

available from September 12, 1988 until December 31, 1994 to:

(d) When to file.

(1) The information in paragraph (b)(1) of this section and entries in the log specified in paragraph (b)(2) of this section relating to transportation requests for which transportation has commenced 30 days or more previously, which have been denied, or which have been pending for more than six months, must be filed initially with the Commission by September 19, 1988, and thereafter as required by paragraphs (d)(2) and (d)(4) until the earlier of: 90 days after the Commission has determined that the pipeline is in full compliance with the requirements of Order No. 636; or December 31, 1993. This requirement applies to transportation service that commenced or transportation requests that were denied after July 14, 1988, or that were pending for six months or more on July 14, 1988.

Moler, Commissioner, *dissenting in part*:

With only minor exceptions, the majority continues to require that pipelines contemporaneously disclose to all shippers the gas sales and marketing information provided to their affiliates.<sup>1</sup> I disagree as a matter of policy. The requirement for contemporaneous disclosure unduly burdens pipelines and gives the pipelines' competitors an unwarranted advantage. It is also unnecessary because Standards C and E are more than adequate safeguards against affiliate abuse.

Standard C prohibits pipelines from giving their marketing affiliates preferences in receiving open access transportation.<sup>2</sup> Standard E prohibits pipelines from disclosing, to their marketing affiliates, information which they receive from nonaffiliated shippers.<sup>3</sup> The retention of these provisions adequately protects nonaffiliated marketers. The court's main concern in *Tenneco Gas v. Federal Energy Regulatory Commission* (*Tenneco*)<sup>4</sup> was that a pipeline should not be allowed to use its market power over transportation to skew the competitive market for natural gas in

favor of its affiliate.<sup>5</sup> These provisions accomplish that without imposing undue burdens on pipelines and their affiliates.

I also disagree as a matter of law. I do not believe the Commission has met the challenge imposed by the court in order to justify retention of Standard F in the face of court's explicit remand in *Tenneco*. There the court found the commission's explanation for requiring contemporaneous disclosure of sales and marketing information was "unsatisfactory".<sup>6</sup> On remand, the court required us to justify the disclosure requirement in terms of the pipeline's monopoly control over transportation service.<sup>7</sup> This the Commission has failed to do.

The order is vague; it does not discuss the types of sales and marketing information that may be obtained in providing transportation services, and thus properly subject to disclosure. Instead, the order cites as truth the bare assumptions previously advanced and rejected by the *Tenneco* court: That a pipeline's ongoing relationship with shippers yields information on sales and marketing information that is not readily available to others and that disclosing this information only to an affiliate creates an undue preference because the affiliate would not have otherwise learned that information. The order utterly fails to meet the burden of showing how this flows from the pipeline's anticompetitive exercise of market power. Wrapping itself in the court's language, the Commission concludes, without support or explanation, that any information obtained by the pipeline relating to sales and marketing on its system "flow[s] from the pipeline's anticompetitive market powers" and thus must be subject to disclosure.<sup>8</sup> The Commission, repeating the error exposed by the *Tenneco* court, asks the world to rely on "common sense" and the Commission's "experience."<sup>9</sup> That is not good enough.<sup>10</sup>

<sup>1</sup> 969 F.2d at 1201.

<sup>2</sup> 969 F.2d at 1201.

<sup>3</sup> In particular, the Commission was to "ensure that the final requirement is reasonably tailored to meet the Commission's goals of improving the market and benefiting consumers, as well as preventing undue discrimination." 969 F.2d at 1201.

<sup>4</sup> Slip op. at 13; cf. 969 F.2d at 1201 ("[b]ut advantages a pipeline gives its affiliate are improper only to the extent that they flow from the pipeline's anti-competitive market power").

<sup>5</sup> Slip op. at 13.

<sup>6</sup> To be sure, while courts must defer to the "informed discretion" of the Commission, we must demonstrate how we are "informed" by relevant factual evidence. See generally *Michigan Consolidated Gas Co. v. FERC*, 883 F.2d 117, 123-

The court has already rejected the circular reasoning that any advantage to a marketing affiliate is a bad advantage.<sup>11</sup> The advantage a pipeline gives to its marketing affiliate is improper only to the extent that the advantage flows from the pipeline's anticompetitive market power. Otherwise, the court said, we would improperly cripple the permissible efficiencies of vertical integration that "cannot by themselves be considered uses of monopoly power."<sup>12</sup>

In conclusion, I would eliminate the contemporaneous disclosure requirement for all sales and marketing information. Thus I dissent.

Elizabeth Anne Moler,  
Commissioner.

[FR Doc. 92-30269 Filed 12-11-92; 8:45 am]  
BILLING CODE 6717-01-M

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[T.D. 8452]

RIN 1545-AG02

#### Information Returns of Brokers

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

**SUMMARY:** This document contains final regulations relating to information returns of brokers. Changes to the applicable law were made by the Tax Equity and Fiscal Responsibility Act of 1982. The regulations affect brokers effecting dispositions (including short sales) of securities, commodities, regulated futures contracts, and forward contracts and provide them with guidance needed to comply with the law.

124 (DC Cir. 1989), *cert. denied*, 494 U.S. 1079 (1990).

<sup>11</sup> The Commission made essentially the same claims to the court on brief as it does here.

There is no merit to the pipeline's argument that the Commission exceeded its authority in requiring disclosure of sales and marketing information rather than just transportation related information. As the Commission explained, for a pipeline to share sales and marketing information, like transportation information, with its affiliate, and not others, presents an obvious potential for undue discrimination \* \* \*. Since the sales and marketing information, like transportation information, can afford a pipeline affiliate a significant advantage, the Commission had ample opportunity to require its disclosure to all potential shippers if the pipeline discloses such information to its affiliate.

Brief of Respondent Federal Energy Regulatory Commission at 37-38 (citations and footnote omitted).

<sup>12</sup> 969 F.2d at 1201.

<sup>1</sup> The order excludes from the contemporaneous disclosure requirement information obtained from public sources and information that does not directly involve the pipeline or an affiliated pipeline. Slip op. at 10.

<sup>2</sup> 18 CFR 161.3(c).

<sup>3</sup> 18 CFR 161.3(e).

<sup>4</sup> 969 F.2d 1187 (DC Cir. 1992).

**EFFECTIVE DATE:** The regulations are effective July 1, 1983.

**FOR FURTHER INFORMATION CONTACT:** John P. Moriarty, 202-622-4950 (not a toll-free call).

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 1.6045-1(a)(5) of the Income Tax Regulations (26 CFR part 1) defines the term "commodity" for purposes of the information reporting requirements of section 6045 of the Internal Revenue Code. On January 5, 1984, the Internal Revenue Service published in the *Federal Register* proposed amendments (49 FR 646) to those regulations to clarify the definition of a commodity. The proposed regulations also contain an exception to the information reporting requirements for sales of small amounts of commodities.

**Public Comments**

A number of comments on the proposed regulations suggested specific *de minimis* dollar amounts or quantities of commodities that should be excepted from reporting. A public hearing on the January 1984 regulations was held on March 28, 1984. After consideration of all written comments regarding the proposed amendments, the final regulations under section 6045 are revised by this Treasury decision. The Internal Revenue Service anticipates finalizing the remaining aspects of the proposed amendments in the near future.

**Explanation of Provisions**

After considering the comments submitted with respect to the proposed regulations, the Service has concluded that specifically tailored rules that except certain transactions from the information reporting requirements will more appropriately balance the cost of reporting against the improvement in compliance attributable to reporting than a general *de minimis* rule. Further, the Service has determined that these rules should not necessarily be limited to transactions involving commodities, but rather should apply to sales of securities as well in appropriate circumstances.

Accordingly, the final regulations provide that no return of information is required for a sale effected by a broker for a customer if the sale is an "excepted sale." A sale is an excepted sale if it is so designated by the Service in a revenue ruling or revenue procedure published in the Internal Revenue Bulletin.

**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 has also 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.

**Drafting Information**

The principal author of these regulations is John P. Moriarty of the Office of the Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

**List of Subjects in 26 CFR 1.6031-1 through 1.6060-1**

Income taxes, Reporting and recordkeeping requirements.

**Adoption of amendments to the regulations**

Accordingly, 26 CFR part 1 is amended as follows:

**PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953**

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

**Authority:** 26 U.S.C. 7805 \* \* \* Section 1.6045-1 also issued under 26 U.S.C. 6045 \* \* \*

**Par. 2.** Section 1.6045-1 is amended by revising paragraph (c)(3) to read as follows:

**§ 1.6045-1 Returns of information of brokers and barter exchanges.**

\* \* \* \* \*

(c) \* \* \*

(3) **Exceptions—(i) In general.** Except as provided in paragraph (c)(3)(ii) of this section, the exceptions set forth in paragraph (c)(3) of § 1.6045-1 of this chapter apply to sales effected on or after May 29, 1984. For an exception for certain sales of agricultural commodities and certificates issued by the Commodity Credit Corporation after January 1, 1993, see paragraph (c)(7) of this section. With respect to sales effected before May 29, 1984, the exceptions provided in § 1.6045-1(c)(3) (as contained in the CFR edition revised as of April 1, 1984) apply.

(ii) **Excepted sales.** No return of information is required with respect to a sale effected by a broker for a customer

if the sale is an excepted sale. For this purpose, a sale is an excepted sale if it is so designated by the Internal Revenue Service in a revenue ruling or revenue procedure published in the Internal Revenue Bulletin. (See § 601.601(d)(2)(ii)(b) of this chapter).

\* \* \* \* \*

Shirley D. Peterson,

Commissioner of Internal Revenue.

Approved: November 19, 1992.

Allen J. Wilensky,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 92-30069 Filed 12-11-92; 8:45 am]

BILLING CODE 4830-01-M

**26 CFR Part 301**

[TD 8453]

RIN 1545-AM68

**Review of Jeopardy Levy or Assessment Procedures**

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations relating to the procedures for review of jeopardy levies and jeopardy and termination assessments. The Technical and Miscellaneous Revenue Act of 1988 expanded the coverage of the existing procedures for the review of an assessment made under sections 6851(a), 6852(a), 6861(a), or 6862 to include the review of those jeopardy levies made less than 30 days after notice and demand for payment is made under section 6331(a). In addition, because Congress intended to permit administrative and judicial review of all jeopardy levy cases where the general notice requirements of section 6331 (a) and (d) are not met, the regulations extend review to include all such cases. The regulations also incorporate the modifications to section 7429 which now provide the Tax Court with concurrent jurisdiction with the federal district courts regarding the review of jeopardy and termination assessments and jeopardy levies in certain circumstances, where previously only the district courts had jurisdiction with respect to the review of jeopardy and termination assessments.

**EFFECTIVE DATE:** These regulations are effective on December 14, 1992.

**FOR FURTHER INFORMATION CONTACT:**

Joseph W. Clark, 202-622-3640 (not a toll-free call).

**SUPPLEMENTARY INFORMATION:****Background**

This document contains final regulations amending the Procedure and Administration Regulations (26 CFR part 301) under section 7429 of the Internal Revenue Code (Code). The regulations reflect the amendment of section 7429 by section 6237 of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. No. 100-647).

**Explanation of Provisions**

The Internal Revenue Service published a notice of proposed rulemaking in the *Federal Register* on May 9, 1991. The Internal Revenue Service received no public comments on the proposed regulations. No changes have been made to the final regulations.

Section 6237 of the Technical and Miscellaneous Revenue Act of 1988 (TAMRA) (Pub. L. No. 100-647, 102 Stat. 3573) amended section 7429 of the Code to extend the existing procedures relating to the review of jeopardy and termination assessments to the review of certain jeopardy levies. The regulations specify that the Internal Revenue Service must give the taxpayer whose property has been subjected to jeopardy or termination assessment a written statement of the information on which the action is based within 5 days of the date the jeopardy or termination assessment is made. A written statement is also required within 5 days of the date that a jeopardy levy is made if the general notice requirements of section 6331 (a) and (d) are not met with respect to the levy. The taxpayer has 30 days from receipt of the written statement or, if no statement was provided, 30 days from the date the statement was required to be furnished to request administrative review. The taxpayer may commence judicial review of the reasonableness of the jeopardy or termination assessment or levy by bringing a civil action in the appropriate court within 90 days after the earlier of (1) the date of notice of the administrative review determination or (2) the 16th day after the request for review was made. The regulations further reflect the grant to the Tax Court of concurrent jurisdiction with the federal district courts over challenges to jeopardy and termination assessments and levies if the taxpayer has filed a petition with the Tax Court prior to the making of the jeopardy assessment or levy with respect to any deficiency covered by the jeopardy assessment or levy notice.

**Special Analyses**

It has been determined that these regulations are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also 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 of the Internal Revenue Code, the notice of proposed rulemaking for these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

**Drafting Information**

The principal author of these regulations is Joseph W. Clark, Office of the Assistant Chief Counsel (General Litigation), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in their development.

**Lists of Subjects in 26 CFR Part 301**

Administrative practice and procedure, Alimony, Bankruptcy, Child support, Continental shelf, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Oil pollution, Penalties, Pensions, Reporting and recordkeeping requirements, Statistics, Taxes.

**Adoption of Amendments to the Regulations**

Accordingly, 26 CFR part 301 is amended as follows:

**Paragraph 1.** The authority citation for part 301 continues to read in part as follows:

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

**Par. 2** Sections 301.7429-1, 301.7429-2 and 301.7429-3 are revised to read as follows:

**§ 301.7429-1 Review of jeopardy and termination assessment and jeopardy levy procedures; information to taxpayer.**

Not later than 5 days after the day on which an assessment is made under section 6851(a), 6852(a), 6861(a), or 6862, or a levy is made under section 6331(a) without complying with the notice before levy provisions of section 6331(d), the district director shall provide the taxpayer a written statement setting forth the information upon which the district director relies in authorizing such assessment or levy.

**§ 301.7429-2 Review of jeopardy and termination assessment and jeopardy levy procedures.**

(a) *Request for administrative review.* Any request for the review of a jeopardy or termination assessment or jeopardy levy provided for by section 7429(a)(2) shall be filed with the district director within 30 days after the statement described in § 301.7429-1 is given to the taxpayer. However, if no statement is given within the 5 day period described in § 301.7429-1, any request for review of the jeopardy or termination assessment or jeopardy levy shall be filed within 35 days after the date such assessment or levy is made. Such request shall be in writing, shall state fully the reasons for the request, and shall be supported by such evidence as will enable the district director to make the redetermination described in section 7429(a)(3).

(b) *Administrative review.* In determining whether the assessment is reasonable and the amount assessed is appropriate, or whether the jeopardy levy is reasonable, the district director shall take into account not only information available at the time the assessment or jeopardy levy is made but also information which subsequently becomes available.

(c) *Abatement of assessment.* For rules relating to the abatement of assessments made under sections 6851 and 6861 see § 301.6861-1(e), 301.6861-1(f) and 1.6851-1(d) of this chapter.

**§ 301.7429-3 Review of jeopardy and termination assessment and jeopardy levy procedures; judicial action.**

(a) *Time for bringing judicial action.* An action for judicial review described in section 7429(b) may be instituted by the taxpayer during the period beginning on the earlier of—

- (1) The date the district director notifies the taxpayer of the determination described in section 7429(a)(3) and ending on the 90th day thereafter; or
- (2) The 16th day after the request described in section 7429(a)(2) was made by the taxpayer and ending on the 90th day thereafter.

(b) *Extension of period for judicial review.* The United States Government may not by itself seek an extension of the 20 day period described in section 7429(b)(3), but it may join with the taxpayer in seeking such an extension.

(c) *Jurisdiction for determination.*—In general, the United States district court will have exclusive jurisdiction over any civil action for a determination described in section 7429(b). However, if a petition for a redetermination of a

deficiency has been timely filed with the Tax Court prior to the making of an assessment or levy that is subject to the section 7429 review procedures, and one or more of the taxes and tax periods before the Tax Court as a result of the petition is also included in the written statement that was provided to the taxpayer, then the Tax Court will have jurisdiction concurrent with the district courts over any civil action for a judicial determination with respect to all the taxes and tax periods included in the written statement. In all other cases, the appropriate United States district court continues to have exclusive jurisdiction over such an action.

David G. Blattner,  
Acting Commissioner of Internal Revenue.

Approved: November 13, 1992.

Fred T. Goldberg, Jr.,  
Assistant Secretary of the Treasury.  
[FR Doc. 92-30184 Filed 12-11-92; 8:45 am]  
BILLING CODE 4830-01-M

## Office of Foreign Assets Control

### 31 CFR Part 500

#### Foreign Assets Control Regulations

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Final Rule, amendment.

**SUMMARY:** The Office of Foreign Assets Control (FAC) is amending the Foreign Assets Control Regulations (the "FACR"), to authorize U.S. common carriers to make current settlement payments to Vietnam or Vietnamese nationals with respect to telecommunications transactions involving Vietnam.

**EFFECTIVE DATE:** December 14, 1992.

**FOR FURTHER INFORMATION CONTACT:** Steven I. Pinter, Chief of Licensing (tel.: 202/622-2480), or William B. Hoffman, Chief Counsel (tel.: 202/622-2410), Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

**SUPPLEMENTARY INFORMATION:** This rule amends § 500.571 of the FACR (31 CFR part 500), which authorizes telecommunications transactions involving Vietnam, provided that payments owed to Vietnam or its nationals are deposited into blocked interest-bearing accounts in domestic U.S. banks pending full lifting of the embargo. The final rule removes the requirement that such proceeds be deposited into blocked U.S. accounts, and the requirement that the establishment of these accounts be reported to FAC. The effect of this

amendment is to authorize current settlement accounts with Vietnam or its nationals arising from telecommunications authorized in § 500.571 of the FACR.

Because the FACR involve a foreign affairs function, Executive Order 12291 and the provisions of the Administrative Procedure Act, 5 U.S.C. 563, requiring notice of proposed rulemaking opportunity for public participation, and delay in effective date are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply.

#### List of Subjects in 31 CFR Part 500

Banks, Blocking of assets, Reporting and recordkeeping requirements, Telecommunications, Vietnam.

For the reasons set forth in the preamble, 31 CFR part 500 is amended as follows:

### PART 500—FOREIGN ASSETS CONTROL REGULATIONS

1. The authority citation for Part 500 continues to read as follows:

**Authority:** 50 U.S.C. App. 5, as amended; E.O. 9193, 7 FR 5205, 3 CFR 1938-1943 Cum. Supp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR 1943-1948 Comp., p. 748.

#### Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

2. Section 500.571 is revised to read as follows:

##### § 500.571 Transactions related to telecommunications authorized.

All transactions of U.S. common carriers incident to the receipt or transmission of telecommunications involving Vietnam are authorized.

**Note:** Exports or reexports to Vietnam of goods and technical data, or of the direct products of technical data (regardless of U.S. content), not prohibited by this part may require authorization from the U.S. Department of Commerce pursuant to the Export Administration Regulations, 15 CFR parts 768-799.

Dated: November 17, 1992.

R. Richard Newcomb,  
Director, Office of Foreign Assets Control.

Approved: November 25, 1992.

Peter K. Nunez,  
Assistant Secretary (Enforcement).  
[FR Doc. 92-30188 Filed 12-9-92; 12:05 pm]

BILLING CODE 4810-25-M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### 32 CFR Part 367

[DoD Directive 5136.1]

#### Assistant Secretary of Defense for Health Affairs (ASD(HA))

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Final rule.

**SUMMARY:** This document revised 32 CFR part 367 to reflect the Deputy Secretary of Defense's guidance on strengthening the medical personnel, facilities, programs, land funding and other resources within DoD which are subject to the authority, direction and control of the ASD (Health Affairs). In addition, this document establishes the Defense Medical Advisory Council to provide advice to the ASD (Health Affairs).

**EFFECTIVE DATE:** December 2, 1992.

**FOR FURTHER INFORMATION CONTACT:** R. Kennedy, Office of the Director of Administration and Management, Organizational and Management Planning, Pentagon, Washington, DC, 20301, telephone 703-697-1142.

#### SUPPLEMENTARY INFORMATION:

##### List of Subjects in 32 CFR Part 367

Organization and functions (Government agencies).

Accordingly, 32 CFR part 367 is revised to read as follows:

#### PART 367—Assistant Secretary of Defense for Health Affairs (ASD(HA))

Sec.

- 367.1 Purpose.
- 367.2 Applicability.
- 367.3 Responsibilities.
- 367.4 Functions.
- 367.5 Relationships.
- 367.6 Authorities.

**Authority:** 10 U.S.C. 136.

##### § 367.1 Purpose.

Pursuant to the authority vested in the Secretary of Defense under title 10, United States Code, this part:

(a) Designates one of the positions of Assistant Secretary of Defense as the ASD(HA).

(b) Assigns responsibilities, functions, relationships, and authorities, as prescribed herein, to the ASD(HA).

##### § 367.2 Applicability.

This part applies to the Office of the Secretary of Defense (OSD); the Military Departments; the Chairman of the Joint Chiefs of Staff and the Joint Staff; the Unified and Specified Commands; the Office of the Inspector General,