for Travel and Tourism.

Accordingly, for the reasons set forth above, 15 CFR chapter XII is amended as set forth below:

A new part 1201 is added to 15 CFR chapter XII to read as follows:

PART 1201—UNITED STATES TRAVEL AND TOURISM ADMINISTRATION FACILITATION FEE

Authority: Sections 306 and 307 of the International Travel Act of 1961, as added by section 10301 of the Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101–508.

§ 1201.1 United States Travel and Tourism Administration Facilitation Fee.

Beginning with the calendar quarter starting January 1, 1991, each commercial airline and passenger cruise ship line transporting passengers to the United States is assessed a quarterly United States Travel and Tourism Administration Facilitation Fee, in the amount of one dollar multiplied by the number of aliens described in section 101(a)(15)(B) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(B)) arriving at any port within the United States aboard a commercial aircraft or cruise ship of such airline or passenger cruise ship line during that calendar quarter.

[FR Doc. 90–30623 Filed 12–28–90; 12:24 pm]

BILLING CODE 3510–11–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 40, 43, 44, 45, 46, 48, 49, 52, 138, 142, 145, 146, 147, 148, and 154

[T.D. 8328]

RIN 1545–A096

Procedural Rules for Excise Taxes Currently Reportable on Form 720

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations and removal of obsolete regulations.

SUMMARY: This document contains temporary regulations relating to requirements for returns, payments, and deposits of tax for excise taxes currently reportable on Form 720. Existing procedural regulations under 26 CFR parts 43, 46, 48, 49, 52, and 154 are amended and consolidated in a new part 40. This document also removes various excise tax regulations under 26 CFR parts 45, 46, 49, 138, 142, 145, 146, 147, and 154 that are obsolete. These temporary regulations reflect changes to the law made by the Omnibus Budget Reconciliation Act of 1989 and affect persons required to report liability for excise taxes currently reportable on Form 720. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations for the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

EFFECTIVE DATES: These regulations are effective April 1, 1991, for returns that relate to calendar quarters beginning after December 31, 1990, and are filed after March 31, 1991, and for deposits relating to calendar quarters beginning after March 31, 1991. In addition, the removal of obsolete regulations is effective April 1, 1991.

FOR FURTHER INFORMATION CONTACT: Ruth Hoffman, 202–566–4475 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the regulations under 26 CFR chapter I, subchapter D (relating to miscellaneous excise taxes). Sections 6011 (relating to requiring returns), 6071 (relating to time for filing returns), and 6302(c) (relating to use of Government depositaries) of the Internal Revenue Code authorize the Secretary to prescribe regulations imposing rules for filing returns and making deposits of tax.

Regulations relating to returns, payments, and deposits of taxes imposed by chapters 31, 32 (except for the firearms tax imposed by section 4181), 33, 34, 36 (except for the harbor maintenance tax imposed by section 4461, the vehicle use tax imposed by section 4481, and the deep seabed mineral removal tax imposed by section 4495), 38, and 39 of the Code have been revised and consolidated in new 26 CFR part 40.

Parts 43, 46, 48, 49, and 52 will be amended to remove the procedural provisions now included in part 40 and by cross-referencing those parts to the regulations in part 40.

In addition, obsolete regulations under 26 CFR chapter I, subchapter D are removed.

Need for Temporary Regulations

Immediate guidance is needed on the new requirements for filing Form 720 and making deposits of taxes reportable on Form 720. Therefore, good cause is found to dispense with the public notice requirement of 5 U.S.C. 553(b) and the delayed effective date requirement of 5 U.S.C. 553(d).

Explanation of Provisions

Requirements for Filing Returns

Section 40.6011(a)–1T(a) requires the quarterly filing of a return on Form 720 to report liability for excise taxes imposed by chapters 31, 32, 33, 34, 36, 38, and 39 of the Code (except for the chapter 32 tax imposed by section 4181 (firearms tax) and the chapter 36 taxes imposed by sections 4461 (harbor maintenance tax), 4481 (vehicle use tax), and 4495 (deep seabed mineral removal tax)). Generally, under § 40.6071(a)–1T(a)(1) the return must be filed by the

last day of the first month following the end of a calendar quarter. However, under § 40.6071(a)–2T(a), returns reporting air transportation, communications, and ozone-depleting chemicals taxes must be filed by the last day of the second month following the end of a calendar quarter (even if other taxes also are reported on such returns). An additional month is provided for filing a return reporting these taxes because of their relative complexity.

Under § 40.6071(a)–1T(a)(2), only one quarterly Form 720 is filed for each quarter. Persons required to file on more than one filing date for a quarter do not file two Forms 720 reporting the taxes due on each date but instead file a single Form 720 by the later of the required filing dates. The single Form 720 must include all excise taxes reportable on Form 720. This rule allows persons filing a Form 720 on which they are reporting air transportation, communications, or ozone-depleting chemicals taxes to defer filing their Form 720 until two months after the end of the calendar quarter, even if such persons must also report excise taxes for which the Form 720 must otherwise be filed one month after the end of the calendar quarter. However, this rule does not extend the time for making deposits or paying any excise tax. Thus, a person that must make an additional deposit to pay any balance due for a quarter must make the required deposit by the date the Form 720 for such excise taxes would otherwise be filed for that quarter; the payment is due at that time even though the Form 720 may, under the above rule, be filed a month later.

Prior regulations allowed some return filers to file a return ten days after the end of the month following the end of the quarter. This rule has been eliminated so that all returns are due either one month or two months after the end of the quarter.

Requirements for Using Government Depositaries

Prior regulations relating to excise taxes currently reportable on Form 720 did not require any deposits if the amount of tax reportable was less than $100. In addition, the regulations did not require semimonthly deposits unless at least $2,000 was due in any month in the prior quarter. These dollar thresholds have been eliminated in order to have a single deposit rule apply to all persons required to make deposits of tax.

Section 40.6302(c)–1T(b)(1) provides that all persons required to make deposits must make semimonthly deposits of tax. Section 40.6302(c)–1T(b)(2) provides that the amount of tax deposited for a semimonthly period generally must equal the amount of tax liability incurred during that period. For communications and air transportation taxes, however, the amount deposited generally equals the tax collected during the semimonthly period.

Under § 40.6302(c)–1T(b)(3), the deposit for a semimonthly period is due by the ninth day of the following semimonthly period (the 9-day rule). These regulations provide two exceptions to this rule, however: (1) section 40.6302(c)–2T(a)(1) provides that the deposit of ozone-depleting chemicals tax for each semimonthly period during which liability for the tax was incurred is due by the last day of the second following semimonthly period (the 30-day rule) and (2) § 40.6302(c)–4T(a) provides that, if a qualified person makes a deposit of gasoline tax by means of a transfer between accounts in a Government depositary, the deposit for a semimonthly period is due by the fourteenth day of the following semimonthly period (the 14-day rule).

In addition, existing regulations under 26 CFR part 49 provide a special rule for deposits of tax made by persons required to collect and pay over tax under chapter 33. Under § 49.6302(c)–1(a)(1)(iii), the amount of the deposits of tax under chapter 33 for communications and air transportation taxes for each semimonthly period may be computed based on amounts billed for communications services or tickets sold for air transportation during each semimonthly period. These temporary regulations do not replace this provision. Instead, § 49.6302(c)–1(a)(1)(iii) is retained and further guidance relating to deposits of tax based on amounts billed will be provided under § 40.6302(c)–3T in January of 1991.

Safe Harbor Rules for Semimonthly Deposits

Deposits of tax for a semimonthly period generally must equal the amount of tax liability incurred (or in the case of collected taxes, the amount of tax collected) during that semimonthly period. Prior regulations provided four exceptions to this rule to be used in computing the amount required to be deposited. The details of the exceptions varied according to the tax involved. The exceptions are eliminated by these regulations which instead provide one general safe harbor rule and one special safe harbor rule for new filers. Section 40.6302(c)–1T(c) sets forth these safe harbor rules. Safe harbor rules are provided so that taxpayers and persons required to collect and pay over tax will not be required to determine their actual tax liability for a semimonthly period during the semimonthly period in which the deposit is due in order to avoid failure-to-deposit penalties, as would otherwise be the case. All taxpayers and persons required to collect and pay over tax that are required to make deposits and that use the safe harbor rule must determine their net tax liability for each semimonthly period at the close of each calendar quarter.

The general safe harbor rule applies to persons that have filed a Form 720 reporting tax for the second calendar quarter preceding the current calendar quarter (the look-back quarter). Such persons are considered to have met the semimonthly deposit requirement for the current quarter if the deposit for each semimonthly period in the current quarter is not less than ⅙ of the total net tax liability reported on Form 720 for the look-back quarter, the deposit is timely made at an authorized Government depositary, and any underpayment for the current quarter is paid by the due date of the return on which the tax would ordinarily be reported. All three requirements must be satisfied in order for the safe harbor rule to apply.

The special safe harbor rule applies to persons (generally new return filers) that did not file a Form 720 reporting tax for the look-back quarter. Such persons are considered to have met the semimonthly deposit requirement for the current quarter if the deposit for each semimonthly period in the current quarter is not less than 90 percent of the net tax liability incurred during the semimonthly period, the deposit is timely made at an authorized Government depositary, and any underpayment for the current quarter is paid by the due date of the return on which the tax would ordinarily be reported.

The above safe harbor rules do not apply on a tax-by-tax basis. Instead, under the general safe harbor rule, a person uses the net tax liability for all the taxes with the same deposit due date in the look-back quarter to determine the amount of deposits. If a person also is required to report taxes that are deposited on a different due date schedule, such taxes are not included in the determination of net tax liability for the first deposit due date; separate safe harbor computations are made with respect to those taxes. A person uses the special safe harbor rule only if a return of tax was not required to report any tax with the same deposit due date as the tax the person is required to report in the current quarter.

In addition, under § 40.6302(c)–2T(a)(2)(ii), the general safe harbor rule described above is modified in the case

of ozone-depleting chemicals taxes to take into account predictable increases in tax liability due to increases in the base tax amount or due to the phase-in of tax on Halons and ozone-depleting chemicals used in the manufacture of rigid foam insulation. For example, for the first two calendar quarters of 1991, the amount to deposit under the general safe harbor rule will be based on the taxpayer's tax liability under section 4681 for the look-back quarter, but calculated as if Halons and ozone-depleting chemicals used in the manufacture of rigid foam insulation had been subject to tax for such preceding calendar quarters.

Special Rules for One-time Filings

Special rules are provided in the case of one-time filings of returns. A person may make a one-time filing reporting liability with respect to taxable transactions in a calendar quarter if the person (1) Did not engage in the taxable transactions in the course of a trade or business; (2) does not engage in similar taxable transactions in the course of a trade or business; and (3) is not otherwise required to file a return reporting excise taxes for the calendar quarter.

A return that is a one-time filing serves both as the return for the calendar quarter and as the final return, so that no return need be filed in subsequent quarters unless tax liability is actually incurred in the subsequent quarter.

In addition, no deposit is required in the case of tax reported on a one-time filing. Instead, the tax reported on a one-time filing is paid with the return.

Procedures Relating to Filing Returns and Making Deposits

Generally, rules describing procedures relating to the mechanics of filing returns, paying tax, and making deposits that were included in prior regulations are not included in these regulations. Instead, those procedures are provided in the instructions to the applicable forms. Where this is the case, the regulations refer to the form instructions. These procedures are often modified and such modifications are more easily reflected in revised form instructions than in revised regulations.

Deletion of Obsolete Regulations

The following parts are removed as obsolete: part 45 (relating to taxes on coin-operated devices, oleomargarine, white phosphorus matches, adulterated or renovated butter, filled cheese, and cotton futures); subparts B and D of part 46 (relating to taxes on sugar and on circulation other than of national banks); subparts B and E of part 49 (relating to taxes on club dues and fees and on safe deposit boxes); part 138 (relating to temporary rules under the 1978 Energy Tax Act); part 142 (relating to temporary rules under the 1971 Revenue Act); §§ 145.1–1 through 145.4–6 of part 145 (relating to temporary rules under the 1982 Highway Revenue Act); part 146 (relating to rebuilt parts and accessories); part 147 (relating to temporary rules under the Interest Equalization Tax Act); § 148.1–6 of part 148 (relating to temporary rules under the Excise Tax Technical Changes Act of 1958); and part 154 (relating to temporary rules under the Airport and Airway Revenue Act of 1970).

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking that cross-references to these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Ruth Hoffman, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in their development.

List of Subjects

26 CFR Part 40

Administrative practice and procedure, Excise taxes, Filing requirements, Payment of tax, Tax depositaries.

26 CFR Part 43

Excise taxes, Gambling, Transportation by water, Vessels.

26 CFR Part 44

Excise taxes, Gambling.

26 CFR Part 45

Butter, Cheese, Coin operated machines, Cotton, Excise taxes, Margarine, Matches.

26 CFR Part 46

Banks and banking, Excise taxes, Insurance.

26 CFR Part 48

Agriculture, Coal, Excise taxes, Gasohol, Gasoline, Motor vehicles, Petroleum, Sporting Goods, Tires.

26 CFR Part 49

Excise taxes, Telegraph, Telephone, Transportation.

26 CFR Part 52

Excise taxes, Petroleum, Chemicals.

26 CFR Part 138

Buses, Excise taxes, Motor vehicles, Energy Tax Act of 1978.

26 CFR Part 142

Excise taxes, Motor vehicles, Revenue Act of 1971.

26 CFR Part 145

Excise taxes, Excise Tax Reduction Act of 1965.

26 CFR Part 146

Excise taxes, Motor vehicles.

26 CFR Part 147

Banks and banking, Excise taxes, Interest equalization tax, United States investments abroad.

26 CFR Part 148

Excise taxes, Excise Tax Technical Changes Act of 1958.

26 CFR Part 154

Aircraft, Airports, Excise taxes, Airway Revenue Act of 1970.

Adoption of Amendments to the Regulations

Accordingly, title 26 of the Code of Federal Regulations is amended as follows:

Paragraph 1. Part 40 is added to read as follows:

PART 40—EXCISE TAX PROCEDURAL REGULATIONS

Sec.

40.0–1T Introduction (temporary).
40.6011(a)–1T Returns (temporary).
40.6011(a)–2T Final returns (temporary).
40.6071(a)–1T Time for filing returns (temporary).
40.6071(a)–2T Time for filing quarterly returns under chapter 33 and section 4681 (temporary).
40.6091–1T Place for filing returns (temporary).
40.6101–1T Period covered by returns (temporary).
40.6109(a)–1T Identifying numbers (temporary).

Sec.

40.6151(a)–1T Time and place for paying tax shown on return (temporary).
40.6302(c)–1T Use of Government depositaries (temporary).
40.6302(c)–2T Use of Government depositaries under section 4681 (temporary).
40.6302(c)–3T Special rule for use of Government depositaries under chapter 33 (temporary). [Reserved]
40.6302(c)–4T Special rule for use of Government depositaries under section 4081 (temporary).
40.9999–1T Examples (temporary).

Authority: 26 U.S.C. 7805. Sections 40.6011(a)–1T and 40.6011(a)–2T also issued under 26 U.S.C. 6011(a); §§ 40.6071(a)–1T and 40.6071(a)–2T also issued under 26 U.S.C. 6071(a); § 40.6091–1T also issued under 26 U.S.C. 6091; § 40.6101–1T also issued under 26 U.S.C. 6101; § 40.6109(a)–1T also issued under 26 U.S.C. 6109(a); §§ 40.6302(c)–1T, 40.6302(c)–2T, 40.6302(c)–3T, and 40.6302(c)–4T also issued under 26 U.S.C. 6302(a).

§ 40.0–1T Introduction (temporary).

(a) *In general.* The regulations in this part 40 are designated "Excise Tax Procedural Regulations." The regulations set forth administrative provisions relating to the excise taxes imposed by chapters 31, 32, 33, 34, 36, 38, and 39 (except for the chapter 32 tax imposed by section 4181 (firearms tax) and the chapter 36 taxes imposed by sections 4461 (harbor maintenance tax), 4481 (vehicle use tax), and 4495 (deep seabed mineral removal tax)). See parts 43, 46, 48, 49, and 52 of this subchapter for regulations relating to the imposition of tax.

(b) *Effective date.* This part is effective April 1, 1991, for returns that relate to calendar quarters beginning after December 31, 1990, and are filed after March 31, 1991, and for deposits relating to calendar quarters beginning after March 31, 1991.

§ 40.6011(a)–1T Returns (temporary).

(a) *In general.* The return of any tax imposed by chapter 31, 32 (except for the firearms tax imposed by section 4181), 33, 34, 36 (except for the harbor maintenance tax imposed by section 4461, the vehicle use tax imposed by section 4481, and the deep seabed mineral removal tax imposed by section 4495), 38, or 39 shall be made on Form 720, Quarterly Federal Excise Tax Return (or any other form designated by the Commissioner after publication of these regulations for reporting such taxes). Except as provided in paragraph (b) of this section, the return shall be made for a period of one calendar quarter. Except in the case of a tax required to be collected and paid over, the person incurring liability for tax shall file the return. In the case of a tax required to be collected and paid over, the person required to collect the tax (and not the person incurring liability) shall file the return. A person shall file a return for the first calendar quarter in which liability for tax is incurred (or in which tax must be collected and paid over), and for each subsequent calendar quarter, whether or not liability was incurred (or tax collected) during such quarter, until the person has filed a final return in accordance with § 40.6011(a)–2T. In the case of one-time filings under § 40.6011(a)–2T(c), the first return is also a final return.

(b) *Monthly and semimonthly returns.* If the district director determines that any person that is required under the provisions of this part 40 to make deposits of taxes has failed to make those deposits, that person shall be required, if so notified in writing by the district director, to make a return on Form 720 (or other form furnished by the district director for use in lieu of Form 720) for a monthly or semimonthly period. Each person so notified by the district director shall make a return for the calendar month or semimonthly period (as defined in § 40.6302(c)–1T(d)) in which the notice is received and for each calendar month or semimonthly period thereafter until the person has filed a final return (as defined in § 40.6011(a)–2T) or until the person is notified by the district director to resume making quarterly returns.

(c) *Cross references.* For provisions relating to the time to file returns, see §§ 40.6071(a)–1T and 40.6071(a)–2T. For provisions relating to the place for filing returns, see § 40.6091–1T. For provisions relating to use of Government depositaries, see §§ 40.6302(c)–1T, , 40.6302(c)–2T, 40.6302(c)–3T, and 40.6302(c)–4T. For provisions relating to floor stocks tax on ozone-depleting chemicals imposed under section 4682(h), see § 52.6071–3T.

(d) *Effective date.* This section is effective April 1, 1991, for returns relating to calendar quarters beginning after December 31, 1990.

§ 40.6011(a)–2T Final returns (temporary).

(a) *In general.* Any person that is required under § 40.6011(a)–1T to make returns and that permanently ceases all operations with respect to which liability for tax was incurred (or with respect to which tax must be collected and paid over) shall make a final return in accordance with the instructions applicable to the form on which the return is made. A person shall not make a final return in any case in which only a temporary or partial cessation of such operations occurs and shall continue to file returns in accordance with § 40.6011(a)–1T.

(b) *Special rule for one-time filings*—(1) *In general.* A first return is also a final return if it is a one-time filing. A return is a one-time filing if the person reporting tax—

(i) Did not engage in the transactions with respect to which tax is reportable on the return in the course of a trade or business;

(ii) Does not engage in similar taxable transactions in the course of a trade or business; and

(iii) Is not otherwise required under this part 40 to file a return reporting excise taxes for the calendar quarter.

(2) *Deposits not required.* See § 40.6302(c)–1T(f)(2) for a rule providing that no deposit of tax reported on a one-time filing is required.

(c) *Effective date.* This section is effective April 1, 1991, for returns relating to calendar quarters beginning after December 31, 1990.

§ 40.6071(a)–1T Time for filing returns (temporary).

(a) *Quarterly returns*—(1) *In general.* Except as otherwise provided in paragraph (a)(2) of this section and in § 40.6071(a)–2T (relating to quarterly returns under chapter 33 and section 4681), each quarterly return required under § 40.6011(a)–1T shall be filed by the last day of the first calendar month following the quarter for which it is made.

(2) *Special rule.* A person shall file only one Form 720 for a quarter. If under § 40.6071(a)–2T a person is required to file a Form 720 for a quarter by a date that is later than the date provided in paragraph (a)(1) of this section, the person shall file a single Form 720 for the quarter by the filing date provided under § 40.6071(a)–2T. This rule does not extend the time for making deposits or paying any excise tax.

(b) *Monthly and semimonthly returns*—(1) *Monthly returns.* Each monthly return required under § 40.6011(a)–1T(b) shall be filed by the fifteenth day of the month following the month for which it is made.

(2) *Semimonthly returns.* Each semimonthly return required under § 40.6011(a)–1T(b) shall be filed by the ninth day of the semimonthly period following the semimonthly period for which it is made.

(c) *Cross references.* For provisions relating to timely mailing treated as timely filing and paying, see section 7502. For provisions relating to time for performance of acts where last day for performance falls on Saturday, Sunday, or a legal holiday, see section 7503. For

provisions relating to time and place for paying tax shown on the return, see § 40.6151(a)–1T. For provisions relating to floor stocks tax on ozone-depleting chemicals imposed under section 4682(h), see § 52.6071(a)–3T.

(d) *Effective date.* This section is effective April 1, 1991, for returns relating to calendar quarters beginning after December 31, 1990.

§ 40.6071(a)–2T Time for filing quarterly returns under chapter 33 and section 4681 (temporary).

(a) *In general.* In the case of returns of tax imposed by chapter 33 or section 4681, each quarterly return required under § 40.6011(a)–1T(a) shall be filed by the last day of the second calendar month following the quarter for which it is made.

(b) *Effective date.* This section is effective April 1, 1991, for returns relating to calendar quarters beginning after December 31, 1990.

§ 40.6091–1T Place for filing returns (temporary).

(a) *Quarterly returns.* Except as otherwise provided in paragraph (b) of this section, quarterly returns shall be filed in accordance with the instructions applicable to the form on which the return is made.

(b) *Hand-carried returns—*

(1) *Persons other than corporations.* Returns of persons other than corporations that are filed by hand carrying shall be filed with the district director for the internal revenue district in which is located the principal place of business or legal residence of the person.

(2) *Corporations.* Returns of corporations that are filed by hand carrying shall be filed with the district director for the district in which is located the principal place of business or principal office or agency of the corporation.

(c) *Monthly and semimonthly returns.* Monthly and semimonthly returns required under § 40.6011(a)–1T(b) shall be filed in accordance with the instructions of the district director requiring such filing.

(d) *Effective date.* This section is effective April 1, 1991, for returns relating to calendar quarters beginning after December 31, 1990.

§ 40.6101–1T Period covered by returns (temporary).

(a) *In general.* See § 40.6011(a)–1T for the rules relating to the period covered by the return.

(b) *Effective date.* This section is effective April 1, 1991, for returns relating to calendar quarters beginning after December 31, 1990.

§ 40.6109(a)–1T Identifying numbers (temporary)

(a) *In general.* Every person required under § 40.6011(a)–1T to make a return shall provide the identifying number as required by the instructions applicable to the form on which the return is made.

(b) *Effective date.* This section is effective April 1, 1991, for returns relating to calendar quarters beginning after December 31, 1990.

§ 40.6151(a)–1T Time and place for paying tax shown on return (temporary).

(a) *In general.* Except as otherwise provided by statute, the tax shall be paid at the time prescribed in §§ 40.6071(a)–1T and 40.6071(a)–2T for filing the return, and at the place prescribed in § 40.6091(a)–1T for filing the return.

(b) *Cross reference.* For provisions relating to use of Government depositaries, see §§ 40.6302(c)–1T, 40.6302(c)–2T, 40.6302(c)–3T, and 40.6302(c)–4T.

(c) *Effective date.* This section is effective April 1, 1991, for returns relating to calendar quarters beginning after December 31, 1990.

§ 40.6302(c)–1T Use of Government depositaries (temporary).

(a) *Overview.* This section sets forth the general rule that any person required to file a quarterly return must make deposits of taxes reported on the return and provides rules relating to the time for making a deposit and its amount. Exceptions to these rules are set forth in other sections. Section 40.6302(c)–2T (relating to ozone-depleting chemicals) provides the rules for making deposits of section 4681 taxes and a safe harbor rule for computing the amount of deposits for those taxes. Section 40.6302(c)–4T provides additional time for qualified persons to make deposits of section 4081 taxes (relating to gasoline).

(b) *In general—*(1) *Semimonthly deposits required.* Except as otherwise provided by statute or by paragraph (f) of this section, each person required under § 40.6011(a)–1T(a) to file a quarterly return shall make semimonthly deposits of the tax required to be reported on the return.

(2) *Amount of deposit.* Except as otherwise provided in paragraph (c) of this section (relating to safe harbor rules) or in § 40.6302(c)–2T(a)(2) (relating to safe harbor rules for section 4681 taxes), the deposit of tax for any semimonthly period (as defined in paragraph (d) of this section) shall equal the amount of net tax liability incurred during that semimonthly period.

(3) *Time to deposit.* Except as provided in §§ 40.6302(c)–2T (relating to deposits of section 4681 taxes) and 40.6302(c)–4T (relating to deposits by qualified persons of section 4081 taxes), the deposit of tax for any semimonthly period shall be made by the ninth day of the semimonthly period following the semimonthly period in which the tax liability is incurred (the "9-day rule"). Thus, under the 9-day rule generally, the deposit of tax for the first semimonthly period in a month is due by the 24th of that month and the deposit of tax for the second semimonthly period in a month is due by the 9th of the following month.

(4) *Treatment of taxes imposed by chapter 33.* For purposes of this section, a tax imposed by chapter 33 shall be treated as a tax liability incurred during the semimonthly period in which such tax is collected.

(5) *Timeliness of deposits.* Failure-to-deposit penalties under section 6656 may apply if required deposits are not timely made in the correct amount at an authorized Government depositary. Deposits for a calendar quarter will be applied in date-made order against deposits due for the quarter in due-date order. In determining the timeliness of a deposit, any overpayment from a prior quarter is not credited to the return filer's account until the due date of the return showing the overpayment or the date that return is filed, whichever is later.

(c) *Amount of deposit; safe harbor rules—*(1) *Applicability.* This paragraph (c) provides the safe harbor rules for deposits of taxes made under the 9-day rule. Thus, for purposes of this paragraph (c), the term "net tax liability" does not include section 4681 taxes and section 4081 taxes to which § 40.6302(c)–4T (relating to timely deposits by qualified persons) applies.

(2) *Persons that made a return of tax for the look-back quarter—*(i) *In general.* Any person that made a return of tax reporting taxes to which this paragraph (c) applies for the second preceding calendar quarter (the "look-back quarter") will be considered to have complied for the current calendar quarter with the requirement of this section for semimonthly deposit of such taxes if—

(A) The deposit of such taxes for each semimonthly period in the current calendar quarter is not less than ⅙ (16.67 percent) of the net tax liability reported for the look-back quarter;

(B) Each deposit is made on time; and

(C) The amount of any underpayment of such taxes for the current calendar quarter is paid by the last day of the first calendar month following the end of the quarter.

(ii) *Deposit of underpayment if return due date extended.* In any case in which the due date of the return is extended under § 40.6071(a)–1T(a)(2) (relating to filing a single Form 720), the amount of any underpayment shall be paid by deposit under the provisions of paragraph (e) of this section.

(3) *Persons that did not make a return of tax for the look-back quarter*—(i) *In general.* Any person that did not make a return of tax reporting taxes to which this paragraph (c) applies for the look-back quarter will be considered to have complied for the current calendar quarter with the requirement of this section for semimonthly deposit of such taxes if—

(A) The deposit of such taxes for each semimonthly period in the current calendar quarter is at least 90 percent of the net tax liability incurred during that semimonthly period;

(B) Each deposit is made on time; and

(C) The amount of any underpayment of such taxes for the current calendar quarter is paid by the last day of the first calendar month following the end of the quarter.

(ii) *Deposit of underpayment if return due date extended.* In any case in which the due date of the return is extended under § 40.6071(a)–1T(a)(2) (relating to filing a single Form 720), the amount of any underpayment shall be paid by deposit under the provisions of paragraph (e) of this section.

(d) *Semimonthly period.* The term "semimonthly period" means the first 15 days of a calendar month or the portion of a calendar month following the 15th day of the month.

(e) *Remittance of deposits.* A completed Form 8109, Federal Tax Deposit Coupon (or any other form designated by the Commissioner for making deposits) must accompany each deposit. The deposit must be remitted, in accordance with the instructions applicable to the form, to a financial institution authorized as a depositary for federal taxes (as provided in 31 part 214) or to a Federal Reserve bank.

(f) *Exceptions*—(1) *Taxes excluded.* No deposit is required of the taxes imposed under section 4042 (relating to fuel used on inland waterways) and section 4161 (relating to sport fishing equipment and bows and arrows).

(2) *One-time filings.* No deposit is required of any taxes reportable on a one-time filing (as defined in § 40.6011(a)–2T(c)).

(g) *Cross references.* For provisions relating to the penalty for failure to make deposit of taxes, see section 6656. For provisions relating to timely mailing treated as timely depositing, see section 7502. For provisions relating to time for performance of acts where last day for performance falls on Saturday, Sunday, or legal holiday, see section 7503.

(h) *Effective date.* This section is effective April 1, 1991, for deposits relating to calendar quarters beginning after March 31, 1991.

§ 40.6302(c)–2T Use of Government depositaries under section 4681 (temporary).

(a) *In general*—(1) *Time to deposit.* The deposit of tax imposed by section 4681 shall be made by the last day of the second semimonthly period following the semimonthly period in which the tax liability is incurred (the "30-day rule"). Thus, under the 30-day rule generally, the deposit of tax for the first semimonthly period in a month is due by the 15th of the following month and the deposit of tax for the second semimonthly period in a month is due by the end of the following month.

(2) *Amount of deposit; safe harbor rule applicable to persons that made a return of tax for the look-back quarter*—(i) *In general.* Except as otherwise provided in paragraph (a)(2)(ii) of this section, any person that made a return of tax reporting taxes imposed by section 4681 for the second preceding calendar quarter (the "look-back quarter") will be considered to have complied for the current calendar quarter with the requirement of § 40.6302(c)–1T(b)(1) for semimonthly deposit of such tax if—

(A) The deposit of such tax for each semimonthly period in the current calendar quarter is not less than ⅙ (16.67 percent) of the net tax liability under section 4681 reported for the look-back quarter;

(B) Each deposit is made on time; and

(C) The amount of any underpayment of such tax for the current calendar quarter is paid by the last day of the second calendar month following the end of the quarter.

(ii) *Special rule*—(A) *Applicability.* The safe harbor rule of paragraph (a)(2)(i) of this section is modified for the first and second calendar quarters following the effective date of—

(*1*) An increase in the base tax amount under section 4681(b); or

(*2*) A change in the treatment of ozone-depleting chemicals that are described in section 4682(g)(1).

(B) *Rule.* The safe harbor rule in paragraph (a)(2)(i) of this section shall not apply for such calendar quarters unless the deposit for each semimonthly period in the calendar quarter is not less than ⅙ (16.67 percent) of the tax liability the person would have had under section 4681 for the look-back quarter if the increased base tax amount or the change in treatment has been in effect for such look-back quarter.

(3) *Amount of deposit; safe harbor rule applicable to persons that did not make a return of tax for the look-back quarter.* Any person that did not make a return of tax imposed by section 4681 for the look-back quarter will be considered to have complied for the current calendar quarter with the requirement of § 40.6302(c)–1T(b)(1) for semimonthly deposit of such tax if—

(i) The deposit of such tax for each semimonthly period in the current calendar quarter is not less than 90 percent of the net tax liability incurred under section 4681 during that semimonthly period;

(ii) Each deposit is made on time; and

(iii) The amount of any underpayment of such tax for the current calendar quarter is paid by the last day of the second calendar month following the end of the quarter.

(b) *Cross reference.* For general provisions relating to use of Government depositaries, see § 40.6302(c)–1T.

(c) *Effective date.* This section is effective April 1, 1991, for deposits relating to calendar quarters beginning after March 31, 1991.

§ 40.6302(c)–3T Special rule for use of Government depositaries under chapter 33 (temporary). [Reserved]

§ 40.6302(c)–4T Special rule for use of Government depositaries under section 4081 (temporary).

(a) *Time to deposit under the 14-day rule*—(1) Each qualified person (as defined in paragraph (b) of this section) may make deposits of the tax imposed by section 4081 (relating to gasoline) by the fourteenth day of the semimonthly period following the semimonthly period in which the tax liability is incurred if the deposit is made by transfer between accounts in the same Government depositary (the "14-day rule"). Thus, under the 14-day rule generally, the deposit of tax for the first semimonthly period in a month is due by the 29th of that month and the deposit of tax for the second semimonthly period in a month is due by the 14th of the following month.

(2) If the due date under paragraph (a)(1) of this section falls on a Saturday, Sunday, or legal holiday in the District of Columbia, the due date of the deposit shall be the immediately preceding day which is not a Saturday, Sunday, or legal holiday in the District of Columbia.

(b) *Qualified person defined*—(1) *In general.* The term "qualified person" means—

(i) Any person whose average daily production of crude oil for the preceding

calendar quarter did not exceed 1,000 barrels; and

(ii) Any independent refiner (within the meaning of section 4995(b)(4) (as in effect on January 6, 1983)).

(2) *Aggregation rules.* In determining for purposes of paragraph (b)(1) of this section, whether a person's production exceeds 1,000 barrels per day, the rules of section 4992(e) (as in effect on January 6, 1983) relating to allocation within related groups shall apply. Thus, for persons who are members of the same related group (within the meaning of such section 4992(e)(2)) at any time during the preceding calendar quarter, the 1,000 barrel amount will be reduced for each person by allocating such amount among all such persons in accordance with rules of section 4992(e).

(c) *Cross reference.* For general provisions relating to use of Government depositaries, see § 40.6302(c)–1T.

(d) *Effective date.* This section is effective April 1, 1991, for deposits relating to calendar quarters beginning after March 31, 1991.

§ 40.9999–1T Examples (temporary).

The following examples illustrate the rules of this part 40.

(a) *Examples relating to luxury tax; one-time filing.*

Example 1. (1) *Facts.* On March 20, 1991, A, an individual, purchases a new car outside the United States for $102,000. In April, A imports the car into the U.S. and uses it for personal use. At the time of importation, the car's retail value is $100,000. Thus, A is liable for the luxury tax imposed by section 4001. The amount of A's section 4001 tax liability is $7,000, 10% of the amount by which the $100,000 retail value exceeds $30,000. The liability is incurred in the second calendar quarter of 1991, the quarter during which the car is imported and used. The fuel economy of the car's model type is at least 22.5 miles per gallon, so that A is not liable for the gas guzzler tax imposed by section 4064. A did not import the car in the course of its trade or business, does not import cars subject to luxury tax in the course of its trade or business, and is not otherwise required to file a Form 720 for the calendar quarter.

(2) *Filing requirement.* A must file a return of the luxury tax on Form 720 (§ 40.6011(a)–1T) for the second calendar quarter of 1991 reporting A's $7,000 luxury tax liability. The Form 720 is due by July 31, 1991, the last day of the first month following the calendar quarter (§ 40.6071(a)–1T). Because A did not import the car in the course of its trade or business, does not import cars subject to luxury tax in the course of its trade or business, and is not otherwise required to file a Form 720 for the calendar quarter, A's Form 720 for the second calendar quarter of 1991 is a one-time filing (§ 40.6011(a)–2T(c)). As a one-time filing, A's Form 720 also constitutes a final return.

(3) *Deposit and payment requirement.* Because A's Form 720 is a one-time filing, A is not required to make deposits of tax (§ 40.6302(c)–1T(f)(2)). Instead, A pays the $7,000 of tax with the return.

Example 2. (1) *Facts.* The facts are the same as in Example 1. In addition, on September 30, 1991, A imports and uses for A's personal use two pieces of new jewelry each with a retail value at the time of importation of $40,000 and a new fur coat with a retail value at the time of importation of $50,000. A is liable for $3,000 of luxury tax on each piece of jewelry and $4,000 of luxury tax on the fur coat, for a total luxury tax liability of $10,000 in the third calendar quarter of 1991. A did not import the jewelry and fur in the course of its trade or business, does not import jewelry or furs subject to luxury tax in the course of its trade or business, and is not otherwise required to file a Form 720 for the calendar quarter.

(2) *Filing requirement.* A must file a return of the luxury tax on Form 720 (§ 40.6011(a)–1T) for the third calendar quarter of 1991 reporting A's $10,000 luxury tax liability. The Form 720 is due by October 31, 1991, the last day of the first month following the calendar quarter (§ 40.6071(a)–1T). Because A did not import the taxed items in the course of its business, does not import similar taxed items in the course of its business, and is not otherwise required to file a Form 720 for the 3rd calendar quarter of 1991, A's Form 720 for the third calendar quarter of 1991 is a one-time filing, even though A already make a one-time filing for the second calendar quarter of 1991 (§ 40.6011(a)–2T(c)). As a one-time filing, A's Form 720 also constitutes a final return.

(3) *Deposit and payment requirement.* Because A's Form 720 is a one-time filing, A is not required to made deposits of tax (§ 40.6302(c)–1T(f)(2)). Instead, A pays the $10,000 of tax with the return.

(b) *Example relating to luxury tax; not a one-time filing; special safe harbor rule for deposits by new filers.*

Example 3. (1) *Facts.* On May 16, 1991, B, an individual in the business of car dealing, sells a new car for $150,000. Because the price of the car sold by B is more than $30,000, B is liable for the luxury tax imposed by section 4001. The amount of B's section 4001 tax liability is $12,000, 10% of the amount by which the $150,000 price exceeds $30,000. The sale of the car is in the course of B's business, but B does not ordinarily sell cars for more than $30,000. B is not required to file a Form 720 for the second calendar quarter of 1991 by reason of any other transaction or activity, and has not in the past filed a Form 720.

(2) *Filing requirement.* B must file a return of the luxury tax (§ 40.6011(a)–1T) on Form 720 for the second calendar quarter of 1991 reporting B's $12,000 luxury tax liability. The Form 720 is due by July 31, 1991, the last day of the first month following the calendar quarter (§ 40.6071(a)–1T). Because the tax is due with respect to a transaction engaged in by B in the course of a trade or business, even though B does not ordinarily engage in transactions giving rise to a luxury tax liability in B's business, the return is not a one-time filing under § 40.6011(a)–2T(c). Because the return is not a one-time filing, B must file a Form 720 for each subsequent calendar quarter until B files a final return in accordance with § 40.6011(a)–2T.

(3) *Deposit and payment requirement*—(i) *Semimonthly deposit rule.* Because the return is not a one-time filing, B is required to make semimonthly deposits of tax (§ 40.6302(c)–1T(b)(1)). B must deposit the $12,000 tax by Monday, June 10, 1991. The tax would ordinarily have to be deposited by June 9, 1991 (the 9th day of the semimonthly period following the semimonthly period in which B incurred liability for the tax), but because June 9, 1991 is a Sunday, B has until that Monday to make the required deposit.

(ii) *Safe harbor.* B may also meet the semimonthly deposit requirement by using the special safe harbor rule applicable to persons that did not file a return in the look-back quarter. Under § 40.6302(c)–1T(c)(3), B meets this safe harbor by depositing $10,800 (90% of $12,000) by June 10, 1991, and by paying the $1,200 balance of tax due with the return by July 31, 1991.

(c) *Example relating to ozone-depleting chemicals tax; general safe harbor rule for deposits.*

Example 4. (1) *Facts.* During the second calendar quarter of 1991, C, an individual who is an electronics dealer, imports into the U.S. electronic products identified in the table of taxable products published in § 52.4682–3T(f). C imports electronics products as part of C's business, and C has elected to treat the importation of these products as the use of such products under § 52.4682–3T(c)(2). C files a Form 720 each quarter to report liability for the ozone-depleting chemicals tax imposed by section 4681. The ozone-depleting chemicals tax liability incurred by C during each semimonthly period in the second calendar quarter of 1991 is as follows:

April 1st–15th	$400
April 16th–30th	20
May 1st–15th	1,150
May 16th–31st	300
June 1st–15th	0
June 16th–30th	2,140
Total	$4,010

C's ozone-depleting chemicals tax liability in the fourth quarter of 1990 (the look-back quarter under § 40.6302(c)–2T(a)(2)) was $1,800. C's liability during the look-back quarter would not have increased by reason of increased base amounts or changes of treatment of chemicals described in section 4682(g)(1) had such increases or changes been in effect.

(2) *Filing requirement.* Under § 40.6011(a)–1T(a), C must continue to file a Form 720 for each calendar quarter until C files a final return in accordance with § 40.6011(a)–2T. C's Form 720 for the second calendar quarter of 1991 is due by Tuesday, September 3, 1991. C's Form 720 would ordinarily be due by August 31, 1991 (the last day of the second month after the end of the calendar quarter (§ 40.6071(a)–2T(a)), but because August 31, 1991 is a Saturday, and Monday, September 2, 1991, is Labor Day, a legal holiday, C has until that Tuesday to file).

(3) *Deposit and payment requirement*—(i) *Semimonthly deposit rule.* C is required to make semimonthly deposits of tax (§ 40.6302(c)–1T(b)(1)). Deposits of ozone-

depleting chemicals tax for a semimonthly period are due by the last day of the second following semimonthly period (the 30-day rule under § 40.6302(c)–2T(a)(1)). Accordingly, C meets the semimonthly deposit requirement if C makes the following deposits:

By May 15th	$400
By May 31st	20
By June 17th	1,150
By July 1st	300
By July 15th	0
By July 32st	2,140

The deposit due on Monday, June 17th would ordinarily be due on June 15th, but because June 15, 1991 is a Saturday, C has until that Monday to make the deposit. The deposit due on Monday, July 1st would ordinarily be due on June 30th, but because June 30, 1991 is a Sunday, C has until that Monday to make the deposit.

(ii) *Safe harbor.* C may also meet the semimonthly deposit requirement by using the safe harbor rule applicable to persons that filed a return reporting section 4681 taxes for the look-back qnarter (§ 40.6203(c)–2T(a)(2)(i)), in this case the fourth calendar quarter of 1990. C meets this safe harbor by:

(A) Depositing $300 (1/6 of C's ozone-depleting chemicals tax liability for the fourth calendar quarter of 1990) by the last day of the second semimonthly period following each semimonthly period in the second calendar quarter of 1991 (*i.e.*, by each of May 15th, May 31st, June 17th, July 1st, July 15th, and July 31st); and

(B) Paying $2,210 (the balance of tax due for the second calendar quarter of 1991) by September 3, 1991. C is not required to increase its safe harbor deposit amounts to take into account predictable increases in ozone-depleting chemicals tax liability by reason of increased base amounts or changes of treatment of chemicals described in section 4682(g)(1) (§ 40.6302(c)–2T(a)(2)(ii)).

(d) *Example relating to diesel fuel tax; general safe harbor rule for deposits; crediting of overpayments.*

Example 5. (1) *Facts.* M, a corporation, is a wholesale distributor of diesel fuel registered under section 4101 with respect to the tax imposed by section 4091, and is therefore treated as a producer for purposes of the section 4091 tax on the sale of diesel fuel by its producer. M files Form 720 on a quarterly basis to report its liability for the diesel fuel tax. During each semimonthly period in the second calendar quarter of 1991, M incurs liability for the diesel fuel tax as follows:

April 1st-15th	$5,000
April 16th-30th	4,500
May 1st-15th	5,000
May 16h-31st	3,200
June 1st-15th	2,000
June 16ht-30th	1,500
Total	21,200

M incurred a diesel fuel tax liability of $36,000 in the fourth quarter of 1990 (the look-back quarter under (§ 40.6302(c)-1T(c)(2)(i)).

(2) *Filing requirement.* M must file a Form 720 for the second calendar quarter of 1991 reporting its $21,200 liability for diesel fuel tax (§ 40.6011(a)–1T(a)). M must continue to file a Form 720 for each calendar quarter until M files a final return in accordance with § 40.6011(a)–2T. Under § 40.6071(a)–1T(a), M's Form 720 for the second calendar quarter of 1991 is due by July 31, 1991.

(3) *Deposit and payment requirements*—(i) *Semimonthly deposit rule.* Under § 40.6302(c)–1T(b)(1), M is required to deposit the diesel fuel tax on a semimonthly basis. Diesel fuel tax must be deposited under the 9-day rule of § 40.6302(c)–1T(b)(3), so M's deposits of tax incurred during a semimonthly period are due by the 9th day of the following semimonthly period. Accordingly, M meets the semimonthly deposit requirement if M makes the following deposits:

By April 24th:	$5,000
By May 9th:	4,500
By May 24th:	5,000
By June 10th:	3,200
By June 24th:	2,000
By July 9th:	1,500

The deposit due on Monday, June 10th would ordinarily be due on June 9th, but because June 9, 1991, is a Sunday, M has until that Monday to make the required deposit.

(ii) *Safe harbor.* Under § 40.6302(c)–1T(c)(2), M may also meet the semimonthly deposit requirement by using the safe harbor rule applicable to persons that filed a return of this tax for the look-back quarter, in this case the fourth calendar quarter of 1990. M meets this safe harbor by:

(A) depositing $6,000 (⅙ of M's diesel fuel tax liability for the fourth calendar quarter of 1990) by the 9th day of the semimonthly period following each semimonthly period in the second calendar quarter of 1991 at an authorized Government depositary; and

(B) paying $0 (the balance of diesel fuel tax due for the second calendar quarter of 1991) by July 31, 1991. M may request that the overpayment of $14,800 (the difference between M's second-quarter deposits of $36,000 and M's second-quarter liability of $21,200) shown on its Form 720 for the second quarter of 1991 be credited towards any tax liability for the third quarter of 1991. Under § 40.6302(c)–1T(b)(1), this overpayment will be credited to M's account on July 31, 1991, the due date of the return showing the overpayment, or the filing date, if later. Thus, the $14,800 cannot be used to satisfy any deposit for the third quarter of 1991 required to be made before July 31, 1991.

(e) *Example relating to diesel fuel tax; failure-to-deposit penalties.*

Example 6. (1) *Facts.* N, a corporation, is a wholesale distributor of diesel fuel registered under section 4101 with respect to the tax imposed by section 4091, and is therefore treated as a producer for purposes of the section 4091 tax on the sale of diesel fuel by its producer. N files Form 720 on a quarterly basis to report its liability for the diesel fuel tax. During each semimonthly period in the second calendar quarter of 1991, N incurs liability for the diesel fuel tax as follows:

April 1st–15th:	$3,000
April 16th–30th:	3,500
May 1st–15th:	1,300
May 16th–31st:	2,000
June 1st–15th:	1,200
June 16th–30th:	1,400
Total:	$12,400

N incurred a diesel fuel tax liability of $12,000 in the fourth quarter of 1990 (the look-back quarter). With respect to its second quarter 1991 liability, N makes deposits to an authorized Government depositary as follows:

On April 24th:	$2,000
On May 9th:	2,000
On May 24th:	2,000
On June 11th:	2,000
On June 24th:	2,000
On July 9th:	2,000

N also deposits $400 on July 31, 1991. N did not make any overpayment of tax for the first calendar quarter of 1991.

(2) *Filing requirement.* N must file a Form 720 for the second calendar quarter of 1991 reporting its $12,400 liability for diesel fuel tax (§ 40.6011(a)–1T(a)). N must continue to file a Form 720 for each calendar quarter until N files a final return in accordance with § 40.6011(a)–2T. Under § 40.6071(a)–1T(a), N's Form 720 for the second calendar quarter of 1991 is due by July 31, 1991.

(3) *Deposit and payment requirement*—(i) *Semimonthly deposit rule.* Under § 40.6302(c)–1T(b)(1), N is required to deposit the diesel fuel tax on a semimonthly basis. Diesel fuel tax must be deposited under the 9-day rule of § 40.6302(c)–1T(b)(3), so N's deposits of tax incurred during a semimonthly period are due by the ninth day of the following semimonthly period. N chooses to use the safe harbor rule under § 40.6302(c)–1T(c)(2) to compute the amount of deposit for each semimonthly period in the quarter because N filed a return of diesel fuel tax for the look-back quarter, the fourth calendar quarter of 1990.

(ii) *Safe harbor.* In this case, N has not met the requirements of the safe harbor of § 40.6302(c)–1T(c)(2). In order to meet the semimonthly deposit requirement under the safe harbor rule, N must make six timely deposits at an authorized Government depositary, each in the correct amount, and pay any underpayment by the due date of the return. The deposit made on June 11th was due by June 10th.

(iii) *Result of failure to satisfy deposit requirements.* Under section 6656, failure-to-deposit penalties apply if deposits are not timely made, in the correct amount, to an authorized Government depositary. Deposits made are applied in date-made order against deposits due in due-date order. The penalty rate is 2 percent of the deposit underpayment ("underdeposit") if the failure is for not more than 5 days, 5 percent if the failure is for more than 5 days but not more than 15 days, and 10 percent if the failure is for more than 15 days. The penalty rate may thereafter

increase to more than 15 percent. N does not calculate the penalty itself. Instead, N files the Form 720 for the second calendar quarter reporting the $12,400 tax liability incurred during the quarter. N will be notified by the IRS of the amount of the penalty. Because N did not satisfy the safe harbor rule, N is subject to penalty based on N's failure to comply with the semimonthly deposit requirements (not the safe harbor rule). N incurs failure-to-deposit penalties as follows:

(A) The deposit due by April 24th was $3,000. The underdeposit is $1,000 for more than 5 but not more than 15 days. Thus, the penalty for this semimonthly period is $50, 5% of $1,000.

(B) The deposit due by May 9th was $3,500. The underdeposit is $2,000 for more than 5 days but not more than 15 days *and* $500 for more than 15 days. Thus, the penalty for this semimonthly period is $275, 5% of $2,000 plus 10% of $500.

(C) The deposit due by May 24th was $1,300. The underdeposit is $1,300 for more than 15 days. Thus, the penalty for this semimonthly period is $130, 10% of $1,300.

(D) The deposit due by June 11th was $2,000. The underdeposit is $1,800 for more than 5 days but not more than 15 days. Thus, the penalty for this semimonthly period is $180, 5% of $1,800.

(E) The deposit due by June 24th was $1,200. The underdeposit is $1,000 for more than 5 days but not more than 15 days. Thus, the penalty for this semimonthly period is $100, 5% of $1,000.

(F) The deposit due by July 9th was $1,400. The underdeposit is $400 for more than 15 days. Thus, the penalty is $40, 10% of $400.

(G) The total failure-to-deposit penalty is $775.

(f) *Example relating to air transportation and diesel fuel taxes; general safe harbor rule for deposits.*

Example 7. (1) *Facts.* O is a corporation engaged in providing air transportation to passengers and importing diesel fuel for retail sale. O is responsible for collecting the air transportation tax imposed by section 4261, and incurs liability for the diesel fuel tax imposed by section 4091. O files Form 720 on a quarterly basis to report these taxes. O does not compute its deposits of air transportation tax on the basis of amounts billed during each semimonthly period of the quarter. During each semimonthly period in the second calendar quarter of 1991, O collects air transportation tax as follows:

April 1st–15th:	$3,000
April 16th–30th:	2,500
May 1st–15th:	1,000
May 16th–31st:	4,000
June 1st–15th:	1,500
June 16th–30th:	2,000
Total:	$14,000

Also, during each semimonthly period in the second calendar quarter of 1991, O incurs liability for diesel fuel tax as follows:

April 1st–15th:	$500
April 16th–30th:	800
May 1st–15th:	1,200
May 16th–31st:	300
June 1st–15th:	400
June 16th–30th:	1,100
Total:	$4,300

O collected $12,000 of air transportation tax and incurred a diesel fuel tax liability of $3,000 in the look-back quarter, in this case the fourth quarter of 1990, for a combined total liability in that quarter of $15,000.

(2) *Filing requirement.* O must continue to file a Form 720 for each calendar quarter (§ 40.6011(a)–1T(a)) until O files a final return in accordance with § 40.6011(a)–2T. Because O must report air transportation tax for the second calendar quarter of 1991, O's Form 720 for that quarter is due by Tuesday, September 3, 1991 (§ 40.6071(a)–2T(a)). The Form 720 would ordinarily be due by August 31st (the last day of the second month after the end of the calendar quarter), but because August 31, 1991 is a Saturday, and Monday, September 2, 1991, is Labor Day, a legal holiday, O has until that Tuesday to file. If O had reported only diesel fuel tax liability on O's Form 720 for the second calendar quarter of 1991, the Form 720 would have been due by July 31, 1991, the last day of the month after the end of the calendar quarter (§ 40.6071(a)–1T(a)). However, only one Form 720 may be filed for a calendar quarter. Thus, O's responsibility for reporting air transportation tax allows O to delay the filing of the Form 720 (§ 40.6071(a)–1T(a)(2)).

(3) *Deposit and payment requirement*—(i) *Semimonthly deposit rule.* O is required to deposit both the air transportation tax and the diesel fuel tax on a semimonthly basis (§ 40.6302(c)–1T(b)(1)). Deposits of air transportation tax collected during a semimonthly period and of diesel fuel tax incurred during a semimonthly period are due by the 9th day of the following semimonthly period (§ 40.6302(c)–1T(b)(3)). Accordingly, O meets the semimonthly deposit requirement if O makes the following deposits:

By April 24th:	$3,500
By May 9th	3,300
By May 24th	2,200
By June 10th	4,300
By June 24th	1,900
By July 9th	3,100

The deposit due on Monday, June 10th would ordinarily be due on June 9th, but because June 9, 1991 is a Sunday, O has until that Monday to make the required deposit.

(ii) *Safe harbor.* O filed a Form 720 reporting air transportation and diesel fuel tax in the look-back quarter, in this case the fourth calendar quarter of 1990. Therefore, O may also meet the semimonthly deposit requirements using the safe harbor rule under § 40.6302(c)–1T(c)(2). Because the deposits of air transportation tax and diesel fuel tax O must make are due on the same schedule (i.e., by the 9th day of the semimonthly period following the semimonthly period in which the tax liability is incurred), O computes the safe harbor amount of deposit based on O's combined liability for these taxes in the look-back quarter. Accordingly, O meets the safe harbor by:

(A) Depositing $2,500 (⅙ of O's combined air transportation tax liability and diesel fuel tax liability for the fourth calendar quarter of 1990) by the 9th day of the semimonthly period following each semimonthly period in the first calendar quarter of 1991;

(B) Depositing $1,300 (the balance of diesel fuel tax due for the second calendar quarter of 1991) by July 31, 1991; and

(C) Paying $2,000 (the balance of air transportation tax due for the second calendar quarter of 1991) with the return by September 3, 1991. Note that although O may delay the filing of its Form 720 for the second calendar quarter of 1991 until two months after the quarter ends, O must pay the full amount of diesel fuel tax due for the quarter by the date the return of diesel fuel tax would ordinarily be due (i.e., the last day of the month after the end of the calendar quarter) (§ 40.6302(c)–1T(c)(2)(ii)).

(g) [Reserved]

(h) *Examples relating to luxury tax and foreign insurer policy tax; general safe harbor rule for deposits.*

Example 9. (1) *Facts.* Q is a corporation engaged in the retail sale of jewelry. Because the price of some of the pieces of jewelry sold by Q in the first and second calendar quarters of 1991 exceeds $10,000, Q is liable in each quarter for the luxury tax imposed by section 4006. Q's total luxury tax liability for the first calendar quarter of 1991 was $60,000. Q's luxury tax liability for each semimonthly period in the second calendar quarter of 1991 is as follows:

April 1st–15th	$20,000
April 16th–30th	25,000
May 1st–15th	2,000
May 16th–31st	8,000
June 1st–15th	4,500
June 16th–30th	12,000
Total	71,500

Q also purchases insurance from a foreign insurer, thereby incurring liability for the tax imposed by section 4371 on policies issued by a foreign insurer. Prior to 1991, Q filed Form 720 on a quarterly basis to report its section 4371 liability. Q filed Form 720 for the first calendar quarter of 1991 to report both its luxury tax liability and its section 4371 liability for that quarter. During each semimonthly period in the second calendar quarter of 1991, Q's section 4371 liability is as follows:

April 1st–15th	$0
April 16th–30th	0
May 1st–15th	2,500
May 16th–31st	0
June 1st–15th	0
June 16th–30th	2,500
Total	5,000

Q paid section 4371 tax of $6,000 in the safe harbor look-back quarter, the fourth quarter of 1990. Because the luxury tax was not in

effect in 1990, Q was not liable for luxury tax in that quarter.

(2) *Filing requirement.* Q must file a Form 720 reporting the $71,500 luxury tax liability and the $5,000 section 4371 tax liability for the second calendar quarter of 1991 (§ 40.6011(a)–1T(a)). The Form 720 is due by July 31, 1991, the last day of the first month following the calendar quarter (§ 40.6071(a)–1T(a)). Q must continue to file a Form 720 for each subsequent calendar quarter until Q files a final return in accordance with § 40.6011(a)–2T.

(3) *Deposit and payment requirement*—(i) *Semimonthly deposit rule.* Q is required to deposit both the luxury tax and the section 4371 tax on a semimonthly basis (§ 40.6302(c)–1T(b)(1)). Deposits of these taxes for each semimonthly period are due by the 9th day of the following semimonthly period (§ 40.6302(c)–1T(b)(3)). Accordingly, Q meets the semimonthly deposit requirement if Q makes the following deposits:

By April 24th	$20,000
By May 9th	25,000
By May 24th	4,500
By June 10th	8,000
By June 24th	4,500
By July 9th	14,500

The deposit due on Monday, June 10th would ordinarily be due on June 9th, but because June 9, 1991 is a Sunday, Q has until that Monday to make the required deposit.

(ii) *Safe harbor.* Deposits of the luxury tax and the section 4371 tax are due on the same schedule. Accordingly, Q may also meet the semimonthly deposit requirements for both taxes using the safe harbor applicable to persons that filed a return during the safe harbor look-back quarter, in this case the fourth calendar quarter of 1990, even though Q did not pay luxury tax in that quarter. Q would meet this safe harbor by:

(A) Depositing $1,000 (⅛ of Q's section 4371 tax liability in the fourth calendar quarter of 1990) by the 9th day of the semimonthly period following each semimonthly period in the second calendar quarter of 1991; and

(B) Paying $70,500 (the balance of luxury tax and section 4371 tax due for the second calendar quarter of 1991) by July 31, 1991.

Example 10. (1) *Facts.* The facts are the same as in Example 9. In addition, Q's luxury tax liability for the fourth calendar quarter of 1991 is as follows:

October 1st–15th	$ 5,000
October 16th–31st	10,000
November 1st–15th	25,000
November 16th–30th	10,500
December 1st–15th	25,000
December 16th–31st	22,500
Total	$98,000

Q continues to purchase insurance from a foreign insurer, incurring liability for the tax imposed by section 4371 on policies issued by a foreign insurer. During the fourth quarter of 1991, Q's section 4371 is as follows:

October 1st–15th	$ 0
October 16th–31st	0
November 1st–15th	2,500
November 16th–30th	0
December 1st–15th	0
December 16th–31st	2,000
Total	$4,500

Q filed a Form 720 reporting luxury tax and section 4371 tax for the third calendar quarter of 1991.

(2) *Filing requirement.* Q must file a Form 720 reporting the $98,000 luxury tax liability and the $4,500 section 4371 tax liability for the fourth calendar quarter of 1991 (§ 40.6011(a)–1T(a)). The Form 720 is due by January 31, 1992, the last day of the first month following the calendar quarter (§ 40.6071(a)–1T(a)). Q must continue to file a Form 720 for each subsequent calendar quarter until Q files a final return in accordance with § 40.6011(a)–2T.

(3) *Deposit and payment requirement*—(i) *Semimonthly deposit rule.* Q is required to deposit both the luxury tax and the section 4371 tax on a semimonthly basis (§ 40.6302(c)–1T(b)(1)). Deposits of these taxes for each semimonthly period are due by the 9th day of the following semimonthly period (§ 40.6302(c)–1T(b)(3)). Accordingly, Q meets the semimonthly deposit requirement if Q makes the following deposits:

By October 24th	$ 5,000
By November 12th	10,000
By November 25th	27,500
By December 9th	10,500
By December 24th	25,000
By January 9th	24,500

The deposit due by Tuesday, November 12th would ordinarily be due by November 9th (the 9th day after the end of the semimonthly period). Because November 9, 1991 is a Saturday, and Monday, November 11, 1991, is Veterans Day, a legal holiday, Q has until that Tuesday to make the required deposit. Similarly, Q has until Monday, November 25, 1991, to make the deposit that would ordinarily be due the preceding day because November 24th is a Sunday.

(ii) *Safe harbor.* Q may also meet the semimonthly deposit requirements using the safe harbor applicable to persons that filed a return during the safe harbor look-back quarter, in this case the second quarter of 1991. Because the deposits of luxury tax and section 4371 taxes Q must make are due on the same schedule, Q computes the safe harbor deposit amount based on the combined net tax liability for these taxes reported in the look-back quarter ($76,500). Accordingly, Q meets the safe harbor by:

(A) depositing $12,750 (⅛ of Q's combined liability for the second calendar quarter of 1991) by the 9th day of the semimonthly period following each semimonthly period in the third calendar quarter of 1991; and

(B) paying $26,000 (total tax liability for the fourth calendar quarter of $102,500 less $76,500 deposited) with the return by January 31, 1992, the last day of the month following the end of the fourth calendar quarter (§ 40.6071(a)–1T(a)).

PART 43—[AMENDED]

Par. 2. Part 43 is amended as follows.

1. The authority for part 43 continues to read in part as follows:

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

2. Section 43.0–1T is added to read as follows:

§ 43.0–1T Introduction (temporary).

(a) *In general.* The regulations in this part 43 are designated "Excise Tax on Transportation by Water." The regulations relate to the taxes on transportation by water imposed by section 4471 of the Internal Revenue Code. See part 40 of this subchapter for regulations relating to returns, payments, and deposits of taxes imposed by section 4471.

(b) *Termination of certain provisions.* Sections 43.6011(a)–1T, 43.6011(a)–2T, 43.6071(a)–1T, 43.6091–1T, 43.6101–1T, 43.6109(a)–1T, and 43.6151(a)–1T shall not apply for calendar quarters beginning after December 31, 1990, and § 43.6302(c)–1T shall not apply for calendar quarters beginning after March 31, 1991.

PART 44—[AMENDED]

Par. 3. Part 44 is amended as follows:

1. The authority for part 44 continues to read in part as follows:

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

§ 44.4402–1 [Removed]

2. Section 44.4402–1 is removed and a new § 44.4402–1T is added to read as follows:

§ 44.4402–1T Exemptions (temporary).

(a) *Parimutuel wagering enterprises.* Section 4402 provides that no tax shall be imposed by section 4401 on any wager placed with, or on any wager placed in a wagering pool conducted by, a parimutuel wagering enterprise licensed under State law.

(b) *Wagering machines*—(1) *In general.* Section 4402 provides that no tax shall be imposed by section 4401 on any wager placed in a coin-operated device (as defined in section 4462 as in effect for years beginning before July 1, 1980), or on any amount paid, in lieu of inserting a coin, token, or similar object, to operate a device described in section 4462(a)(2) (as so in effect). These devices include:

(i) So-called "slot" machines that operate by means of the insertion of a coin, token, or similar object and that, by application of the element of chance, may deliver, or entitle the person playing or operating the machine to receive cash, premiums, merchandise, or tokens; and

(ii) Machines that are similar to machines described in paragraph

(b)(1)(i) of this section and are operated without the insertion of a coin, token, or similar object.

(2) *Examples.* The following devices and machines are examples of the devices referred to in paragraph (b)(1) of this section:

(i) A machine that is operated by means of the insertion of a coin, token, or similar object and that, even though it does not dispense cash or tokens, has the features and characteristics of a gaming device whether or not evidence exists as to actual payoffs.

(ii) A so-called crane machine, claw, digger, or rotary merchandising type device that is operated by the insertion of a coin and adjustment of a control lever for the purpose or removing from the machine, by gripping, pushing, or other manipulation articles such as figurines, lighters, etc., in the machine.

(iii) A pinball machine equipped with a pushbutton for releasing free plays and a meter for recording the plays so released, or equipped with provisions for multiple coin insertion for increasing the odds.

(iv) Pinball machines in connection with which free plays are redeemed in cash, tokens, or merchandise, or prizes are offered to any person for the attainment of designated scores.

(v) A coin-operated machine that displays a poker hand or delivers a ticket with a poker hand symbolized on it that entitles the player to a prize if the poker hand displayed by the machine or symbolized on the ticket constitutes a winning hand.

PART 45—[REMOVED]

Par. 4. Part 45 is removed.

Par. 5. Part 46 is amended as follows.

1. The authority for part 46 continues to read in part as follows:

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

2. The heading for part 46 is revised.

3. Section 46.0–1 is removed and new § 46.0–1T is added.

4. Sections 46.0–3 and 46.0–4 are removed.

5. Subpart B is removed and subpart D is removed and reserved.

6. Subpart A1 is redesignated as subpart B.

7. Section 46.4375–1 is removed.

8. Section 46.6001–4 is redesignated as § 46.4371–4 of newly designated subpart B.

9. The revised heading and added provisions read as follows:

PART 46—EXCISE TAX ON POLICIES ISSUED BY FOREIGN INSURERS AND OBLIGATIONS NOT IN REGISTERED FORM

§ 46.0–1T Introduction (temporary).

(a) *In general.* The regulations in this part 46 relate to the taxes on policies issued by foreign insurers imposed by chapter 34 of the Internal Revenue Code and the tax on the issuer of registration-required obligations not issued in registered form imposed by chapter 39 of the Internal Revenue Code. See part 40 of this subchapter for regulations relating to returns, payments, and deposits of taxes imposed by chapters 34 and 39.

(b) *Termination of certain provisions.* Subpart E (other than §§ 46.6302(b)–1, 46.6302(c)–1 and 46.6302(c)–2) shall not apply for calendar quarters beginning after December 31, 1990, and §§ 46.6302(b)–1, 46.6302(c)–1, and 46.6302(c)–2 shall not apply for calendar quarters beginning after March 31, 1991.

PART 48—[AMENDED]

Par. 6. Part 48 is amended as follows.

1. The authority for part 48 continues to read in part as follows:

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

§ 48.0–1 [Removed]

2. Section 48.0–1 is removed and new § 48.0–1T is added.

3. The added provision reads as follows:

§ 48.0–1T Introduction (temporary).

(a) *In general.* The regulations in this part 48 are designated "Manufacturers and Retailers Excise Tax Regulations." The regulations relate to the excise taxes imposed by chapter 31 and 32 of the Internal Revenue Code. Chapter 31 (relating to retail taxes) imposes tax on certain luxury items, special fuels, fuel used in commercial transportation on inland waterways, and heavy trucks and trailers. Chapter 32 (relating to manufacturers taxes) imposes tax on gas guzzler automobiles, highway-type tires, gasoline, diesel and aviation fuel, coal, certain vaccines, and sporting goods. Although chapter 32 also imposes a tax on firearms, this tax is under the jurisdiction of the Bureau of Alcohol, Tobacco, and Firearms beginning in 1991, and the regulations in this part 48 relating to the tax are not in effect after December 31, 1990. See part 40 of this subchapter for regulations relating to returns, payments, and deposits of taxes imposed by chapters 31 and 32 (other than the tax on firearms imposed by section 4181).

(b) *Termination of certain provisions.* Sections 48.4181–1, 48.4181–2, 48.4182–1, 48.4182–2, 48.6011(a)–1, 48.6011(a)–2, 48.6071(a)–1, 48.6081(a)–1, 48.6091–1, 48.6101–1, 48.6109–1, 48.6151–1, 48.6151–1T, 48.6161(a)(1)–1, 48.6402(a)–1, and 48.6404(a)–1 shall not apply for calendar quarters beginning after December 31, 1990, and §§ 48.6302(c)–1 and 48.6302(c)–2 shall not apply for calendar quarters beginning after March 31, 1991.

PART 49—[AMENDED]

Par. 7. Part 49 is amended as follows.

1. The authority for part 49 continues to read in part as follows:

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

2. Sections 49.0–1, 49.0–3, and 49.0–4 are removed and new § 49.0–1T is added.

3. Subpart B is removed and reserved.

4. The heading for subpart E is revised to read as follows: "Subpart E—Transportation of Property."

5. Sections 49.4286–1 and 49.4287–1 of subpart E are removed.

§§ 49.9000 and 49.9000–1 [Removed]

6. The undesignated center heading preceding § 49.9000, and §§ 49.9000 and 49.9000–1 are removed.

7. The added provision reads as follows:

§ 49.0–1T Introduction (temporary).

(a) *In general.* The regulations in this part 49 are designated "Facilities and Service Excise Taxes." The regulations relate to the taxes on communications and transportation by air imposed by chapter 33 of the Internal Revenue Code. See part 40 of this subchapter for regulations relating to returns, payments, and deposits of taxes imposed by chapter 33.

(b) *Termination of certain provisions.* Subpart G (other than § 49.6302(c)–1) shall not apply for calendar quarters beginning after December 31, 1990. Section 49.6302(c)–1 (except for paragraph (a)(1)(iii) (relating to semimonthly deposits only)) shall not apply for calendar quarters beginning after March 31, 1991.

PART 52—[AMENDED]

Par. 8. Part 52 is amended as follows.

1. The authority for part 52 continues to read in part as follows:

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

2. Section 52.0–1T is added to read as follows:

§ 52.0–1T Introduction (temporary).

(a) *In general.* The regulations in this part 52 are designated "Environmental Tax Regulations." The regulations relate to the environmental taxes imposed by chapter 38 of the Internal Revenue Code.

See part 40 of this subchapter for regulations relating to returns, payments, and deposits of taxes imposed by chapter 38.

(b) *Termination of certain provisions.* Sections 52.6011(a)–1T, 52.6011(a)–2T, 52.6071(a)–1, 52.6071(a)–2T, 52.6091–1T, 52.6101–1T and 52.6109(a)–1T shall not apply for calendar quarters beginning after December 31, 1990 and §§ 52.6302(c)–1 and 52.6302(c)–2T shall not apply for calendar quarters beginning after March 31, 1991.

PART 138—[REMOVED]

Par. 9. Part 138 is removed.

PART 142—[REMOVED]

Par. 10. Part 142 is removed.

PART 145—[AMENDED]

Par. 11. Part 145 is amended as follows.

1. The authority for part 145 continues to read in part:

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

2. Sections 145.1–1 through 145.4–6 are removed.

PART 146—[REMOVED]

Par. 12. Part 146 is removed.

PART 147—[REMOVED]

Par. 13. Part 147 is removed

PART 148—[AMENDED]

Par. 14. Part 148 is amended as follows.

1. The authority for part 148 continues to read as follows:

Authority: Sec. 7805, 68A Stat. 917; 26 U.S.C. 7805.

2. Section 148.1–6 is removed.

PART 49—[AMENDED]

Par. 15. Section 154.2–1 of part 154 is redesignated as § 49.4271–1T and transferred to subpart E of part 49, and newly designated § 49.4271–1T is amended by revising the section heading, by removing the last sentence of paragraph (a), and by revising paragraph (f) to read as follows:

§ 49.4271–1T Tax on transportation of property by air (temporary).

* * * * *

(f) *Collection of tax.* The tax imposed by section 4271 shall be paid by the person making the payment subject to tax and shall be collected by the person engaged in the business of transporting property by air for hire who receives such payment, except that in the case of amounts subject to tax which are paid by the U.S. Postal Service, the tax shall not be collected by the person engaged in the business of transporting property by air for hire who receives such payment, but instead shall be paid directly by such Service as if it were a collecting agent.

PART 154—[REMOVED]

Par. 16. Part 154 is removed.

Approved: December 19, 1990.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 925

Missouri Permanent Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing approval, with certain exceptions and additional requirements, of a proposed amendment to the Missouri permanent regulatory program (hereinafter referred to the Missouri program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment was submitted to OSM on January 12, 1989, and pertains to prime farmland, hydrology, excess spoil disposal, coal processing waste disposal, fish and wildlife, rills and gullies, revegetation, subsidence, prohibitions, areas unsuitable for mining, bonding, and definitions. The amendment is intended to revise the State program to be consistent with the corresponding Federal standards and to incorporate the additional flexibility afforded by the revised Federal regulations.

EFFECTIVE DATE: January 3, 1991.

FOR FURTHER INFORMATION CONTACT: Jerry R. Ennis, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 934 Wyandotte Street, Room 500, Kansas City, Missouri 64105; telephone: (816) 374–6405.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior conditionally approved the Missouri program on November 21, 1980. Information pertinent to the general background and revisions to the permanent program submission, as well as the Secretary's findings, the disposition of comments, and the conditions of approval of the Missouri program can be found in the November 21, 1980, **Federal Register** (45 FR 77017). Subsequent actions concerning proposed amendments are codified at 30 CFR 925.10, 925.12, 925.15, and 925.16.

II. Submission of Amendment

On January 12, 1989, Missouri submitted proposed regulations to OSM as an amendment to its approved regulatory program (Administrative Record No. MO–410). The proposed regulations would amend Chapters 2, 3, 5, 6, 7, and 8 of Division 40—Land Reclamation Commission, Title 10—Department of Natural Resources, of the Missouri Code of State Regulations (CSR).

The amendment proposed by Missouri responds to (1) a June 11, 1986, letter from OSM (Administrative Record No. MO–295) sent in accordance with 30 CFR part 732 requiring certain provisions of the State program to be updated for consistency with the Federal regulations through July 1, 1983, (2) a January 30, 1986, letter from OSM (Administrative Record No. MO–351) sent in accordance with 30 CFR part 732 concerning the adequacy of Missouri's alternative bonding system, and (3) a required program amendment at 30 CFR 925.16(1)(1). Additionally, Missouri proposes to revise provisions at its own initiative.

Missouri proposes to revise: 10 CSR 40–3.040 sections (1), (3), (4), (6) through (13) along with 10 CSR 40–3.200 sections (3), (4), and (6) through (12) concerning Surface and Underground Requirements for Protection of the Hydrologic Balance; 10 CSR 40–3.060(1) along with 10 CSR 40–3.220(1) concerning Surface and Underground Requirements for the Disposal of Excess Spoil; 10 CSR 40–3.080 sections (1), (2), (4), (10), and (11) along with 10 CSR 40–3.230 sections (1), (2), (4), (10), and (11), concerning Surface and Underground Requirements for the Disposal of Coal Processing Waste; 10 CSR 40–3.100(2), Requirements for the Protection of Fish, Wildlife, and Related Environmental Values and Protection Against Slides and Other Related Damage; 10 CSR 40–3.110(6), Regrading or Stabilizing Rills and Gullies; 10 CSR 40–3.120 sections (6), and (8) along with