requirements of this AD can be accomplished.

(h) The inspections, and replacement, if necessary, shall be done in accordance with the following service document:

Document No.	Pages	Revision	Date
TCM CSB No. 93–13	1–3	Original	Aug. 12, 1993.

Total pages: 3.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Teledyne Continental Motors, P.O. Box 90, Mobile, AL 36601; telephone (205) 438–3411. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(i) This amendment becomes effective December 14, 1993, to all persons except those persons to whom it was made immediately effective by priority letter AD 93–22–05, issued November 4, 1993, which contained the requirements of this amendment.

Issued in Burlington, Massachusetts, on November 19, 1993.

Mark C. Fulmer,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 93–28955 Filed 11–26–93; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 375 and 388

[Docket No. RM94–3–000]

Revisions to Regulations Governing Freedom of Information Act Requests

Issued November 22, 1993.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is transferring authority to reduce or waive fees and to release documents requested under the Freedom of Information Act from the Director of Public Affairs to the Director, Office of External Affairs because of a recent reorganization.

EFFECTIVE DATE: This rule is effective November 22, 1993.

FOR FURTHER INFORMATION CONTACT: Adam Gurwitz, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, (202) 208–0457.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, 941 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this document will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, LaDorn Systems Corporation, also located in room 3104, 941 North Capitol Street NE., Washington, DC 20426.

Order No. 562

Final Rule

I. Introduction

The Federal Energy Regulatory Commission (Commission) is revising its regulations in parts 375 and 388 transferring delegated authority to release or withhold documents, and to reduce or waive fees under the Freedom of Information Act (FOIA), from the Director of Public Affairs to the Director, Office of External Affairs.

II. Background and Discussion

The Commission's regulations authorize the Director of Public Affairs to determine whether to release or withhold non-public documents requested under the FOIA, and whether to reduce or waive fees associated with FOIA requests. See 18 CFR 375.312, 388.108, and 388.112. The Office of External Affairs recently was reorganized to combine the Division of Congressional Affairs and State Liaison with the Division of Public and Intergovernmental Affairs. This reorganization eliminated the Director of Public Affairs position. The Commission is amending its regulations to designate the Director, Office of External Affairs, as the official authorized to release or withhold FERC documents under FOIA and to reduce or waive FOIA fees.

This final rule will not effect any other changes to the Commission's FOIA procedures.

III. Regulatory Flexibility Certification

The Regulatory Flexibility Act of 1980 (RFA)[1] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities.[2] Pursuant to section 605(b) of the RFA, the Commission hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities.

IV. Environmental Statement

Issuance of this rule would not represent a major federal action having a significant adverse effect on the human environment under the Commission regulations implementing the National Environmental Policy Act.[3] This rule is procedural and falls within the categorical exemptions provided in the Commission's regulations. Neither an environmental impact statement nor an environmental assessment is required.[4]

[1] 5 U.S.C. 601–602.

[2] Section 601(c) of the RFA defines a "small entity" as a small business, a small not-for-profit enterprise, or a small governmental jurisdiction. A "small business" is defined by reference to section 3 of the Small Business Act as an enterprise which is "independently owned and operated and which is not dominant in its field of operation." 15 U.S.C. 632(a).

[3] See Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,783 (Dec. 10, 1987) (codified at 18 CFR part 380).

[4] See 18 CFR 380.4(a)(1).

V. Information Collection Statement

Office of Management and Budget (OMB) regulations require that OMB approve certain information collection requirements imposed by agency rule.[5] This rule contains no information collection requirements and is not subject to OMB approval.

VI. Administrative Findings and Effective Date

This final rule is a rule of agency organization that does not alter any substantive rights or interests, but merely changes the title of the Commission official who is delegated authority to release or withhold documents under FOIA and to reduce or waive FOIA fees. Prior notice and comment under section 4 of the Administrative Procedure Act[6] are therefore unnecessary. The Commission finds good cause to make this rule effective immediately upon issuance. This rule therefore is effective November 22, 1993.

List of Subjects

18 CFR Part 375

Authority delegations (Government agencies), Seals and insignia, Sunshine Act.

18 CFR Part 388

Confidential business information, Freedom of information.

By the Commission.

Lois D. Cashell,

Secretary.

In consideration of the foregoing, the Commission is amending parts 375 and 388, Chapter I, Title 18, Code of Federal Regulations, as set forth below.

PART 375—THE COMMISSION

1. The authority citation for part 375 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791–828r, 791a note, 2601–2645; 42 U.S.C. 7101–7532.

2. Section 375.312 is revised to read as follows:

§ 375.312 Delegations to the Director, Office of External Affairs.

The Commission authorizes the Director, Office of External Affairs to waive or reduce fees in accordance with §§ 388.108 through 388.110 of this chapter.

[5] 5 CFR Part 1320.

[6] 5 U.S.C. 553(b) (1988).

PART 388—INFORMATION AND REQUESTS

3. The authority citation for part 388 is revised to read as follows:

Authority: 5 U.S.C. 301–305, 551–557; 42 U.S.C. 7101–7352.

§ 388.108 [Amended]

4. In § 388.108, paragraphs (a)(1)(i), (a)(2) through (a)(4) and (b)(1), the words "Director of Public Affairs" are removed and the words "Director, Office of External Affairs" are inserted in their place.

§ 388.112 [Amended]

5. In § 388.112, paragraph (e), the words "Director of the Division of Public Affairs" are removed and the words "Director, Office of External Affairs" are inserted in their place.

[FR Doc. 93–29105 Filed 11–26–93; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 14

Advisory Committee; Clarifying Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the standing advisory committees' regulations to change the name of the over-the-counter (OTC) Drugs Advisory Committee. This action is being taken to more accurately describe this committee.

EFFECTIVE DATE: November 29, 1993.

FOR FURTHER INFORMATION CONTACT: Donna M. Combs, Committee Management Office (HFA–306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2765.

SUPPLEMENTARY INFORMATION: FDA is announcing that the name of the OTC Drugs Advisory Committee has been changed. After the establishment of this committee, on August 27, 1991, the agency decided that the name "Nonprescription Drugs Advisory Committee" would more accurately describe the committee. The committee reviews the safety and effectiveness of over-the-counter (nonprescription) human drug products which involves an exchange of views regarding both prescription and nonprescription status. The review of these various products or combinations thereof may include switches from one status to another. Therefore, the agency feels the name change will more accurately describe this committee to the public. In the **Federal Register** of September 30, 1993 (58 FR 51084), FDA published a notice and indicated that the name of the OTC Drugs Advisory Committee had been changed to the Nonprescription Drugs Advisory Committee in the charter renewal dated August 10, 1993. In this document, FDA is hereby formally changing the name of the committee by revising 21 CFR 14.100(c)(17).

Publication of this document constitutes a final action on this change under the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B) and (d)) and under 21 CFR 10.40(d) and (e). Notice and public procedure and delayed effective date on this regulation are unnecessary and not in the public interest, because the final rule is merely a clarifying amendment to existing regulations and when effective will provide notice of accepted standards.

List of Subjects in 21 CFR Part 14

Administrative practice and procedure, Advisory committees, Color additives, Drugs, Radiation protection.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 14 is amended as follows:

PART 14—PUBLIC HEARING BEFORE A PUBLIC ADVISORY COMMITTEE

1. The authority citation for 21 CFR part 14 continues to read as follows:

Authority: Secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–394; 21 U.S.C. 41–50, 141–149, 467f, 679, 821, 1034; secs. 2, 351, 354, 361 of the Public Health Service Act (42 U.S.C. 201, 262, 263b, 264); secs. 2-12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 5 U.S.C. App. 2; 28 U.S.C. 2112.

2. Section 14.100 is amended by revising the heading for paragraph (c)(17) to read as follows:

§ 14.100 List of standing advisory committees.

* * * * *

(c) * * *

(17) *Nonprescription Drugs Advisory Committee.*

* * * * *

Dated: November 19, 1993.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 93–29113 Filed 11–26–93; 8:45 am]
BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 905 and 941

[Docket No R–93–1690; FR–3550–I–01]

RIN 2577–AB34

Public and Indian Housing Development—Amendment to Calculation of Total Development Cost

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule amends the Department's regulations to remove donations (non-public or non-Indian housing funds) from the Department's calculation of total development cost (TDC). The Department's experience has indicated that the inclusion of donations within the TDC of projects has created unwarranted delays in the development process, and, in some cases, has been a contributory reason for cost increases in the low-income housing development process.

DATES: Effective date: This interim rule becomes effective on December 29, 1993, and will expire on May 29, 1995.

COMMENT DUE DATE: January 28, 1994.

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule to the Office of General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying on weekdays between 7:30 a.m. and 5:30 p.m. at the above address. Facsimile (FAX) comments are not acceptable.

FOR FURTHER INFORMATION CONTACT: For Public Housing, Janice Rattley, Director of the Office of Construction, Rehabilitation and Maintenance, Department of Housing and Urban Development, 451 Seventh Street, SW., room 4136, Washington, DC. 20410. Telephone (202) 708–1800 (voice) or (202) 708–4594 (TDD). (These are not toll-free numbers.)

For Indian Housing, Dom Nessi, Director, Office of Native American Programs, Department of Housing and Urban Development, 451 Seventh Street, SW., room 4140, Washington, DC 20410. Telephone (202) 708–1015 (voice) or (202) 708–4594 (TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The regulations for HUD's public housing development program, which are codified at 24 CFR part 941, and HUD's Indian housing development regulations, which are codified at 24 CFR part 905, subpart C, provide for the inclusion of donations (non-public or non-Indian housing funds) that have been provided to public housing agencies and Indian housing authorities (collectively, "HAs') in the total development cost (TDC). The project TDC is then compared to the published TDC limitations currently in effect. The comparison can result in actual development costs that are less than, the same as, or more than the published TDC limitations. Under HUD's existing regulations, if the project TDC exceeds 100 percent of the published TDC limitation, notwithstanding the reason for the increase over the TDC limitation or the source of funding for the increase, the Field Office cannot approve the project TDC without authorization of the Regional Administrator or the Assistant Secretary of Public and Indian Housing. (See 24 CFR 941.406.) Similar provisions are contained in the Indian housing regulations. (See 24 CFR 905.255(d).) The approval procedure is intended to verify Field Office processing, and to ensure that the project TDC will provide modest, non-luxury, durable housing at a reasonable cost. In actual fact, however, the existing TDC approval process, which does not take into consideration that donations may be the reason for, or the source of payment of, the increase over the TDC limits, has resulted in unwarranted delays in the development process because of the amount of time it takes for the request to move through the system. In some cases, these delays have been a contributory reason for cost increases in development of public and Indian housing.

The amendments to be made by this interim rule will permit HUD Field Offices to calculate the project TDC relative to published TDC limitations, and to authorize HAs to proceed with developments, without referral to Regional Administrators or the Assistant Secretary, where funds in excess of TDC limits are provided through donations. Where funds in excess of TDC limits will not be provided through donations, Field Offices must continue to seek authorization from the Regional Administrators or the Assistant Secretary. HUD will not provide funds to HAs under section 5 of the U.S. Housing Act of 1937 in excess of TDC limitations without such authorization.

The Department is aware that other changes need to be made to part 941 to simplify and facilitate the development of public housing, and the Department is in the process of completely redesigning the public housing development program for this purpose. The Department will be issuing a proposed rule to amend 24 CFR part 941 to reflect the redesigned program, and to invite public comment on the Department's proposed redesign of the public housing development program. Thus, although additional and comprehensive changes are contemplated for part 941, the Department believes that it is in the best interest of HAs and the public to issue this interim rule, in advance of publication of the proposed rule, because the amendment to the calculation of the TDC is needed immediately to facilitate development of already reserved projects.

The specific sections in 24 CFR parts 905 and 941 to be amended by this interim rule are as follows:

Sections 905.102 and 941.103 are each amended by revising the definition of "total development cost" contained in these sections to clarify that maximum total development cost excludes any donations.

Sections 905.255 and 941.204 are amended to add a new paragraph to each section that will clarify that although donations are not included in the project TDC calculations, donations must be included in the project development cost budget. A new paragraph (j) would be added to § 905.255 and a new paragraph (d) would be added to § 941.204. Additionally, § 905.255(a)(2) would be amended to clarify that the "inclusion of all costs" discussed in this paragraph does not include donations.

Additionally, § 941.406 is amended to clarify that the total project cost refers to HUD funds.

Through implementation of these amendments, many developments in the pre-construction pipeline will be able to achieve construction starts sooner, which will benefit (1) low-income persons that need public and Indian housing, and (2) the public in general by creating local economic stimulus.

Justification for Interim Rulemaking

It is the Department's general policy to publish a rule for notice and comment before issuing a rule for effect, in accordance with its own rule on rulemaking, codified at 24 CFR part 10. However, part 10 provides for exceptions from that general rule where

the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is determined to be "impracticable, unnecessary, or contrary to the public interest." (See 24 CFR 10.1)

The Department finds that good cause exists to publish this interim rule for effect without notice and prior public comment in that prior public procedure is contrary to the public interest. The amendments made by this interim rule are beneficial to HAs because they exclude donations from calculation of the total development cost (TDC) in the Department's public and Indian housing development programs. The Department's experience has shown that the inclusion of donations in the TDC has created unwarranted delays and contributed to cost increases in the public housing development process. Thus, not only HAs, but residents and prospective residents that the HAs serve benefit from these amendments.

Although this interim rule is being published for immediate effect, the Department requests comments from the public on this interim rule. All public comments will be considered by the Department in the development of a final rule.

Other Matters

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

Executive Order 12866

This interim rule was reviewed by the Office of Management and Budget under Executive 12866 as a significant regulatory action.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this interim rule before publication, and, by approving it, certifies that this interim rule will not have a significant economic impact on a substantial number of small entities. The interim rule's major effect is on HAs which are state and local governmental entities. The interim rule revises the manner in which the total development cost is calculated, and in so doing, reduces delays and costs in the development of public and Indian housing, which is beneficial to HAs.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order No. 12612, Federalism, has determined that this interim rule will not have a substantial, direct effect on the States or their political subdivisions or on the relationship between the Federal government and the States, or on the distribution of power or responsibilities among the various levels of government. The interim rule removes, rather than imposes, a program requirement.

Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this interim rule does not have a potential significant impact on family formation, maintenance, and general well-being, and thus is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this interim rule, as those policies and programs relate to family concerns.

Regulatory Agenda

This interim rule was listed as sequence number 1650 in the Department's Semiannual Agenda of Regulations published on October 25, 1993 (58 FR 56402, 56451) under Executive Order 12866 and the Regulatory Flexibility Act, and was submitted to the Committee on Banking, Housing and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives under section 7(o) of the Department of Housing and Urban Development Act.

Catalog of Federal Domestic Assistance Program

The Catalog of Federal Domestic Assistance Program title and number is 14.850, Public and Indian Housing.

List of Subjects

24 CFR Part 905

Aged, Energy conservation, Grant programs—housing and community development, Grant programs—Indians, Indians, Individuals with disabilities, Lead poisoning, Loan programs—housing and community development, Loan programs—Indians, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 941

Grant programs—housing and community development, Loan programs—housing and community development, Public housing.

Accordingly, 24 CFR parts 905 and 941 are amended as follows:

PART 905—INDIAN HOUSING PROGRAMS

1. The authority citation for part 905 continues to read as follows:

Authority: 25 U.S.C. 450e(b); 42 U.S.C. 1437a-1, 1437aa, 1437bb, 1437c, 1437cc, 1437d(c)(4)(D), 1437ee, and 3535(d).

2. In § 905.102, the definition of "Total development cost" is revised to read as follows:

§ 905.102 Definitions.

* * * * *

Total development cost. The sum of all HUD-approved costs for a project including all undertakings necessary for administration, planning, site acquisition, demolition, construction or equipment and financing (including the payment of carrying charges), and for otherwise carrying out the development of the project. The maximum total development cost excludes offsite water and sewer facilities development costs; costs normally paid for by other entities, but included in the development cost budget for the project for contracting or accounting convenience; and any donations received from public or private sources.

* * * * *

3. In § 905.255, paragraph (a)(2) is revised, and a new paragraph (j) is added to read as follows:

§ 905.255 Total development cost standard.

(a) * * *

(2) The costs covered by the TDC approved for a project, which is subject to the TDC standard, include all costs (excluding donations; see paragraph (j) of this section) associated with the project, except for the costs of off-site water and sanitation facilities infrastructure. The TDC limit for a project shall be calculated by multiplying the number of units for each bedroom size and structure type in the project by the applicable per unit TDC standard, and adding together the amounts for all the units in the project.

* * * * *

(j) *Donations.* Donations from other funding sources may be obtained by the IHA to supplement project costs which otherwise could not be included, provided that the added funds are not used for items which would result in substantially increased operating, maintenance, or replacement costs, and the HUD certification required under section 102 of the HUD Reform Act can

be made in accordance with 24 CFR part 12. Although donations are not subject to the TDC limitations set forth in paragraph (d) of this section, donations must be included in the project development cost budget, and legally acceptable written commitments must be provided to the IHA before the IHA can rely on the donations in its planning and contracting.

PART 941—PUBLIC HOUSING DEVELOPMENT

4. The authority citation for part 941 is revised to read as follows:

Authority: 42 U.S.C. 1437b, 1437c, 1437g, and 3535(d).

5. In § 941.103, the definition of "Total Development Cost" is revised to read as follows:

§ 941.103 Definitions.

* * * * *

Total development cost (TDC). The sum of all HUD-approved costs for planning (including proposal preparation), administration, site acquisition, relocation, demolition, construction and equipment, interest and carrying charges, on-site streets and utilities, non-dwelling facilities, a contingency allowance, insurance premiums, off-site facilities, any initial operating deficit, and other costs necessary to develop the project. The total development cost in the proposal, when reviewed and approved by the Field Office, becomes the maximum total development cost stated in the ACC. Upon completion of the project, the actual development cost is determined, and this becomes the maximum total development cost of the project for purposes of the ACC. The maximum total development cost excludes costs funded from donations. (See 24 CFR 941.204.)

6. In § 941.204, a new paragraph (d) is added to read as follows:

§ 941.204 Cost guidelines.

* * * * *

(d) *Donations.* Donations from other funding sources may be obtained by the PHA to supplement project costs which otherwise could not be included, provided that the added funds are not used for items that would result in substantially increased operating, maintenance or replacement costs, and the HUD certification required under section 102 of the HUD Reform Act can be made in accordance with 24 CFR part 12. Although donations are not subject to the TDC limitations set forth in § 941.406(a), donations must be included in the project development cost budget, and legally acceptable written commitments for such donations must be provided by the PHA for Field Office approval.

7. In § 941.406, paragraphs (a)(1) and (a)(2)(i) are revised to read as follows:

§ 941.406 Maximum development cost and advances.

(a) * * *

(1) The total project cost that may be approved and reserved with HUD funds for a proposed project at the time of the initial reservation of funds may not exceed 100 percent of the maximum TDC based on the most recently issued TDC limits.

(2)(i) After initial fund reservation and subject to the availability of funds:

(A) A Field Office may approve costs to be paid from HUD funds and reserve funds for a project up to 100 percent of the maximum TDC based on the most recently issued TDC limits;

(B) The Regional Administrator may authorize the Field Office to approve costs to be paid from HUD funds and reserve funds for a project up to 105 percent of the maximum TDC based on the most recently issued TDC limits;

(C) The Assistant Secretary may authorize the Field Offices to approve costs to be paid from HUD funds and reserve funds for a project above 105 percent of the maximum TDC, based on the most recently approved TDC limits.

* * * * *

Dated: November 19, 1993.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 93–29056 Filed 11–26–93; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 47

[T.D. 8497]

RIN 1545–AS06

Vaccine Floor Stocks Tax of 1993

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the floor stocks tax on vaccines held on August 10, 1993. These rules reflect changes to the law made by the Omnibus Budget Reconciliation Act of 1993 (Act). The temporary regulations provide guidance relating to the person liable for the tax, an exception to the tax, and the time for reporting and paying the tax.

EFFECTIVE DATE: These regulations are effective August 10, 1993.

FOR FURTHER INFORMATION CONTACT: Edward Madden (202) 622–4537 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The Act reinstates the manufacturers excise tax on vaccines under section 4131 of the Internal Revenue Code (Code) effective August 11, 1993. The vaccine tax is imposed on DPT (diphtheria, pertussis, tetanus) vaccine at the rate of $4.56 per dose, DT (diphtheria, tetanus) vaccine at the rate of $0.06 per dose, MMR (measles, mumps, rubella) vaccine at the rate of $4.44 per dose, and polio vaccine at the rate of $0.29 per dose.

The Act also imposes a floor stocks tax, which does not appear in the Code, on these vaccines. The floor stocks tax is a one-time tax on taxable vaccines that were sold by the manufacturer, producer, or importer on or before August 10, 1993, on which no tax was imposed by section 4131 of the Code, and that were held at the last moment of August 10, 1993, for sale or use. The rates of floor stocks tax are equal to the tax rates for sales by the manufacturer, producer, or importer.

Explanation of Provisions

The regulations provide definitions relating to the floor stocks tax, identify the vaccines subject to the floor stocks tax, list the applicable rates of tax, and identify the persons liable for the tax (primarily doctors, public and private hospitals and clinics, and public health agencies).

The regulations also provide a de minimis exception to the floor stocks tax. Under this exception, any person that holds vaccines subject to a total tax of $1,000 or less is not required to report or pay the tax. If the tax exceeds $1,000, the full amount of tax must be reported and paid. Vaccines held by members of controlled groups must be aggregated for purposes of the de minimis exception. The de minimis exception is not prescribed by statute, but is being established for administrative convenience as were the de minimis exceptions contained in the Floor Stocks Tax provisions of the Environmental Tax Regulations (see 26 CFR 52.4682–4). The $1,000 threshold for tax is consistent with the de minimis exemption requested by the Department of Health and Human Services, which administers the Vaccine Injury Compensation Trust Fund.

The regulations provide that a return on Form 720, Quarterly Federal Excise

Tax Return, must be filed by February 28, 1994, and that the tax also must be paid by February 28, 1994. Persons that are also required to report other excise taxes for the fourth quarter of 1993 must report the floor stocks tax and the other excise taxes on the same Form 720. The due date for the return is February 28, 1994, even if returns for the other excise taxes are ordinarily due at an earlier date. This rule does not extend the time for making deposits or payments of any excise tax.

These regulations do not impose any specific recordkeeping requirements with respect to the floor stocks tax. However, the general recordkeeping requirements applicable to Form 720 apply. For example, inventories based on actual measurement, on a work-forward or work-back method, or any other method that accurately reflects vaccines held are acceptable.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. 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 Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary 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 Edward Madden, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 47

Excise taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR chapter I is amended as follows:

Paragraph 1. Part 47 is added to read as follows:

PART 47—FLOOR STOCKS TAXES

Subpart A—[Reserved]

Sec.

47.1–1T through 47.1–5T [Reserved]

Subpart B—Vaccine Floor Stocks Tax of 1993

47.2–1T Scope of subpart B (temporary).
47.2–2T Definitions relating to the vaccine floor stocks tax (temporary).
47.2–3T Imposition of vaccine floor stocks tax (temporary).
47.2–4T De minimis exception to vaccine floor stocks tax (temporary).
47.2–5T Requirements with respect to payment and return (temporary).

Authority: 26 U.S.C. 7805.

Section 47.2–5T also issued under section 13421(c) of the Omnibus Budget Reconciliation Act of 1993 (107 Stat. 312).

Subpart A—[Reserved]

§§ 47.1–5T [Reserved]

Subpart B—Vaccine Floor Stocks Tax of 1993

§ 47.2–1T Scope of subpart B (temporary).

The regulations in this subpart B relate to the vaccine floor stocks tax imposed by section 13421(c) of the Omnibus Budget Reconciliation Act of 1993 (107 Stat. 312). The tax is imposed on untaxed vaccines held at the last moment of August 10, 1993. This subpart describes the specific articles subject to tax, the rates of tax, and the persons liable for tax. This subpart also provides an exception to the tax and requirements for payment of tax and filing a return reporting the tax. This subpart is effective on August 10, 1993.

§ 47.2–2T Definitions relating to the vaccine floor stocks tax (temporary).

(a) *Terms used in section 4131.* For purposes of this subpart, terms that are also used in section 4131 have the same meaning as when so used.

(b) *Other terms.* For purposes of this section—

Act refers to the Omnibus Budget Reconciliation Act of 1993 (107 Stat. 312).

Controlled group means—

(i) Any controlled group of corporations within the meaning of section 1563(a), except that the phrase "more than 50 percent" is substituted for the phrase "at least 80 percent" each place it appears therein and a controlled group of corporations includes members that are described in section 1563(b)(2) (relating to excluded members); and

(ii) Any other group of organizations, at least one member of which is not a corporation, that is a brother-sister group under common control or a combined group under common control, with terms having the following meanings for this purpose:

(A) *Organization* means a sole proprietorship, a partnership, a trust, an estate, or a corporation.

(B) *Brother-sister group under common control* means two or more organizations if—

(*1*) The same five or fewer persons who are individuals, estates, or trusts own (directly and with the application of § 1.414(c)–4 of this chapter) a controlling interest of each organization;

(*2*) Taking into account the ownership of each person only to the extent that person's ownership is identical with respect to each organization, such persons are in effective control of each organization; and

(*3*) The five or fewer persons whose ownership is considered for purposes of the controlling interest requirement for each organization are the same persons whose ownership is considered for purposes of the effective control requirement.

(C) *Controlling interest* means—

(*1*) In the case of a corporation, ownership of stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote or at least 50 percent of the total value of the shares of all classes of stock of the corporation;

(*2*) In the case of a trust or estate, ownership of an actuarial interest (determined under § 1.52–1(f) of this chapter) of at least 50 percent of the trust or estate;

(*3*) In the case of a partnership, ownership of at least 50 percent of the profit interest or capital interest of the partnership; and

(*4*) In the case of a sole proprietorship, ownership of the sole proprietorship.

(D) *Effective control* has the meaning given that term in § 1.52–1(d)(3) of this chapter.

(E) *Combined group under common control* has the meaning given that term in § 1.52–1(e) of this chapter.

§ 47.2–3T Imposition of vaccine floor stocks tax (temporary).

(a) *Vaccines subject to tax.* Section 13421(c) of the Act imposes a floor stocks tax on any taxable vaccine (as defined in section 4132(a)(1) of the Internal Revenue Code)—

(1) Which was sold by the manufacturer, producer, or importer on or before August 10, 1993;

(2) On which no tax was imposed under section 4131 (or on which such tax was imposed and subsequently credited or refunded); and

(3) Which is held at the last moment of August 10, 1993, by any person for sale or use.

(b) *Rates of tax.* The rate of floor stocks tax on each taxable vaccine is the

rate of tax specified in section 4131(b)(1) of the Code.

(c) *Person liable for tax.* The person liable for the floor stocks tax on any vaccine subject to tax is the person that holds the vaccine at the last moment of August 10, 1993. For purposes of the floor stocks tax, a vaccine is held at the last moment of August 10, 1993, by the person that has title to the vaccine (whether or not delivery to that person has been made) at such time, as determined under applicable local law. There is no exemption from the floor stocks tax for the United States or for State or local governments. Each business unit that has, or is required to have, its own employer identification number is treated as a separate person for purposes of the floor stocks tax.

§ 47.2–4T De minimis exception to vaccine floor stocks tax (temporary).

(a) *De minimis exception*—(1) *In general.* Except as otherwise provided in this section, if the aggregate amount of floor stocks tax payable by a person does not exceed $1,000, that person is not required to report or pay the tax.

(2) *All amounts held subject to tax if threshold exceeded.* If the aggregate amount of floor stocks tax payable by a person exceeds $1,000, that person is required to report and pay the total amount of tax as determined without regard to this section.

(3) *Controlled groups.* A member of a controlled group (as defined in § 47.2–2T) is not excepted from reporting and paying floor stocks tax under this section if the aggregate amount of floor stocks tax payable by all members of the controlled group exceeds $1,000.

(b) *Examples.* The following examples illustrate the rules of this section:

Example 1. A holds 50 doses of DPT vaccine and 60 doses of polio vaccine on the last moment of August 10, 1993. A is not a member of a controlled group. A is not required to report and pay the floor stocks tax on any of the taxable vaccines because the aggregate amount of floor stocks tax payable by A (determined without regard to this section) does not exceed $1,000 ((50×$4.56 per dose of DPT vaccine)+(60×$0.29 per dose of polio vaccine)=$245.40).

Example 2. D, E, and F are members of the same controlled group. On the last moment of August 10, 1993, D holds 100 doses of DPT vaccine and 160 doses of polio vaccine; E holds 80 doses of DPT vaccine, 10 doses of MMR vaccine and 60 doses of polio vaccine; and F holds 20 doses of MMR vaccine and 10 doses of DT vaccine. Without regard to this section, D is liable for a tax of $502.40 ((100×$4.56 per dose of DPT vaccine) + (160×$0.29 per dose of polio vaccine)); E is liable for a tax of $426.60 ((80×$4.56 per dose of DPT vaccine)+(10×$4.44 per dose of MMR vaccine)+(60×$0.29 per dose of polio vaccine)); and F is liable for a tax of $89.40 ((20×$4.44 per dose of MMR vaccine)+(10×$0.06 per dose of DT vaccine)). Because the aggregate amount of floor stocks tax payable by all members of the group ($1,018.40) exceeds $1,000, each member of the controlled group must report and pay the floor stocks tax.

§ 47.2–5T Requirements with respect to payment and return (temporary).

(a) *Payment of tax.* The floor stocks tax is to be paid without assessment or notice on or before February 28, 1994.

(b) *Filing of return—(1) Form 720.* Except as provided in § 47.2–4T(a) (relating to the de minimis exception), every person liable for the floor stocks tax must make a return of the tax on Form 720, Quarterly Federal Excise Tax Return. The return is to be prepared and filed in accordance with the instructions relating to the return.

(2) *Time for filing—(i) In general.* The Form 720 required by paragraph (b)(1) of this section must be filed on or before February 28, 1994, and is a return for the fourth calendar quarter of 1993. A first return reporting only floor stocks tax is also a final return and therefore, in accordance with the instructions to Form 720, the box for "final return" must be marked.

(ii) *Return reporting other taxes.* A person must file only one Form 720 for a quarter. If a person is required under part 40 of this chapter to file Form 720 for the fourth calendar quarter of 1993 for other excise taxes earlier than February 28, 1994, that person files a single Form 720 for the quarter by February 28, 1994. This Paragraph (b)(2)(ii) does not extend the time for making deposits or paying any excise tax.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: November 15, 1993.

Leslie Samuels,

Assistant Secretary of the Treasury.

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26 CFR Part 47

[T.D. 8498]

RIN 1545–AS07

Fuel Floor Stocks Taxes Under the Omnibus Budget Reconciliation Act of 1993

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the floor stocks taxes on gasoline, diesel fuel, and aviation fuel held on October 1, 1993; on diesel fuel held on January 1, 1994; and on commercial aviation fuel held on October 1, 1995. These rules reflect changes to the law made by the Omnibus Budget Reconciliation Act of 1993 (Act). The temporary regulations provide guidance relating to the persons liable for the taxes, exceptions to the taxes, and the times for reporting and paying the taxes.

EFFECTIVE DATE: These regulations are effective October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Edward Madden (202) 622–4537 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The Act makes several changes to the Internal Revenue Code with respect to the taxation of motor fuels. First, effective October 1, 1993, it increases the rates of excise taxes on gasoline, diesel fuel, and aviation fuel. The gasoline tax, under section 4081, increases from 14.1 cents per gallon to 18.4 cents per gallon; the diesel fuel tax, under section 4091, increases from 20.1 cents per gallon to 24.4 cents per gallon; and the aviation fuel tax, under section 4091, increases from 17.6 cents per gallon to 21.9 cents per gallon. These new rates include the 0.1-cent-per-gallon tax that funds the Leaking Underground Storage Tank (LUST) Trust Fund. Second, effective January 1, 1994, the Act generally moves the point of imposition of tax on diesel fuel to the terminal rack. Third, effective October 1, 1995, the Act increases the tax on fuel used in commercial aviation by 4.3 cents per gallon.

The Act also imposes three floor stocks taxes, which are not codified, on these fuels. The taxes are to be paid by persons holding fuel on the effective dates of the taxes.

The first floor stocks tax is a one-time tax on gasoline, diesel fuel, and aviation fuel that are held at the first moment of October 1, 1993, at a point in the distribution chain where these fuels would not otherwise be subject to the increased tax rates. The rate of the October 1, 1993, floor stocks tax is 4.3 cents per gallon.

The second floor stocks tax is a one-time tax on diesel fuel held by any person at the first moment of January 1, 1994, if (A) no tax was imposed on the fuel under section 4041(a) or 4091 as in effect on December 31, 1993, and (B) tax would have been imposed by section 4081, as amended by the Act, on any prior removal, entry, or sale of the fuel had section 4081 applied to the fuel for periods before January 1, 1994. The rate

of the January 1, 1994, floor stocks tax is 24.4 cents per gallon.

The third floor stocks tax is a one-time tax on commercial aviation fuel held by any person at the first moment of October 1, 1995, on which the Lust tax was imposed under section 4091 before October 1, 1995. The rate of the October 1, 1995, floor stocks tax is 4.3 cents per gallon.

Explanation of Provisions

The temporary regulations provide definitions relating to the floor stocks taxes. The definitions of "aviation fuel" and "diesel fuel" are in substance the same as the existing definitions under the Fuel Floor Stocks Tax of 1990 Regulations (26 CFR 42.2). The definition of "gasoline" is in substance the same as the existing definition under § 48.4081–1(i) of the Manufacturers and Retailers Excise Tax Regulations (26 CFR part 48). A new definition is added for "commercial aviation fuel." "Commercial aviation fuel" is any liquid (other than any product taxable under section 4081) that is suitable for use as fuel in an aircraft and is held for use or sale for use in a business of transporting persons or property for compensation or hire by air.

The regulations identify the fuels subject to the floor stocks taxes, list the applicable rates of tax, and identify the persons liable for the taxes.

Exceptions to the Floor Stocks Taxes

The regulations also provide rules relating to exceptions to the floor stocks taxes. First, the floor stocks taxes generally do not apply to fuel held exclusively for an exempt use. An exempt use is any use of a fuel (other than use in producing gasohol or a diesel fuel/alcohol mixture, or use as fuel in a train) that is described in section 6420, 6421, or 6427 and gives rise to a credit or payment from the IRS equal to the tax imposed under section 4081 or 4091, as the case may be. Generally, the regulations provide that fuel is held exclusively for an exempt use only if the person holding the fuel at the first moment of the tax imposition date actually uses the fuel in an exempt use. Accordingly, fuel is not held exclusively for an exempt use if it is held for resale (including resale to a person who will use the fuel for an exempt use). However, the ultimate purchaser of fuel for an exempt use may be entitled to a credit or payment equal to the floor stocks tax pursuant to section 34, 6416, 6420, 6421, or 6427.

Generally, diesel fuel held for use in a train is not treated as held for an exempt use and, therefore, a floor stocks tax applies to such fuel. Fuel held for the exclusive use of a State or local government in a train, however, is treated as exempt and is not subject to the floor stocks tax.

Second, the October 1, 1993, floor stocks tax does not apply to gasoline or diesel fuel held at the first moment of October 1, 1993, in the fuel supply tank of a motor vehicle or motorboat.

Third, a person is not liable for the October 1, 1993, floor stocks tax on gasoline if the amount of gasoline held by the person at the first moment of October 1, 1993, does not exceed 4,000 gallons. In determining whether this threshold is crossed, the amount of gasoline a person holds exclusively for an exempt use and the amount of gasoline held by a person in the fuel supply tank of a motor vehicle or motorboat are not taken into account. If a person holds more than 4,000 gallons of gasoline, then the floor stocks tax is imposed on all gasoline that is held by the person and that is not otherwise exempt.

Members of certain controlled groups must aggregate the gasoline held by all members in determining whether they hold no more than 4,000 gallons of gasoline. If holdings of all members in aggregate exceed 4,000 gallons, then the de minimis exception does not apply to any member of the group. The aggregation rule for controlled groups does not affect the requirement that each separate person liable for the floor stocks tax file a return.

Similar rules apply with respect to the October 1, 1993, floor stocks tax on diesel fuel and aviation fuel and the October 1, 1995, floor stocks tax on commercial aviation fuel, but the threshold amount under these rules is 2,000 gallons. There is no similar de minimis exception to the January 1, 1994, floor stocks tax on diesel fuel.

The temporary regulations provide that the January 1, 1994, floor stocks tax does not apply to any diesel fuel that would satisfy the dyeing and other requirements of section 4082, as amended by section 13242 of the Act. Temporary regulations providing rules relating to dyeing of diesel fuel and other requirements of section 4082 will be issued soon.

No specific exception is provided to any of the floor stocks taxes for fuel held in "dead storage" (i.e., the amount of fuel that will not be pumped out of a storage tank because the fuel is below the mouth of the draw pipe). Although exceptions to the floor stocks taxes are provided for fuel held for an exempt use and for dyed fuel, undyed fuel held in dead storage is not held for an exempt use and is, therefore, subject to the floor stocks taxes.

The temporary regulations define diesel fuel as a liquid suitable for use as a fuel in a diesel-powered highway vehicle or a diesel-powered train, aviation fuel as a liquid suitable for use as fuel in an aircraft, and gasoline as a product that is commercially known or sold as gasoline and is suitable for use as a motor fuel. Thus, the contents of a fuel storage tank are not subject to tax to the extent the owner can establish that they are not suitable for use as a fuel. However, the possibility that some liquids held in dead storage may not be suitable for use as a fuel does not justify a blanket exemption for otherwise taxable fuel that is held in dead storage.

Payment and Return

The tax must be paid with a return on Form 720, Quarterly Federal Excise Tax Return, filed by the applicable return date. Persons that are also required to report other excise taxes must report the floor stocks tax and the other excise taxes for the same calendar quarter on one Form 720. The due date for the return is the later of the floor stocks return date or the return date for the other excise taxes due for the same calendar quarter. This rule does not extend the time for making deposits or payments of the other excise taxes.

These regulations do not propose any specific recordkeeping requirements with respect to the floor stocks taxes. However, the general recordkeeping requirements applicable to Form 720 apply. In determining the amount of fuel subject to floor stocks taxes any acceptable method may be used. For example, inventories based on actual measurement, on a work-forward or work-back method, or any other method that accurately reflects fuel held are acceptable.

The applicable Form 720 and its separate instructions may be obtained at many local IRS offices or by calling the following toll-free number: 1–800–829–3676.

Special Analyses

It has been determined that this Treasury Decision is not a significant regulatory action as defined in Executive Order 12866. 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 Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary 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 temporary regulations is Edward Madden, Office of the Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 47

Excise taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 47 is amended as follows:

PART 47—FLOOR STOCKS TAXES

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

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

Par. 2. Subpart C is added to read as follows:

Subpart C—Fuel Floor Stocks Taxes Under the Omnibus Budget Reconciliation Act of 1993

Sec.

47.3–1T Scope of subpart C and effective date (temporary).
47.3–2T Definitions relating to the floor stocks taxes under subpart C (temporary).
47.3–3T Imposition of floor stocks tax on fuel held on October 1, 1993 (temporary).
47.3–4T Exceptions to the October 1, 1993, floor stocks tax (temporary).
47.3–5T Requirements with respect to payment and return for the October 1, 1993, floor stocks tax (temporary).
47.3–6T Imposition of the January 1, 1994, floor stocks tax on diesel fuel held on January 1, 1994 (temporary).
47.3–7T Exception to the January 1, 1994, floor stocks tax (temporary).
47.3–8T Requirements with respect to payment and return for the January 1, 1994, floor stocks tax (temporary).
47.3–9T Imposition of the October 1, 1995, floor stocks tax on commercial aviation fuel held on October 1, 1995 (temporary).
47.3–10T Exceptions to the October 1, 1995, floor stocks tax (temporary).
47.3–11T Requirements with respect to payment and return for the October 1, 1995, floor stocks tax (temporary).

Subpart C—Fuel Floor Stocks Taxes Under the Omnibus Budget Reconciliation Act of 1993

§ 47.3–1T Scope of subpart C and effective date (temporary).

The regulations in this subpart C relate to the fuel floor stocks taxes imposed by sections 13241(h), 13243, and 13245 of the Omnibus Budget Reconciliation Act of 1993 (107 Stat. 312). The tax under section 13241(h) is imposed on previously taxed gasoline, diesel fuel, and aviation fuel held by any person at the first moment of October 1, 1993 (the October 1, 1993, floor stocks tax). The tax under section 13243 is imposed on untaxed diesel fuel that does not satisfy the requirements of section 4082 (as amended by section 13242 of the Act) and that is held by any person at the first moment of January 1, 1994, at a point in the distribution chain outside the bulk transfer/terminal system (the January 1, 1994, floor stocks tax). The tax under section 13245 is imposed on commercial aviation fuel on which tax was imposed under section 4091 (even if only at the Leaking Underground Storage Tank Trust Fund financing rate) before October 1, 1995, and that is held by any person at the first moment of October 1, 1995 (the October 1, 1995, floor stocks tax). The regulations in this subpart describe the specific fuels subject to tax, the rates of tax, and the persons liable for tax. The regulations in this subpart also provide exceptions to tax and requirements for payment of tax and filing a return reporting tax. This subpart is effective on October 1, 1993.

§ 47.3–2T Definitions relating to the floor stocks taxes under subpart C (temporary).

Act is the Omnibus Budget Reconciliation Act of 1993 (107 Stat. 312).

Aviation fuel is any liquid (other than any product taxable under section 4081) that is commonly or commercially known or sold as a fuel that is suitable for use in an aircraft.

Commercial aviation fuel is any aviation fuel that is held for use or sale for use in a business of transporting persons or property for compensation or hire by air.

Controlled group means—

(1) Any controlled group of corporations within the meaning of section 1563(a), except that the phrase "more than 50 percent" is substituted for the phrase "at least 80 percent" each place it appears therein and a controlled group of corporations includes members that are described in section 1563(b)(2) (relating to excluded members); and

(2) Any other group of organizations, at least one member of which is not a corporation, that is a brother-sister group under common control or a combined group under common control, with terms having the following meanings for this purpose:

(i) *Organization* means a sole proprietorship, a partnership, a trust, an estate, or a corporation.

(ii) *Brother-sister group under common control* means two or more organizations if—

(A) The same five or fewer persons who are individuals, estates, or trusts own (directly and with the application of § 1.414(c)–4 of this chapter) a controlling interest of each organization;

(B) Taking into account the ownership of each person only to the extent that person's ownership is identical with respect to each organization, such persons are in effective control of each organization; and

(C) The five or fewer persons whose ownership is considered for purposes of the controlling interest requirement for each organization are the same persons whose ownership is considered for purposes of the effective control requirement.

(iii) *Controlling interest* means—

(A) In the case of a corporation, ownership of stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote or at least 50 percent of the total value of the shares of all classes of stock of the corporation;

(B) In the case of a trust or estate, ownership of an actuarial interest (determined under § 1.52–1(f) of this chapter) of at least 50 percent of the trust or estate;

(C) In the case of a partnership, ownership of at least 50 percent of the profit interest or capital interest of the partnership; and

(D) In the case of a sole proprietorship, ownership of the sole proprietorship.

(iv) *Effective control* has the meaning given that term in § 1.52–1(d)(3) of this chapter.

(v) *Combined group under common control* has the meaning given that term in § 1.52–1(e) of this chapter.

Diesel fuel means any liquid (other than gasoline) that is suitable for use in a diesel powered highway vehicle, diesel-powered train, or, after December 31, 1993, diesel-powered boat.

Fuel means gasoline, diesel fuel, and aviation fuel (including after September 30, 1995, commercial aviation fuel).

Gasoline means—

(1) All products (including gasohol) that are commonly or commercially known or sold as gasoline and are suitable for use as a motor fuel (other than products that are not sold as gasoline and have an American Society for Testing Materials octane number of less than 75 as determined by the motor method); and

(2) Gasoline blend stocks (as defined in § 48.4081–1(j) of this chapter).

Person includes each business unit that has, or is required to have, its own employer identification number.

§ 47.3–3T Imposition of floor stocks tax on fuel held on October 1, 1993 (temporary).

(a) *Fuels subject to tax.* Section 13241(h)(1) of the Act imposes a floor stocks tax on gasoline (including gasohol), diesel fuel, and aviation fuel—

(1) On which tax was imposed under section 4081 or 4091 before October 1, 1993; and

(2) That is held at the first moment of October 1, 1993, by any person.

(b) *Rate of tax.* The rate of the October 1, 1993, floor stocks tax is 4.3 cents per gallon.

(c) *Person liable for tax.* The person liable for tax on any fuel subject to the October 1, 1993, floor stocks tax is the person that holds the fuel at the first moment of October 1, 1993. Fuel is held by a person if the person has title to the fuel (whether or not delivery to that person has been made) at such time, as determined under applicable local law.

§ 47.3–4T Exceptions to the October 1, 1993, floor stocks tax (temporary).

(a) *Exception for fuel held for an exempt use*—(1) *Gasoline.* The October 1, 1993, floor stocks tax does not apply to gasoline held exclusively for an exempt use. In determining whether gasoline is held exclusively for an exempt use, the following rules apply:

(i) An exempt use, with respect to gasoline, is any use of gasoline (other than use in producing gasohol) that is described in section 6420, 6421, or 6427 and that entitles the ultimate purchaser to a credit or payment equal to the tax imposed by section 4081. Thus, for example, exempt use of gasoline includes use on a farm for farming purposes; use in an off-highway business use; use in certain intercity, local, and school buses; exclusive use by a State or local government or nonprofit educational organization; and use in commercial aircraft.

(ii) Gasoline is held exclusively for an exempt use only if the person that holds gasoline at the first moment of October 1, 1993, actually uses the gasoline in an exempt use.

(iii) Gasoline is not held exclusively for an exempt use if, at the first moment of October 1, 1993, the gasoline is held for resale (including resale to a person that will use the gasoline in an exempt use). Thus, for example, gasoline held by a gasoline service station for sale to a farmer for use on a farm for farming purposes is not exempt from the October 1, 1993, floor stocks tax. However, the farmer would be eligible to claim an income tax credit for an amount equal to the tax under sections 34 and 6420.

(2) *Diesel fuel.* The October 1, 1993, floor stocks tax does not apply to diesel fuel held exclusively for an exempt use. In determining whether diesel fuel is held exclusively for an exempt use, the following rules apply:

(i) An exempt use, with respect to diesel fuel, is any use of diesel fuel (other than use in producing a diesel fuel/alcohol mixture or as fuel in a diesel-powered train) that is described in section 6427 and that entitles the ultimate purchaser to a credit or payment equal to the tax imposed by section 4091. Thus, for example, exempt uses of diesel fuel include use other than as a fuel in a diesel-powered highway vehicle (as defined in § 48.4041–8(b)(4) of this chapter), use on a farm for farming purposes, exclusive use by a State or local government or nonprofit educational organization, and use in an off-highway business use.

(ii) Diesel fuel held for use in a diesel-powered train is not exempt from the October 1, 1993, floor stocks tax under this paragraph (a)(2) unless the fuel is held by a State or local government. Thus, the exemptions for use other than as fuel in a diesel-powered highway vehicle and off-highway business use do not apply to fuel used in a diesel-powered train. See section 6427(l)(3) as amended by section 13241 of the Act.

(iii) Diesel fuel is held exclusively for an exempt use only if the person that holds the fuel at the first moment of October 1, 1993, actually uses the diesel fuel in an exempt use.

(iv) Diesel fuel is not held exclusively for an exempt use if, at the first moment of October 1, 1993, the diesel fuel is held for resale (including resale to a person that will use the diesel fuel in an exempt use). Thus, for example, diesel fuel held by a retailer for sale to a construction company for use in the construction company's off-road machinery is not exempt from the October 1, 1993, floor stocks tax. However, the construction company would be eligible to claim a credit or payment equal to the tax under section 6427.

(3) *Aviation fuel.* The October 1, 1993, floor stocks tax does not apply to aviation fuel held exclusively for an exempt use. In determining whether aviation fuel is held exclusively for an exempt use, the following rules apply:

(i) An exempt use, with respect to aviation fuel, is any use of aviation fuel that is described in section 6427 and that entitles the ultimate purchaser to a credit or payment equal to the tax imposed by section 4091. Thus, for example, exempt use of aviation fuel includes any use on a farm for farming purposes, exclusive use by a State or local government or nonprofit educational organization, and use other than use as a fuel in an aircraft in noncommercial aviation (as defined in section 4041(c)).

(ii) Aviation fuel is held exclusively for an exempt use only if the person that holds the aviation fuel at the first moment of October 1, 1993, actually uses the aviation fuel in an exempt use.

(iii) Aviation fuel is not held exclusively for an exempt use if, at the first moment of October 1, 1993, the aviation fuel is held for resale (including resale to a person that will use the aviation fuel in an exempt use). Thus, for example, aviation fuel held by a fixed-base operator for sale to an airline for use in commercial aviation is not exempt from the October 1, 1993, floor stocks tax. However, the airline would be eligible to claim a credit or payment equal to the tax under section 6427.

(b) *Exception for gasoline or diesel fuel held in vehicle fuel supply tank.* The October 1, 1993, floor stocks tax does not apply to gasoline or diesel fuel held at the first moment of October 1, 1993, in the fuel supply tank of a motor vehicle (as defined in § 48.4041–8(c) of this chapter) or motorboat. This exception does not apply to fuel held in the fuel supply tank of a train or an aircraft.

(c) *Exception for certain amounts of fuel*—(1) *In general.* The October 1, 1993, floor stocks tax does not apply to—

(i) Gasoline that a person holds at the first moment of October 1, 1993, if the aggregate amount of gasoline held by that person at that moment does not exceed 4,000 gallons; and

(ii) Diesel fuel or aviation fuel that a person holds at the first moment of October 1, 1993, if the aggregate amount of diesel fuel or the aggregate amount of aviation fuel held by that person at that moment does not exceed 2,000 gallons.

(2) *Additional rules*—(i) *Coordination with other exemptions.* In determining the aggregate amount of gasoline, diesel fuel, or aviation fuel held by a person at the first moment of October 1, 1993, there is excluded the amount of gasoline, diesel fuel, or aviation fuel exempt from the October 1, 1993, floor stocks tax by reason of paragraph (a) of this section (relating to fuel held for exempt uses), or paragraph (b) of this section (relating to gasoline and diesel fuel held in the fuel supply tank of a motor vehicle or motorboat).

(ii) *All amounts held subject to tax if threshold exceeded.* The October 1, 1993, floor stocks tax applies to all amounts of gasoline, diesel fuel, or aviation fuel (as the case may be) held by a person (and not exempt from tax under paragraph (a) or (b) of this

section) if the aggregate amount of fuel held by the person at the first moment of October 1, 1993, exceeds 4,000 gallons in the case of gasoline or 2,000 gallons in the case of diesel fuel or aviation fuel.

(iii) *Controlled groups.* A member of a controlled group (as defined in § 47.3–2T) holds more than 4,000 gallons of gasoline if the aggregate amount of all gasoline held by all members of the controlled group exceeds 4,000 gallons. A member of a controlled group holds more than 2,000 gallons of diesel fuel or aviation fuel if the aggregate amount of all diesel fuel or aviation fuel, as the case may be, held by all members of the controlled group exceeds 2,000 gallons.

(3) *Examples.* The following examples illustrate the rules of this section:

Example 1. On October 1, 1993, A holds 10,000 gallons of gasoline, 6,000 gallons of which are held exclusively for use on a farm for farming purposes. The remaining 4,000 gallons are held for use in A's highway vehicles. A is not a member of a controlled group. A is not liable for the floor stocks tax on any of the 10,000 gallons because the aggregate amount of fuel held by A for uses other than exempt uses does not exceed 4,000 gallons.

Example 2. On October 1, 1993, B holds 1,900 gallons of diesel fuel and 3,900 gallons of gasoline. B is not a member of a controlled group. B is not liable for the floor stocks tax on diesel fuel because B's holdings of diesel fuel do not exceed 2,000 gallons. B is not liable for the floor stocks tax on gasoline because B's holdings of gasoline do not exceed 4,000 gallons.

Example 3. On October 1, 1993, C holds 4,100 gallons of gasoline for resale at a service station. C is liable for a floor stocks tax of $176.30 (4,100×$.043) on that gasoline.

§ 47.3–5T Requirements with respect to payment and return for the October 1, 1993, floor stocks tax (temporary).

(a) *Payment of tax.* The October 1, 1993, floor stocks tax is to be paid without assessment or notice on or before November 30, 1993.

(b) *Filing of returns*—(1) *Form 720.* Every person liable for the October 1, 1993, floor stocks tax must make a return of the tax on Form 720, Quarterly Federal Excise Tax Return. The return is to be prepared and filed in accordance with the instructions relating to the return.

(2) *Time for filing*—(i) *In general.* The Form 720 required by paragraph (b)(1) of this section must be filed on or before November 30, 1993, and is a return for the third calendar quarter of 1993. A first return reporting only the October 1, 1993, floor stocks tax is also a final return and therefore, in accordance with the instructions to Form 720, the box for "final return" must be marked.

(ii) *Return reporting other taxes.* A person must file only one Form 720 for a quarter. If a person is required under part 40 of this chapter to file Form 720 for the third calendar quarter of 1993 for other excise taxes earlier than November 30, 1993, that person files a single Form 720 for the quarter on or before November 30, 1993. This rule does not extend the time for making deposits or paying any excise tax.

§ 47.3–6T Imposition of the January 1, 1994, floor stocks tax on diesel fuel held on January 1, 1994 (temporary).

(a) *Fuel subject to tax.* Section 13243 of the Act imposes a floor stocks tax on diesel fuel held at the first moment of January 1, 1994, by any person if—

(1) No tax was imposed on the diesel fuel under section 4041(a) or 4091 as in effect on December 31, 1993; and

(2) Tax would have been imposed by section 4081, as amended by section 13242 of the Act, on any prior removal, entry, or sale of the diesel fuel had section 4081 applied to the diesel fuel for periods before January 1, 1994.

(b) *Rate of tax.* The rate of the January 1, 1994, floor stocks tax is 24.4 cents per gallon.

(c) *Person liable for tax.* The person liable for tax on any diesel fuel subject to the January 1, 1994, floor stocks tax is the wholesale distributor or other registered producer, recreational boat operator, or other person that holds the fuel at the first moment of January 1, 1994. Fuel is held by a person if the person has title to the fuel (whether or not delivery to that person has been made) at such time, as determined under applicable local law.

§ 47.3–7T Exception to the January 1, 1994, floor stocks tax (temporary).

(a) *In general.* The January 1, 1994, floor stocks tax does not apply to diesel fuel held exclusively for an exempt use. In determining whether diesel fuel is held exclusively for an exempt use, the following rules apply:

(1) An exempt use, with respect to diesel fuel, is any use of diesel fuel (other than in producing a diesel fuel/alcohol mixture or as fuel in a diesel-powered train) that is described in section 6427 (as in effect on January 1, 1994) and that would entitle the ultimate purchaser to a credit or payment equal to any tax imposed by section 4081 (as in effect on such date). Thus, for example, exempt uses of diesel fuel include use other than as a fuel in a diesel-powered highway vehicle (as defined in § 48.4041–8(b)(4) of this chapter), use on a farm for farming purposes, exclusive use by a State or local government or nonprofit educational organization, and use in an off-highway business use.

(2) Diesel fuel held for use in a diesel-powered train is not exempt from the January 1, 1994, floor stocks tax under paragraph (a)(1) of this section unless the fuel is held by a State or local government. Thus, the exemptions for use other than as fuel in a diesel-powered highway vehicle and off-highway business use do not apply to fuel used in a diesel-powered train. For circumstances in which diesel fuel held for use in a diesel-powered train may be exempt from the January 1, 1994, floor stocks tax, see paragraph (b) of this section (relating to the exemption for dyed fuel) and § 47.3–6T(a)(1), which exempts fuel that was previously taxed under section 4041(a) or 4091 (as in effect on December 31, 1993).

(3) Diesel fuel is held exclusively for an exempt use only if the person that holds the fuel at the first moment of January 1, 1994, actually uses the diesel fuel in an exempt use.

(4) Diesel fuel is not held exclusively for an exempt use if, at the first moment of January 1, 1994, the diesel fuel is held for resale (including resale to a person that will use the diesel fuel in an exempt use). Thus, for example, except in the case of dyed fuel described in paragraph (b) of this section, diesel fuel held by a heating oil retailer for sale for use as home heating oil is not exempt from the January 1, 1994, floor stocks tax. However, a homeowner who uses the fuel for heating purposes would be eligible to claim a credit or may be eligible for a payment equal to the tax under section 6427.

(b) *Exception for dyed fuel.* The January 1, 1994, floor stocks tax does not apply to diesel fuel that would have satisfied the requirements of section 4082 (relating to the exemption from the diesel fuel tax for dyed fuel) had that section, as amended by the Act, been in effect on the date the diesel fuel was removed from the terminal. (See § 47.3–6T(a)(2), which provides that the January 1, 1994, floor stocks tax applies only if tax would have been imposed by section 4081, as amended by section 13242 of the Act, on the removal of the fuel.) Thus, for example, diesel fuel held by a heating oil retailer for sale for use as home heating oil is exempt from the January 1, 1994, floor stocks tax if the fuel was removed from an approved terminal and, at the time of its removal, was dyed in the manner prescribed by section 4082.

§ 47.3–8T Requirements with respect to payment and return for the January 1, 1994, floor stocks tax (temporary).

(a) *Payment of tax.* The January 1, 1994, floor stocks tax is to be paid without assessment or notice on or before July 31, 1994.

(b) *Filing of returns*—(1) *Form 720.* Every person liable for the January 1, 1994, floor stocks tax must make a return of the tax on Form 720, Quarterly Federal Excise Tax Return. The return is to be prepared and filed in accordance with the instructions relating to the return.

(2) *Time for filing*—(i) *In general.* The Form 720 required by paragraph (b)(1) of this section must be filed on or before July 31, 1994, and is a return for the second calendar quarter of 1994. A first return reporting only January 1, 1994, floor stocks tax is also a final return and therefore, in accordance with the instructions to Form 720, the box for "final return" must be marked.

(ii) *Return reporting other taxes.* A person must file only one Form 720 for a quarter. If a person is required under part 40 of this chapter to file Form 720 for the second calendar quarter of 1994 for other excise taxes on or before July 31, 1994, that person files a single Form 720 for the quarter on or before July 31, 1994. This paragraph (b)(2)(ii) does not extend the time for making deposits or paying any excise tax.

§ 47.3–9T Imposition of the October 1, 1995, floor stocks tax on commercial aviation fuel held on October 1, 1995 (temporary).

(a) *Fuel subject to tax.* Section 13245 of the Act imposes a floor stocks tax on commercial aviation fuel on which tax was imposed under section 4091 before October 1, 1995, and which is held on the first moment of that date by any person. Tax is imposed under section 4091 even if imposed only at the Leaking Underground Storage Tank Trust Fund financing rate under that section.

(b) *Rate of tax.* The rate of the October 1, 1995, floor stocks tax is 4.3 cents per gallon.

(c) *Person liable for tax.* The person liable for tax on any commercial aviation fuel subject to the October 1, 1995, floor stocks tax is the person that holds the commercial aviation fuel at the first moment of October 1, 1995. Fuel is held by a person if the person has title to the fuel (whether or not delivery to that person has been made) at such time, as determined under applicable local law.

§ 47.3–10T Exceptions to the October 1, 1995, floor stocks tax (temporary).

(a) *Exception for commercial aviation fuel held for use as supplies for vessels or aircraft.* The October 1, 1995, floor stocks tax does not apply to commercial aviation fuel held exclusively for use as supplies for vessels or aircraft within the meaning of section 4221(d)(3). In determining whether commercial aviation fuel is held exclusively for such use, the following rules apply:

(1) Commercial aviation fuel is held exclusively for use as supplies for vessels or aircraft only if the person that holds the commercial aviation fuel at the first moment of October 1, 1995, actually uses the aviation fuel in that exempt use.

(2) Commercial aviation fuel is not held exclusively for use as supplies for vessels or aircraft if, at the first moment of October 1, 1995, the commercial aviation fuel is held for resale (including resale to a person that will use the aviation fuel as supplies for vessels or aircraft). Thus, for example, commercial aviation fuel held by a fixed base operator for sale to an airline for use in foreign trade is not exempt from the October 1, 1995, floor stocks tax. However, the airline would be eligible to claim a credit or payment equal to the tax under section 6427.

(b) *Exception for certain amounts of fuel*—(1) *In general.* The October 1, 1995, floor stocks tax does not apply to commercial aviation fuel that a person holds at the first moment of October 1, 1995, if the aggregate amount of commercial aviation fuel held by that person at that moment does not exceed 2,000 gallons.

(2) *Additional rules relating to the 2,000 gallon exception*—(i) *Coordination with other exemptions.* In determining the aggregate amount of commercial aviation fuel held by a person at the first moment of October 1, 1995, there is to be excluded the amount of commercial aviation fuel exempt from the October 1, 1995, floor stocks tax by reason of paragraph (a) of this section (relating to fuel held for an exempt use).

(ii) *All amounts held subject to tax if threshold exceeded.* The October 1, 1995, floor stocks tax applies to all amounts of commercial aviation fuel held by a person (and not exempt from tax under paragraph (a) of this section) if the aggregate amount of commercial aviation fuel held by the person at the first moment of October 1, 1995, exceeds 2,000 gallons.

(iii) *Controlled groups.* A member of a controlled group (as defined in § 47.3–2T) holds more than 2,000 gallons of commercial aviation fuel if the aggregate amount of all commercial aviation fuel held by all members of the controlled group exceeds 2,000 gallons.

(3) *Example.* The following example illustrates the rules of this paragraph (b):

Example. D, E, and F are members of the same controlled group. On October 1, 1995, D holds 2,000 gallons of commercial aviation fuel. E holds 1,500 gallons of commercial aviation fuel, and F holds 500 gallons of commercial aviation fuel. None of the commercial aviation fuel is held for an exempt use. Because the aggregate amount held by all members of the group is 4,000 gallons, which exceeds 2,000 gallons, all commercial aviation fuel held by each member is subject to the floor stocks tax. Thus, D is liable for tax of $86.00 (2,000 X $.043), E is liable for tax of $64.50 (1,500 X $.043), and F is liable for tax of $21.50 (500 X $.043).

§ 47.3–11T Requirements with respect to payment and return for the October 1, 1995, floor stocks tax (temporary).

(a) *Payment of tax.* The October 1, 1995, floor stocks tax is to be paid without assessment or notice on or before April 30, 1996.

(b) *Filing of returns*—(1) *Form 720.* Every person liable for the October 1, 1995, floor stocks tax must make a return of the tax on Form 720, Quarterly Federal Excise Tax Return. The return is to be prepared and filed in accordance with the instructions relating to the return.

(2) *Time for filing*—(i) *In general.* The Form 720 required by paragraph (b)(1) of this section must be filed on or before April 30, 1996, and is a return for the first calendar quarter of 1996. A first return reporting only October 1, 1995, floor stocks tax is also a final return and therefore, in accordance with the instructions to Form 720, the box for "final return" must be marked.

(ii) *Return reporting other taxes.* A person must file only one Form 720 for a quarter. If a person is required under part 40 of this chapter to file Form 720 for the first calendar quarter of 1996 for other excise taxes on or before May 31, 1996, that person files a single Form 720 for the quarter on or before May 31, 1996. This paragraph (b)(2)(ii) does not extend the time for making deposits or paying any excise tax.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: November 10, 1993.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 93–28913 Filed 11–22–93; 3:46 pm]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD09–93–034]

Drawbridge Operation Regulations, Chicago River, IL

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation.

SUMMARY: Notice is hereby given that the Coast Guard has issued a temporary deviation to the regulations governing the opening of certain drawbridges over the Chicago River, from December 1 through December 31, 1993. This deviation requires the City to open the bridges on signal after receiving an advance notice of a vessel's intended time of passage through the draws without regard to the number of vessels to be afforded passage, and establishes specific periods of time in which these bridge openings are to be scheduled. The City is being granted this deviation to reduce the frequency with which it must open its drawbridges and provide time for necessary maintenance during the weekdays, Monday through Friday.

EFFECTIVE DATE: The period of deviation is effective from December 1, 1993, and continues through December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Robert W. Bloom, Jr., Bridge Program Manager, Ninth Coast Guard District. Telephone number (216) 522–3933.

SUPPLEMENTARY INFORMATION: The flotillas of recreational sailboats have all returned to the boatyards for winter storage on the Chicago River system. This deviation is for the purpose of providing specific times on Saturdays and Sundays for sailboat movements on the river system, while providing the City with an uninterrupted period of Mondays through Fridays to perform maintenance on its bridges. The bridges affected by this deviation are listed below:

Main Branch

Lake Shore Drive
Columbus Drive
Michigan Avenue
Wabash Avenue
State Street
Dearborn Street
Clark Street
La Salle Street
Wells Street
Franklin-Orleans Street

South Branch

Lake Street
Randolph Street
Washington Street
Madison Avenue
Monroe Street
Adams Street
Jackson Boulevard
Van Buren Street
Eisenhower Expressway
Harrison Street
Roosevelt Road
18th Street
Canal Street
South Halsted Street
South Loomis Street
South Ashland Avenue

North Branch

Grand Avenue
Ohio Street
Chicago Avenue
North Halsted Street

This deviation from normal operating regulations is authorized in accordance with the provisions of title 33 of the Code of Federal Regulations, § 117.35, and applies only to the passage of recreational vessels. Under this deviation the bridges listed above operated by the City of Chicago shall operate as follows:

(a) The draws need open for the passage of recreational vessels only from 7 a.m. to 2 p.m. on Saturdays and on Sundays, and only after receiving a 24 hours advance notice.

(b) The Kinzie Street bridge, mile 1.81 across the North Branch, and Cermak Road bridge, mile 4.05 across the South Branch, shall continue to operate in accordance with requirements presently established in 33 CFR 117.391.

(c) All draws shall open for commercial vessels in accordance with current regulations in 33 CFR 117.391. In accordance with current regulations, including 33 CFR 117.391, government vessels of the United States, state and local vessels used for public safety, and vessels in distress shall be passed through the draws of all bridges as soon as possible at all times.

(d) This period of deviation is effective from December 1, 1993, through December 31, 1993.

Additional information may be obtained from Robert W. Bloom, Jr., Bridge Program Manager, Ninth Coast Guard District, room 2083D, 1240 East Ninth Street, Cleveland, Ohio 44199–2060, telephone (216) 522–3993.

Dated: November 22, 1993.

Rudy K. Peschel,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 93–29037 Filed 11–26–93; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 45–1–5978; FRL–4806–7]

Conditional Approval of California's Substitute Program for the Clean-Fuel Fleet Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final rulemaking (NFR).

SUMMARY: EPA is finalizing the conditional approval of revisions to the California state implementation plan (SIP) proposed in the **Federal Register** on May 7, 1993. EPA did not receive any written comments during the 30-day comment period.

The California Air Resources Board (CARB) requested EPA's conditional approval of its commitment to submit a substitute plan for the Clean Air Act (CAA or Act) Clean-Fuel Fleet program (fleet program). The CAA fleet program provisions require states, in order to opt-out of the fleet program, to submit a substitute program for all or a portion of the program(s) which achieve at least equal long-term emission reductions of ozone-producing and toxic air emissions. EPA has determined that, in limited circumstances, it may accept committal SIPs to perform CAA requirements. In this action, EPA is finalizing the conditional approval of California's commitment, thereby granting California the ability to opt-out of the fleet program.

EFFECTIVE DATE: This action is effective on December 29, 1993.

ADDRESSES: Copies of the committal SIP and Notice of Proposed Rulemaking are available for public inspection at the following EPA Region IX office during normal business hours: Mobile Sources Section, Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Roxanne Johnson, Mobile Sources Section, (A–2–1), Air & Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1227.

SUPPLEMENTARY INFORMATION:

I. Background

On May 7, 1993 in 58 FR 27254, EPA proposed to conditionally approve the State of California's commitment to submit a substitute plan to "opt-out" of the CAA Clean-Fuel Fleet program. The

fleet program is to introduce (in 22 nonattainment cities) lower pollution emitting vehicles into centrally fueled fleets of (10 or more) vehicles in areas with the worst air quality problems. Section 246 of the Act directs certain states containing "covered areas," as defined in section 246(a), to revise their SIPs to require that "at least a specified percentage of all new covered fleet vehicles in model year 1998 and thereafter purchased by each covered fleet operated in each covered area shall be clean-fuel vehicles and shall use clean alternative fuels when operating in the covered area."

The goal of the fleet program is to reduce emissions of non-methane organic gases (NMOG) and oxides of nitrogen (NOx), and to demonstrate the feasibility of using clean-fuel vehicles in centrally-fueled fleets. A credit program for the fleet program along with transportation control measure exemptions for fleet vehicles was promulgated in a separate rulemaking (58 FR 11888, March 1, 1993).

California has proposed to opt-out of the fleet program by submitting California's low-emission vehicle (LEV) regulations as a substitute program. The SIP revision will commit California to achieve emission reductions equivalent to those predicted to occur with full implementation of the CAA fleet program.

II. Response to Comments

A 30-day public comment period was provided in the May 7, 1993, 58 FR 27253. EPA did not receive any written comments during the comment period, which ended on June 7, 1993.

III. EPA Evaluation and Final Action

EPA is finalizing action to conditionally approve the submittal revision for inclusion into the California SIP (see General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990, April 16, 1992, 57 FR 13498, regarding the requirements of section 110(a) and part D of the CAA).

EPA determined that if California and other states are intending to opt-out of the fleet program they should do so by November 15, 1992, and should at that time submit and commit to a substitute plan. EPA conditionally approved California's commitment and the State will now be required to submit a fully adopted SIP revision fulfilling that commitment by May 15, 1994 (also the deadline for submitting SIP revisions to implement the fleet program pursuant to section 246(a) of the Act). If California fails to submit a SIP revision fulfilling its commitment of the substitute program by May 15, 1994, the conditional approval will be treated as a disapproval and the state will have an obligation to submit a fully-adopted SIP revision to implement the fleet program in accordance with section 246. EPA believes this approach is consistent with the provisions of the Act and will ensure that, by May 15, 1994, a SIP revision either implementing the fleet program or a substitute program achieving equivalent air quality benefits will have been submitted to EPA.

EPA will require much greater detail by May 15, 1994 describing why and how California's substitute program is sufficient to provide long-term reductions in ozone-producing, carbon monoxide and toxic air emissions equal to or greater than those provided by the CAA fleet program. EPA expects that California will consider its reasonable further progress goals (as defined in section 171 of the CAA) in deciding whether to opt-out of the fleet program. The State can still choose to implement part or all of the CAA fleet program by May 15, 1994.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory regulatory requirements.

IV. Regulatory Process

This action has been classified as a Table 2 Action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions from the requirement of section 3 of Executive Order 12291 for a period of two years. U.S. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on U.S. EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the plan will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations less than 50,000.

Conditional approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, EPA certifies that this final action would not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of State action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v *U.S. E.P.A.*, 427 U.S. 246, 256–266 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control for Ozone, Hydrocarbons, Intergovernmental relations, Motor vehicles' pollution, Nitrogen oxide, Reporting and recordkeeping requirements.

Dated: November 2, 1993.

Felicia Marcus,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended to read as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Subpart F is amended by adding § 52.219 to read as follows:

§ 52.219 Identification of plan—Conditional approval.

The plan revision commitments listed in paragraph (a) of this section were submitted on the date specified.

(a) On November 13, 1992, California submitted a commitment to prepare a revision to the California State Implementation Plan (SIP) for the California ozone nonattainment areas to address the requirement in section 182(c)(4)(B) of the 1990 Clean Air Act Amendments that requires the States to develop a SIP revision for all ozone nonattainment areas classified as serious and above to opt-out of the Clean-Fuel Fleet Program by submitting for EPA approval a substitute program(s) resulting in as much or greater long-term reductions in ozone-producing and

toxic air emissions. The State submittal contained an interim milestone to supply more accurate emission reduction data demonstrating equivalence no later than one year after the publication date of the Federal Register Notice approving the States committal SIP revision. California is required to submit the final SIP revision by May 15, 1994. The State held a public meeting on this committal SIP on March 17, 1992. The California SIP revisions are met automatically when the SIP revision concerns a regulation previously adopted by the Board.

[FR Doc. 93-29053 Filed 11-26-93; 8:45 am]
BILLING CODE 6560-50-P

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40 CFR Part 52

[IN21-2-6157; FRL-4806-9]

Basic and Enhanced Vehicle Inspection and Maintenance Plan; Indiana

AGENCY: United States Environmental Protection Agency (U.S. EPA).

ACTION: Final rule.

SUMMARY: This action disapproves a revision to the Indiana State Implementation Plan (SIP) for the attainment of the National Ambient Air Quality Standard for ozone. This revision was intended to provide for the adoption and implementation of a vehicle inspection/maintenance (I/M) program meeting the requirements of U.S. EPA regulations, published in the Federal Register on November 5, 1992, concerning vehicle I/M programs (I/M Regulation) for the Lake, Porter, Clark, and Floyd Counties ozone nonattainment areas. The revision was submitted on December 2, 1992 and consisted of a commitment by the Governor's designee to the timely adoption and implementation of an I/M program meeting all the requirements of U.S. EPA's I/M regulations and a schedule for implementation of the required program. U.S. EPA's disapproval of the submittal is based on the failure by the State of Indiana to meet important milestones pertaining to the development and adoption of necessary rulemaking for the I/M program. Such failure prevented the State from meeting its commitment to submit a full revised I/M SIP by November 15, 1993. U.S. EPA proposed to disapprove the submittal on September 9, 1993.

EFFECTIVE DATE: The final rule is effective on December 29, 1993.

ADDRESSES: Materials relevant to this final rule are available at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, Regulation Development Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604. The docket may be inspected between the hours of 8:30 a.m. until 12 noon and from 1:30 p.m. until 3:30 p.m. Monday through Friday. A reasonable fee may be charged by U.S. EPA for copying docket material.

FOR FURTHER INFORMATION CONTACT: Francisco J. Acevedo, Environmental Engineer, Regulation Development Section, Regulation Development Branch (5AR-18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6061.Anyone wishing to come to Region 5 offices should first contact Francisco J. Acevedo.

SUPPLEMENTARY INFORMATION:

I. Background

On November 5, 1992 (57 FR 52950) U.S. EPA published a final regulation establishing the I/M requirements, pursuant to section 182 of the Act. The I/M regulation was codified at 40 CFR part 51, subpart S, and requires, among other things, that each State that is required to implement an I/M program must submit by November 15, 1992, a SIP revision including two elements: (1) A commitment from the Governor or his/her designee to the timely adoption and implementation of an I/M program meeting all the requirements of the I/M regulation; and (2) a schedule of implementation. In addition, the commitment was to provide interim milestones that the State must meet with regard to the timely implementation of any necessary legislation and regulations required to have full legal authority to implement the program. Failure by the State to meet any of the above mentioned requirements is grounds for U.S. EPA to disapprove the commitment.

Under the authority of the Governor, the Commissioner of the Indiana Department of Environmental Management, on December 2, 1992, submitted a SIP revision to satisfy certain requirements of the I/M regulation to U.S. EPA. A public hearing on this submittal was held by the State on October 22, 1992, in Gary, Indiana. The submittal included a commitment to the timely adoption and implementation of an I/M program in the Lake, Porter, Clark, and Floyd Counties ozone nonattainment areas meeting all the requirements of the I/M regulation and the Act by November 15, 1993, and a schedule of implementation.

On June 30, 1993, the Indiana legislature adjourned without taking necessary action to enable implementation of the I/M provisions mandated in the Clean Air Act and the I/M rule for Lake and Porter Counties. This failure to provide necessary authority has prevented the State from submitting a complete SIP revision containing all the required elements of the program by November 15, 1993.

U.S. EPA reviewed the December 2, 1992 commitment and proposed to disapprove it on September 9, 1993 (58 FR 47415), based on the failure by the State to meet the commitment and schedule contained in the SIP submittal pertaining to the adoption of necessary authority to implement I/M requirements during the 1993 Indiana General legislative session.

On August 17, 1993, U.S. EPA sent a letter to Governor Bayh of Indiana and to the Federal Highway Administration advising them that U.S. EPA has decided to exercise its discretionary authority under section 110(m) of the Act to impose sanctions at any time once a finding of SIP deficiency is made. Because of the failure of the Legislature to provide necessary authority to implement an enhanced I/M program in Lake and Porter Counties, it is U.S. EPA's intent to publish a proposed rule in the Federal Register in the near future proposing to limit certain Federal highway funding assistance statewide and to impose 2:1 emissions offset growth limitations for new and modified major stationary sources of volatile organic compounds and oxides of nitrogen in the ozone nonattainment counties of Lake, Porter, Clark, Floyd, Marion, St. Joseph, Elkhart, and Vanderburgh Counties. A public comment period of at least 30 days and an opportunity for public hearing(s) will be provided to solicit comments on the proposed imposition of sanctions.

This final disapproval of the State's commitment initiates the sanctions process under section 179(a). Under section 179(a), U.S. EPA is required to impose one of the sanctions under section 179(b) 18 months after the final disapproval if the deficiencies are not corrected by that time. In addition, the final disapproval triggers the Federal implementation plan requirement under section 110(c). Further, as stated above, U.S. EPA in an August 17, 1993, letter to Governor Bayh of Indiana has indicated its decision to exercise its discretionary authority under section 110(m) of the Act in this situation. Such discretionary authority allows U.S. EPA to impose sanctions at any time once a finding of SIP deficiency is made.

II. Public Comment/U.S. EPA Response

U.S. EPA received only one comment during the comment period, which ended October 12, 1993. In a September 24, 1993 letter, the Natural Resources Defense Council (NRDC) strongly supported U.S. EPA's proposal to disapprove the Indiana submittal. It also urged U.S. EPA to make the disapproval finding retroactive to November 15, 1992. In addition, NRDC supported U.S. EPA's decision to propose sanctions, and urged U.S. EPA to impose such sanctions statewide. Finally, NRDC stated its opposition to U.S. EPA's use of conditional approvals.

In response to NRDC's comment on making the disapproval retroactive, U.S. EPA does not believe that such action is appropriate. With regard to NRDC's comment on sanctions, U.S. EPA notes that it will be publishing a notice of proposed rulemaking in the **Federal Register** concerning this matter; NRDC may wish to comment in the context of that rulemaking. Finally, since U.S. EPA is disapproving the Indiana submittal in this action, NRDC's comments pertaining to U.S. EPA's authority with regard to conditional approvals is moot.

III. Rulemaking Action

U.S. EPA is disapproving this revision to the Indiana Ozone State Implementation Plan which fails to meet the requirements necessary to develop the required I/M program in the Indiana required areas.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. U.S. EPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 2 Action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions from the requirement of section 3 of Executive Order 12291 for a period of two years. U.S. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on U.S. EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Motor vehicle pollution control, Nitrogen oxide, Volatile organic compounds.

Dated: October 27, 1993.

David A. Ullrich,

Acting Regional Administrator.

For the reasons set out in the preamble, part 52, chapter 1, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart P—Indiana

2. Section 52.786 is amended by adding paragraph (h) to read as follows:

§ 52.786 Inspection and maintenance program.

* * * * *

(h) The State's December 2, 1992, commitment to timely adopt and implement enhanced inspection and maintenance (I/M) rules for Lake and Porter Counties is disapproved based on the failure of the State of Indiana to meet important milestones pertaining to the development and adoption of necessary authority for the I/M program. This disapproval initiates the sanction process of section 179(a) of the Act.

[FR Doc. 93–29054 Filed 11–26–93; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 52

[NM–16–1–5735; FRL–4296–5]

Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Revision to the State Implementation Plan Addressing Carbon Monoxide (CO) for Albuquerque/Bernalillo County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: This action approves a revision to the New Mexico State Implementation Plan (SIP) addressing CO for Albuquerque/Bernalillo County, outside the boundaries of Indian lands. Certain elements of the complete Albuquerque/Bernalillo County CO SIP were submitted by the Governor of New Mexico to the EPA by cover letter dated November 5, 1992, for the purpose of bringing about the attainment of the National Ambient Air Quality Standards (NAAQS) for CO. These elements satisfy certain Federal requirements for an approvable nonattainment area CO SIP for Albuquerque/Bernalillo County. Therefore, this **Federal Register** (FR) action only approves some of the elements of the complete Albuquerque/Bernalillo County CO SIP, specifically the 1990 base year CO emissions inventory, the oxygenated fuels program, and the winter woodburning program. The remaining elements of the complete Albuquerque/Bernalillo County CO SIP, to be submitted to the EPA by November 15, 1993, will be acted upon in separate FR actions.

EFFECTIVE DATE: This action will become effective on January 28, 1994, unless notice is received by December 29, 1993, that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Planning Section, at the EPA Region 6 Office listed. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least twenty-four hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T-AP), 1445 Ross Avenue, Suite 700,Dallas, Texas 75202–2733.

Mr. Jerry Kurtzweg (ANR–443), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Albuquerque Environmental Health Department, Air Pollution Control Division, P.O. Box 1293, Albuquerque, New Mexico 87103.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Sather, Planning Section (6T-AP), Air Programs Branch, U.S. EPA Region 6,1445 Ross Avenue, Dallas, Texas 75202–2733, telephone(214) 655–7258.

SUPPLEMENTARY INFORMATION:

Albuquerque/Bernalillo County, New Mexico, was designated nonattainment for CO and classified as moderate with a design value below 12.7 parts per million (ppm.) (specifically 11.1 ppm.), under sections 107(d)(4)(A) and 186(a) of the Clean Air Act (CAA), upon enactment of the Clean Air Act Amendments (CAAA) of 1990.[1] Please

[1] The CAAA of 1990 made significant changes to the air quality planning requirements for areas that do not meet (or that significantly contribute to ambient air quality in a nearby area that does not

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