(R.S. 251, as amended, sections 1–21, 48 Stat. 998, 999, as amended, 1000, 1002, as amended, 1003, 77A Stat. 14, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 81a–81u, 1202 (Gen. Hdnt. 11)1624))

[FR Doc. 83-31608 Filed 11-23-83; 8:45 am]

BILLING CODE 4820-20-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Tylosin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed for Quali-Tech Products, Inc., providing for the manufacture of 20- and 25-gram-per-pound tylosin premixes. The premixes will subsequently be used to make finished feeds for swine, beef cattle, and chickens.

EFFECTIVE DATE: November 25, 1983.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Bureau of Veterinary Medicine (HFV–130), Food and Drug Aministration, 5600 Fishers Lane, Rockville MD 20857; 301–443–4913.

SUPPLEMENTARY INFORMATION: Quali-Tech Products, Inc., 318 Lake Hazeltine Dr., Chaska, MN 55318, is the sponsor of a supplement to NADA 97–980 submitted on its behalf by Elanco Products Co. This supplement provides for the manufacture of 20- and 25-gram-per-pound premixes subsequently used to make finished feeds for swine beef cattle, and chickens for use as in 21 CFR 558.625(f)(1) (i) through (vi). The basis for approval of this supplement is discussed in the freedom of information summary. Based on the data and information submitted, the supplement is approved and the regulations are amended to reflect the approval.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), § 558.625 is amended by revising paragraph (b)(14) to read as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

§ 558.625 Tylosin.

* * * * *

(b) * * *

(14) To 016968: 1, 2, 4, 8, and 10 grams per pound, paragraph (f)(1) (i), (iii), (iv), and (vi) of this section; 20, 25, and 40 grams per pound, paragraph (f)(1), (i) through (vi) of this section.

* * * * *

Effective date. November 25, 1983.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: November 17, 1983.

Robert A. Baldwin,

Associate Director for Scientific Evaluation.

[FR Doc. 83-31557 Filed 11-23-83; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 635

Buy America Requirements

AGENCY: Federal Highway Administration [FHWA], DOT.

ACTION: Final rule.

SUMMARY: The Federal Highway Administration (FHWA) is amending its Buy America regulation to implement procedures required by section 165 of the Surface Transportation Assistance Act (STAA) 1982 (Pub. L. 97–424). Section 165 provides with exceptions that funds authorized for Federal-aid highway projects may not be obligated unless the steel, cement, and manufactured products used in such projects are produced in the United States. The amendments are based on a review of comments received in response to an interim final rule (January 17, 1983) (48 FR 1946) and to amendments to that interim final rule (May 26, 1983) (48 FR 23631) which were issued to temporarily implement section 165. The final rule provides for application of the revised Buy America provisions to steel and cement regardless of project cost. The waiver exempting manufactured products other than steel and cement contained in the January 17, 1983, interim final rule is retained.

EFFECTIVE DATE: The final rule is effective December 27, 1983.

FOR FURTHER INFORMATION CONTACT: Mr. P. E. Cunningham, Construction and Maintenance Division, (202) 426–0392, or Ms. Ruth R. Johnson, Office of the Chief Counsel, (202) 426–0781, Federal Highway Administration, 400 Seventh Street SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

The FHWA is issuing a final rule revising the existing Buy America regulation to implement procedures required by section 165 of the STAA of 1982. Section 165 provides that, with exceptions, funds authorized by the STAA of 1982, title 23 of the United States Code, the Urban Mass Transportation Act of 1964, or the STAA of 1978 may not be obligated for highway projects unless steel, cement, and manufactured products used in such projects are produced in the United States. The legislative language also requires Buy America to apply to all projects as opposed to previous provisions which only applied to projects costing more than $500,000. The STAA of 1982 also permits States to impose more stringent requirements than are imposed by section 165 and revises the total contract cost differential permitting the use of foreign materials from 10 percent to 25 percent.

An interim final rule was issued under emergency procedures on January 17, 1983, with an expiration date of September 30, 1983. Comments were requested on or before July 1, 1983. In that interim rule, the FHWA determined that it was in the public interest and not inconsistent with the legislative intent to temporarily waive the provisions of section 165 as they applied to manufactured products other than cement and steel, as well as to projects estimated to cost less than $450,000. On May 26, 1983, an amendment to the interim final rule was published in consideration of comments which had been received to that date. The primary

change was elimination of the $450,000 threshold, thereby making the Buy America provisions applicable to all federally funded highway projects regardles of size. The comment period on the interim final rule as amended was extended to August 1, 1983. On September 30, 1983, an emergency regulation was published which extended the expiration date of the interim final rule as amended, from September 30, 1983, until the date a final rule becomes effective.

Analysis of Comments to the Docket

On August 1, when Docket 83–2 closed, FHWA had received in excess of 560 comments. Members of Congress, foreign governments, manufacturers, suppliers, contractors, State and local agencies, and other parties were represented among the commenters. The FHWA fully considered the issues raised by these commenters as it developed this final regulation.

The principal issues brought out in the docket were that the threshold should be eliminated or lowered, that asphalt should be exempted in the final rule, and that Canadian clinker/cement imports should be permitted.

In general, domestic manufacturers and suppliers agreed with the interim rule; while importers, users, and transporters of imported products, foreign governments and foreign suppliers believe that the regulation reduces competition, restricts free trade, and is inflationary. The issues raised by the commenters were considered in light of the intent of Congress and how implementation of a Buy America rule would affect the administering agencies, the construction industry, and the general public.

The commenters could be characterized as follows:

Asphalt Paving Related Organizations—175 Commenters
Steel Fabricators/Suppliers/Erectors—114 Commenters
Ready-Mix Concrete Related Organizations/ Cement Transporters—56 Commenters
Domestic Steel Manufacturers/ Associations—25 Commenters
Private Citizens—18 Commenters
Cast Iron Related Organizations—17 Commenters
State and Local Highway Agencies/ Governments—17 Commenters
Oil Corporations/Refiners/Associations—15 Commenters
Congressional Comments—45 Congressmen
Domestic Cement Manufacturers—14 Commenters
Prestressed Concrete Related Organizations—12 Commenters
Others—82 Commenters

The following is a general discussion of the comments received in Docket 83–2:

I. Comments Regarding the $450,000 Threshold

Over 150 respondents commented on the FHWA decision, in the interim final rule published January 17, to temporarily waive the provisions of section 165 as they apply to projects estimated to cost less than $450,000. Most of the commenters on this issue objected to the $450,000 waiver with many noting that there was no legislative support for establishing any threshold of applicability. A number of respondents noted that limiting applicability of the Buy America provisions violates the letter and the spirit of the STAA of 1982.

Generally, respondents in favor of continuing the waiver included State and local highway agencies and groups representing foreign nations or foreign exporters. One of the State highway agencies commented that use of the $450,000 exclusion had been effective in holding down the cost of administering the Buy America regulations. Several commenters stated that the resource limitations of small local highway agencies would make the administration of the Buy America provisions difficult.

Respondents commenting on the waiver recommended a number of different threshold levels: 35 percent recommended total elimination; 20 percent favored a "drastically lower" threshold; 25 percent suggested placing the threshold at $50,000; 15 percent believe $100,000 is appropriate; and the remaining 5 percent suggested retaining the present $450,000 threshold level.

II. Comments Regarding Steel

Respondents who commented on steel related issues were generally concerned with prestressing strand.

A number of commenters, including State highway agencies and domestic manufacturers who produce strand from foreign high carbon steel rod, asked that prestressing strand be excluded from the list of steel products covered by Buy America provisions. Some of these commenters noted that the regulation should be concerned with the process of domestic manufacturing of prestressing strand from rod, rather than being concerned with the exclusive use of U.S. made rod. Other concerns included: disposition of current inventories; future availability of qualified strand; domestic manufacturers would raise prices and slow deliveries if foreign competition was excluded; strikes by domestic employees; and that elimination of some of the major manufacturers might cause supply problems in the event of an economic turnaround.

III. Comments Regarding Cement

Over 80 comments were received from respondents who were concerned with the extent of the Buy America provision as it applied to cement.

Many of the commenters in the northern States specifically asked for a waiver in section 165 to allow Canadian cement. These commenters included State highway agencies, ready-mix contractors, cement transporters and various concrete associations. They argued that: supply by the U.S. domestic cement industry is inconsistent and the Canadian cement industry has provided a stable source of cement; Canadian cement producers have major investments in the U.S. which contribute to local taxes, domestic employment, and local business activity for the purchase of equipment and maintenance; the cost of concrete would increase due to increased prices of the limited domestic cement; additional capital investments would be necessary for domestic concrete producers to handle and store this cement; exclusion of Canadian cement would disrupt the market and alienate the Canadian producers who for years have been a very stabilizing influence; and, that it would create a hardship on domestic transporters of cement manufactured in Canada.

Domestic cement manufacturers welcomed the Buy America rule. A number of them stated that the regulation should specifically state that cement made in the U.S. does not include cement made with imported clinker.

Comments from domestic manufacturers regarding the importation of foreign cement or clinker indicated that a rise in imports at the expense of an under-utilized domesitc capacity could well result in a problem similar to that of the U.S. steel industry attempting to compete against a flood of imports with existing domestic plants and equipment that are functionally obsolete. Approximately 90 percent of the production cycle is complete at the time the clinker has been produced and, therefore, 90 percent of the work force producing cement would be Canadians. Further they believed that the issues of public interest extend beyond the borders of an individual State. States should recognize in reviewing localized waiver requests that for every ton of Canadian clinker brought into this country, less work is available for American workers in the domestic cement industry.

IV. Comments Regarding Manufactured Products

A number of respondents objected to the waiver of the provisions of section 165 as they apply to manufactured products. The following comments were made: since American taxpayers are taxed to build highways, American industries should benefit; contractors should be compelled to use American made products or their bids should be rejected; the waiver is not in accord with the intent of Congress; the Buy America provisions should apply to construction machinery used on all projects funded by the STAA of 1982.

A number of respondents believe that the regulation should not allow imported manhole and drainage structure castings to be used on the new highway program. Their basis for this position was that the FHWA would be circumventing the intent of Congress; that there are a large number of foundries scattered throughout the United States with heavy inventories; and that cast metal products can arguably be defined as steel products within the intent of the legislation.

Because of administrative difficulties, several State highway agencies were opposed to the extension of the regulation to include manufactured products unless one of the following changes is made: (1) "Manufactured product" is defined so that only the final manufacturing process which produces a usable product is considered in the determination of foreign versus domestic character or (2), domestic items determined by the FHWA to be of inferior quality or in short supply should be excluded from the regulation or their application phased in to provde for development of domestic supplies. Several commenters noted that it is virtually impossible for a contracting agency to trace all components of some manufactured products incorporated into highway products; e.g.; signal controllers, glass for the signal heads, almost all electrical equipment, paints, and asphalt.

Comments were received from individual respondents interested in extending Buy America provisions to specific manufactured products; i.e., glass beads, pavement joint sealants, and wick drains. Comments were received from a number of respondents seeking to exempt certain specific manufactured products from Buy America provision based on considerations such as limited domestic availability. These products include fencing, ground rubber, laminated bridge bearings, and steel extrusions.

Miscellanous comments concerning manufactured products included a recommendation that imported materials already in storage should not be subject to the Buy America regulation. Commenters also recommended that the regulation should exempt material originating in the U.S. which is shipped to a foreign country to undergo additional processing then returned for use in highway construction.

V. Comments Regarding Oil Products

Over 200 comments were received regarding the application of Buy America provisions to oil products. Virtually all the commenters (asphalt paving contractors and associations, State highway agencies, oil companies, etc.) asked that oil and/or petroleum products and/or asphalt be exempted from the final rule. Of those comments received on oil products, 20 percent of the respondents requested an exemption for foreign crude in the final rule; 30 percent of the respondents recommended exempting all petroleum products; approximately 15 percent of the respondents asked for a waiver for asphalt; and approximately 30 percent asked to exempt crude oil and component by-products. Less than 5 percent recommended including petroleum products and/or asphalt.

Respondents asked that the Buy America provisions be waived for crude oil products, noting that the eastern U.S. is almost entirely dependent upon foreign crude for asphalt and related petroleum products. They argued that a ban on the use of foreign crude oil would be counterproductive resulting in prohibitively high prices and the consumption of a disproportionate share of one of the United States' most valuable and rapidly diminishing natural resources.

A limited number of commenters, all oil companies or refiners, asked that petroleum products, in some fashion, be covered under Buy America provisions. Their comments noted that although the refining capacity of the U.S. is more than adequate to supply current requirements for asphalt and other highway project related products, insufficient amounts of crude oil are produced domestically to satisfy demand. These commenters believe that the waiver should therefore apply permanently to the crude oil component of asphalt or other petroleum products used in federally assisted projects, but not to the asphalt and other petroleum products.

VI. Miscellaneous Comments of Interest

Some commenters stated that the 25 percent perference insures that the STAA of 1982 will in fact reinforce American jobs, industry, and tax base, and will revitalize America's roads at the lowest "real" cost to the taxpayer.

Others commented that the allowance of a 25 percent or greater difference in the foreign bid versus native bid is inflationary and very counterproductive.

There was, however, a small number (less than 2 percent) of respondents who expressed philosophical opposition to the Buy America concept. These commenters included a State highway agency, foreign governments, contractors, equipment suppliers, a ready mix concrete association, and others. The comments basically noted that the use or non-use of foreign products should be left to the discretion of the States. They believed that because open trade between countries has been very beneficial in the past, it should not be ruled out completely as these provisions would do. The Canadian authorities view the Buy America provisions of the STAA as possibly in violation of the U.S. General Agreement on Tariffs and Trade (GATT). They believe that the Buy America provisions nullify and impair trade concessions which have been agreed to during multilateral GATT negotiations which the U.S. is obligated to observe. Given the economic climate in Canada, the Canadian authorities noted that this type of U.S. action will significantly add to pressure in Canada for similar protectionist measures.

Discussion of Revisions

A summary of the revisions to the existing provisions in 23 CFR 635.410 follows.

I. Exclusion of Manufactured Products

Most responses from product manufacturers recommended that manufactured products should be excluded from Buy America and/or expressed only a passing interest in the regulation. In evaluating the comments from manufacturers and suppliers who wanted to be covered, the indication was that they favored free trade agreements; however, they protested unfair practices such as foreign subsidized dumping, and foreign import restrictions. Government intervention may well be warranted to protect against these practices, but protectionism in terms of a Buy America regulation on all manufactured products would not serve this purpose.

The FHWA believes the message that Congress, State/local governments, and others sent was not to apply an all-inclusive Buy America rule. Although the earlier Buy America statute, section

401 of the STAA of 1978, provided that both unmanufactured and manufactured "articles, materials, and supplies" were covered under Buy America, the FHWA noted that only foreign structural steel could have a significant nationwide effect on the cost of Federal-aid highway construction projects. Therefore, FHWA determined it was in the public interest to apply section 401 only to structural steel. Section 165 of the STAA of 1982 reinforced congressional intent that Buy America should be applied to steel products. Section 165, however, also specifically cites cement products as covered for the first time and it does not apply at all to raw materials. With respect to manufactured products, Section 165 does not differ in its coverage from section 401 of the STAA of 1978. Since FHWA has never covered all manufactured products under its Buy America regulation and Congress did not specifically direct a change in that policy in enacting section 165, FHWA does not believe that all manufactured products must be covered.

Although asphalt use on Federal-aid highway construction is greater than cement and nearly equal to steel, many comments were received expressing support for an exemption for that manufactured product. It should be noted that the congressional debate on Section 165 was focused on the American steel and cement industries and little or no attention was given to the effect of the provision on the asphalt market [128 Cong. Rec. H8984–8990 (daily ed. December 6, 1982)]. A large number of congressional commenters pointed this out in urging an exemption for asphalt. The FHWA considered the minimal use and economic effect of applying Buy America to manufactured products other than asphalt and noted the potential administrative burdens to the State and contractors if those products were covered.

The materials and products other than steel, cement, asphalt, and natural materials comprise a small percent of the highway construction program. The FHWA agrees with the commenters who noted that it is very difficult to identify the various materials and then trace their origin. A manufactured product such as a traffic controller which has many components is particularly difficult to trace. For these reasons and because unfair practices or other specific problems can be addressed by import laws such as title VII of the Tariff Act of 1930, as amended (19 U.S.C. 1671 et. seq.) (Imposition of Antidumping Duties), the FHWA finds that it is in the public interest to waive the application of Buy America to manufactured products other than steel and cement manufactured products.

II. Inclusion of Steel Products

Although Congress included steel, cement, and manufactured products in the STAA, the FHWA interim rule which was effective following enactment of the law on January 6 applied only to steel products and cement products. Previous provisions applied only to structural steel and a determination of foreign or domestic character was based upon the place of manufacture and on the origin of more than 50 percent of the components. The determination to include only structural steel was based in part on the word "substantially" in the language of Section 401 (1978–STAA).

By denoting "steel" in Section 165 (1982 STAA), Congress called attention to their intent to make the coverage more encompassing. The legislative history is also clear on this point. Congressional concern that Federal money spent to improve highways should also aid U.S. industry is apparent in the first sentence of Section 165 which requires the Secretary of Transportation to ensure that funds authorized for Federal-aid highway projects would only buy U.S. made steel. The FHWA therefore, has expanded the Buy America rule to include all steel products.

III. Inclusion of Cement Products

The issue of cement coverage under Buy America centered around imports from Canada. Over 90 percent of the letters received on this issue asked that Canadian cement/clinker imports be exempt from Buy America.

The FHWA recognizes that the U.S. plants which currently import clinker and grind that material into cement will have to change their operations if they desire to continue to be a supply source for Federal-aid highway projects. They can do this in several ways. For example, they can expand to perform all manufacturing processes in the U.S. or only use domestically produced clinker. As another alternative, they will be able to segregate their production of cement made from U.S. and non-U.S. clinker either by using separate facilities or producing in separate production runs. The existing domestic industry, which utilizes foreign imports, will have to make some adjustments, to avoid job displacements resulting from Buy America. However, those adjustments should not be major.

Several commenters were concerned that applying Buy America to cement would force concrete batch plants to separate their domestic and foreign cement storage or to use only domestic cement. FHWA does not believe the impact of this requirement will be great. Normally, if a large quantity of concrete will be needed, new batch plants are set up on the site or existing batch plants are dedicated to the project. Therefore, the commenters' concerns would be valid only to a small amount of cement. It is possible that, if a concrete supplier is unwilling to comply with the Buy America requirement by separating its foreign and domestic cement and is dependent on Federal-aid contracts for continued profitability, it could be economically injured. However, Section 165 specifically requires that only domestic produced cement shall be used on Federal-aid highway construction. The congressional debate on section 165 clearly refers to cement [128 Congressional Record S14772 (daily edition December 15, 1982)]. Segregated cement storage is the best way to assure that only domestic cement will be incorporated into the work and the minimal burden this imposes is fully warranted.

Congress was very specific in including the term "cement" in the Buy America rule and in stating that cement products must be produced in the United States. "Produced in the U.S." means that all manufacturing processes whereby a raw material is changed or transformed into an article which, because of the process, is different from the original product, must occur domestically. Congress intended that the funds authorized by the Act would mainly benefit American workers and that increasing the demand for U.S. cement products would help the cement industry. Congress fully recognized that there would be a cost to implementing this rule. Therefore, the shortage of cement in a particular geographical area cannot be used as a justification to allow imports if the material is available anywhere domestically and can be supplied at a reasonable cost differential.

The FHWA, therefore, has included comment products in the Buy America rule. It is noted that administrative procedures are provided in the final rule to apply waivers in accordance with the legislation to afford some relief in those instances where the cement product inclusion creates situations which are not in the public interest or where the cement product is not produced in the United States in sufficient and reasonably available quantities of satisfactory quality.

IV. Program Coverage

The final rule requires that steel products and cement products be produced domestically, and only those products which are brought to the construction site and permanently incorporated into the completed project are covered. Construction materials, forms, etc., which remain in place at the contractor's convenience, but are not required by the contract, are not covered.

To further define the coverage, a domestic product is a manufactured steel or cement construction material that was produced in one of the 50 States, the District of Columbia, Puerto Rico, or in the territories and possessions of the United States. Raw materials used in the steel and/or cement product may be imported. All manufacturing processes to produce steel and cement products must occur domestically. Raw materials are materials such as iron ore, limestone, waste products, slag used in cement/concrete, etc., which are used in the manufacturing process to produce the steel or cement products. Waste products would include scrap; i.e., steel no longer useful in its present form from old automobiles, machinery, pipe, railroad tracks and the like. Also steel trimmings from mills or product manufacturing are considered waste. Extracting, crushing, and handling the raw materials which is customary to prepare them for transporting are exempt from Buy America.

V. Threshold

The STAA of 1978 (Public Law 95–599), passed in November of 1978 covered projects whose total cost exceeded $500,000. When FHWA implemented the STAA of 1978, it exempted the Buy America provisions from projects estimated to cost less than $450,000. This allowed the construction cost to exceed the estimate by more than 10 percent before the total project cost would exceed $500,000, thus triggering application of the Act.

The STAA of 1982 did not include a threshold even though there exists legislative colloquy indicating it would be continued. The FHWA, however, retained the threshold from the existing regulation in the interim final rule, noting that it would eliminate the administrative burden of enforcing Buy America on a major percentage of highway projects of small size. Effective June 10, 1983, it was decided that for the remainder of the comment period and until the final rule was published that the threshold should be eliminated. It was hoped that information based on experience without a threshold could be obtained before the final rule was implemented.

The FHWA has determined that the administrative burden of including a Buy America provision in all contracts does not warrant the reimposition of a threshold. Also, although there in no conclusive information, FHWA believes that the contractors' documentation of compliance with Buy America for steel and cement does not place a significant burden on them. The FHWA has eliminated the threshold making Buy America applicable to all projects. However, it should be noted that the final rule does permit a very minimal use of foreign steel and cement. The purpose of this is to eliminate placing an administrative burden on the States for truly minor items.

VI. Waivers

A State may request a waiver of the provisions of this section for specific projects and/or certain materials or products in specific locations. The basis for the request may be either a public interest finding or a determination that the product is not available domestically. An example of public interest would be a finding that applying Buy America would actually reduce rather than create jobs.

If the State finds, that a waiver request is warranted, it may document a justification for that waiver through the FHWA division office in its State and then to the Regional Federal Highway Administrator. There will be circumstances where a waiver should apply to an area larger than a region and possibly nationwide. In those cases, the Federal Highway Administrator will consider the merits of the problem and, if appropriate, approve a waiver which would afford uniform applications throughout the area affected. These cases would be forwarded to the Federal Highway Administrator by the Regional Administrator or arise when the Washington Headquarters ascertains that two regions may be acting on the same request.

VII. Compliance

The State's standard contract control procedures to assure that the contractor meets the terms of the contract shall be applicable to verify compliance with Buy America. It is presumed that a bidder who enters into a contract with a State agrees to comply with the Buy America provision. The States are expected to provide sufficient oversight to ensure compliance with the Buy America provisions. Penalties should be applied as may be appropriate in accordance with the standard State and Federal-aid procedures.

VIII. Legislative Changes

Section 165 sets forth two other requirements which supersede the previous requirements contained in section 401 of the 1978 STAA. The legislative language permits States to impose more stringent requirements than are imposed by section 165. Previously, only those State Buy America provisions which were in effect prior to the enactment of the STAA of 1978 were permitted. The STAA of 1982 also revises the total contract cost differential permitting the use of foreign materials from 10 percent to 25 percent. These two changs are incorporated into the final rule.

IX. Procedural Changes

The final rule implements three procedural changes from the interim final rule. The first involves confusion with the provisions in the STAA of 1982 which permit States to impose more stringent Buy America requirements than are contained in the Federal regulation.

Several comments were received which showed that this provision was being misunderstood. Specifically, State legislatures were considering "Buy-State materials and products preference" for Federal-aid highway work. Such a provision in Federal-aid contracts would be in violation of the longstanding prohibition contained in 23 CFR 635.409(a) against State restrictions on the use of articles or materials made or produced in any other State, territory, or possession of the United States. The issue addressed in section 165 of the STAA of 1982 is that certain materials must be produced in the United States rather than in foreign countries. This is obvious from the inclusion of the words "foreign countries" in the aforementioned provision regarding more stringent State requirements. Section 635.410(a) is being revised to clarify this matter.

The second procedural change is necessary to clarify the application of the alternate bid provisions. The previous regulation required alternate bids for foreign and domestic structural steel. Since the STAA of 1982 permits States to impose more stringent Buy America requirements than are imposed by section 165, it has been pointed out that a State could elect to prohibit the use of foreign steel or cement even on projects which could allow alternate bids under § 635.410(b)(3). Therefore, the final rule is simplified by replacing the alternate bid requirements with a

statement that alternate bids for foreign and domestic materials may be included on any Federal-aid highway project at the State's election. The FHWA still encourages States to consider alternate bids on projects where foreign materials are likely to be competitive even with the 25 percent cost differential.

Third, § 635.410(b)(2) has been deleted. The paragraph has provided that certification acceptance (CA) procedures would apply to the Buy America provisions. However, section 165 of the STAA of 1982 is not incorporated into title 23 U.S.C. to which CA is applicable.

The FHWA has determined that this document does not contain a major rule under Executive Order 12291. However, under the regulatory policies and procedures of the DOT, this rulemaking action is considered significant based on the public interest involved.

A regulatory evaluation/regulatory flexibility assessment has been prepared and is available for review in the public docket. A copy may be obtained by contacting Mr. P. E. Cunningham at the address provided under the heading **"FOR FURTHER INFORMATION CONTACT."** The FHWA has determined that this action will not have a significant economic impact on a substantial number of small entities based upon the evaluation prepared.

List of Subjects in 23 CFR Part 635

Buy America, Government contracts, Grants programs—transportation, Highways and roads.

In consideration of the foregoing, and under the authority of 23 U.S.C. 315, section 165, STAA of 1982, Pub. L. 97-424, 96 Stat. 2136, and 49 CFR 1.48(b), the FHWA amends Part 635, Subpart D, by revising § 635.410 of 23 CFR to read as set forth below.

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

Issued on November 21, 1983.

R. A. Barnhart,

Administrator, Federal Highway Administration.

PART 635—[AMENDED]

§ 635.410 Buy America requirements.

(a) The provisions of this section shall prevail and be given precedence over any requirements of this subpart which are contrary to this section. However, nothing in this section shall be construed to be contrary to the requirements of § 635.409(a) of this subpart.

(b) No Federal-aid highway construction project is to be authorized for advertisement or otherwise authorized to proceed unless at least one of the following requirements is met:

(1) The project either: (i) Includes no permanently incorporated steel or (ii) if cement or steel materials are to be used, all manufacturing processes for these materials must occur in the United States.

(2) The State has standard contract provisions that require the use of domestic materials and products, including cement and steel materials, to the same or greater extent as the provisions set forth in this section.

(3) The State elects to include alternate bid provisions for foreign and domestic steel and/or cement materials which comply with the following requirements. Any procedure for obtaining alternate bids based on furnishing foreign steel and/or cement materials which is acceptable to the Division Administrator may be used. The contract provisions must (i) require all bidders to submit a bid based on furnishing domestic steel and/or cement materials, and (ii) clearly state that the contract will be awarded to the bidder who submits the lowest total bid based on furnishing domestic steel and/or cement materials unless such total bid exceeds the lowest total bid based on furnishing foreign steel and/or cement materials by more than 25 percent.

(4) When cement and steel materials are used in a project, the requirements of this section do not prevent a minimal use of foreign cement and steel materials, if the cost of such materials used does not exceed one-tenth of one percent (0.1 percent) of the total contract cost or $2,500, whichever is greater. For purposes of this paragraph, the cost is that shown to be the value of the steel and/or cement products as they are delivered to the project.

(c)(1) A State may request a waiver of the provisions of this section if:

(i) The application of those provisions would be inconsistent with the public interest; or

(ii) Steel and cement materials/products are not produced in the United States in sufficient and reasonably available quantities which are of a satisfactory quality.

(2) A request for waiver, accompanied by supporting information, must be submitted in writing to the Regional Federal Highway Administrator (RFHWA) through the FHWA Division Administrator. A request must be submitted sufficiently in advance of the need for the waiver in order to allow time for proper review and action on the request. The RFHWA will have approval authority on the request.

(3) Requests for waivers may be made for specific projects, or for certain materials or products in specific geographic areas, or for combinations of both, depending on the circumstances.

(4) The denial of the request by the RFHWA may be appealed by the State to the Federal Highway Administrator (Administrator), whose action on the request shall be considered administratively final.

(5) A request for a waiver which involves nationwide public interest or availability issues or more than one FHWA region may be submitted by the RFHWA to the Administrator for action.

(6) A request for waiver and an appeal from a denial of a request must include facts and justification to support the granting of the waiver. The FHWA response to a request or appeal will be in writing and made available to the public upon request. Any request for a nationwide waiver and FHWA's action on such a request may be published in the **Federal Register** for public comment.

(7) In determining whether the waivers described in paragraph (c)(1) of this section will be granted, the FHWA will consider all appropriate factors including, but not limited to, cost, administrative burden, and delay that would be imposed if the provision were not waived.

(d) Standard State and Federal-aid contract procedures may be used to assure compliance with the requirements of this section.

(23 U.S.C. 315; sec. 165, Surface Transportation Assistance Act of 1982, Pub. L. 97-424, 96 Stat. 2097; 49 CFR 1.48(b).

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 35a

[T.D. 7922]

Employment Taxes; Backup Withholding and Due Diligence Relating to Taxpayer Identification Numbers and Certification Requirements

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document provides temporary regulations relating to backup withholding and due diligence relating

to taxpayer identification numbers and certification requirements. Changes to the applicable tax law were made by the Interest and Dividend Tax Compliance Act of 1983 (Pub. L. 98-67, 97 Stat. 369). These regulations affect payors and payees of, and brokers with respect to, reportable payments and provide them with the guidance necessary to comply with the law.

DATE: The temporary regulations are effective for payments made after December 31, 1983.

FOR FURTHER INFORMATION CONTACT: Diane Kroupa of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (202-566-3829).

SUPPLEMENTARY INFORMATION:

Background

On October 4, 1983, the **Federal Register** published temporary employment tax regulations under the Interest and Dividend Tax Compliance Act of 1983 (26 CFR Part 35a) under sections 3406 and 6676 of the Internal Revenue Code of 1954 (48 FR 45362). Those amendments were published to conform the regulations to the statutory changes enacted by the Interest and Dividend Tax Compliance Act of 1983 (97 Stat. 369). Section 3406 was added to the Internal Revenue Code of 1954 by section 104 of the Interest and Dividend Tax Compliance ACt of 1983 (Pub. L. 98-67, 97 Stat. 371), and section 6676 of the Code was amended by section 105 of the Act (Pub. L. 98-67, 97 Stat. 380).

This document contains temporary regulations relating to the requirement to impose backup withholding on reportable payments and the exercise of due diligence by payors of reportable interest, dividends, and patronage dividends and brokers. This document adds new § 35a.9999-2 to part 35a, Temporary Employment Tax Regulations under the Interest and Dividend Tax Compliance Act of 1983, to Title 26 of the Code of Federal Regulations. In addition, this document amends Q-42 (relating to window transactions) of the question and answers published in the **Federal Register** on October 4, 1983 (48 FR 45362). Because these provisions are generally effective for payments made after December 31, 1983, there is a need for immediate guidance so that payors and payees can prepare to comply with these provisions.

It is expected that further temporary regulations with a cross-reference to a notice of proposed rulemaking, containing additional rules relating to backup withholding, will be published within a month. The temporary regulations contained in this document will remain in effect until superseded by final regulations on this subject.

These temporary regulations, presented in question and answer format, are intended to provide guidelines upon which payors and payees of reportable payments (including reportable interest, dividend, and patronage dividend payments) may rely in order to resolve questions specifically set forth herein. However, no inference should be drawn regarding issues not raised herein or reasons certain questions, and not others, are included in these regulations.

Explanation of Provisions

These regulations provide additional guidance concerning the due diligence standard and provide general rules with respect to backup withholding. Most of the regulations address operational concerns of payors who must adapt their systems to begin withholding on payments made after December 31, 1983.

With respect to due diligence, the regulations provide additional guidance concerning the application of the due diligence exception, the payments to which due diligence is applicable, and the form and timing of the required mailing or mailings. The regulations also specify when due diligence applies to trustees, custodians, and fiduciaries.

The regulations provide guidance concerning the application of backup withholding to payments subject to reporting under section 6041 (relating to rents, royalties, commissions, etc.), section 6041A(a) (relating to nonemployee compensation), section 6045 (relating to brokers and barter exchanges), and section 6050A (relating to certain fishing boat operators).

With respect to reportable interest or dividend payments, the regulations explain how withholding will apply to original issue discount and address how payors may choose not to withhold on minimal payments of interest and dividends.

Section 3406(g)(3) requires that an exemption from withholding shall be provided for the period of time during which a payee is awaiting receipt of a taxpayer identification number. The regulations prescribe certain requirements that a payee must comply with in order to qualify for the exemption. The Service has determined that it generally takes a person approximately 4 weeks to receive a taxpayer identification number. Thus, the regulations provide that a payee generally has 60 days in which to furnish a taxpayer identification number to the payor. Backup withholding is not imposed on payments made during that period, if a payee certifies in the manner required that he or she is waiting for receipt of a taxpayer identification number.

The regulations also provide rules related to the application of backup withholding to trusts and estates. Finally, the regulations specify the record retention requirements for forms related to backup withholding.

With respect to the requirement to withhold under section 3406(a)(1) (B) or (C) when notified by the Service that a payee's taxpayer identification number is not correct or that the payee is subject to withholding due to a notified payee underreporting, payors will not be required to withhold on payments made to such payee until 30 days after temporary regulations are published in the **Federal Register** explaining how withholding will apply under section 3406(a)(1) (B) or (C).

Nonapplicability of Executive Order 12291

The Treasury Department has determined that these temporary regulations are not subject to review under Executive Order 12291 or the Treasury and OMB implementation of the Order dated April 29, 1983.

Regulatory Flexibility Act

No general notice of proposed rulemaking is required by 5 U.S.C. 533(b) for temporary regulations. Accordingly, the Regulatory Flexibility Act does not apply and no Regulatory Flexibility Analysis is required for this rule.

Drafting Information

The principal author of these regulations is Diane Kroupa of the Legislation and Regulations Division of the Office of the Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects in 26 CFR Part 35a

Employment taxes, Income taxes, Backup withholding, Interest and Dividend Tax Compliance Act of 1983.

Adoption of Amendments to the Regulations

Accordingly Part 35a is amended as follows:

PART 35A—[AMENDED]

Paragraph 1. Section 35a.9999–2 is added immediately after § 35a.9999–1 to read as follows:

§ 35a.9999–2 Questions and answers concerning due diligence and issues in connection with backup withholding.

The following questions and answers principally concern the backup withholding requirement with respect to reportable payments and the due diligence exception to the penalty on payors of reportable interest and dividend payments for failure to provide a payee's correct taxpayer identification number on certain information returns. These requirements are issued under the Interest and Dividend Tax Compliance Act of 1983 (Pub. L. 98–67, 97 Stat. 369):

Due Diligence

Q–1. If a payor of reportable interest or dividends does not send the mailing or mailings described in A–5 and A–6 of § 35a.9999–1 of the Temporary Employment Tax Regulations, issued under the Interest and Dividend Tax Compliance Act of 1983, T.D. 7916 ("§ 35a.9999–1"), to all payees who have not certified under penalties of perjury that their taxpayer identification numbers are correct, will a payor be considered to have exercised due diligence with respect to a payee to whom the payor sends the required mailing or mailings?

A–1. Yes. Due diligence applies on a payee-by-payee basis. For example, if a payor sends the separate mailing described in A–5 of § 35a.9999–1 by December 31, 1983, only to certain payees, the payor will be considered to have exercised due diligence with respect to the payees to whom the mailing was sent. However, the payor will not be considered to have exercised due diligence with respect to those payees to whom the payor did not send the required mailing or mailings.

A penalty for failure to provide a correct taxpayer identification number will not be imposed merely because the payor fails to send the required mailing or mailings. Rather, a penalty will be imposed only in the case of an information return filed by a payor of reportable interest or dividends if the required mailing or mailings were not sent to the payee and the payor fails to include a taxpayer identification number or includes an incorrect number on the return filed with respect to the payee.

Q–2. Does the due diligence standard apply to reportable payments other than reportable interest or dividends?

A–2. No. The due diligence standard does not apply to payments reportable under sections 6041, 6041A(a), 6045, or 6050A. Thus, payors of these other reportable payments are not required to send the mailings described in A–5 and A–6 of § 35a.9999–1.

Q–3. Do the rules of section 7503 of the Internal Revenue Code, regarding the time for performance of an act where the last day to perform the act falls on Saturday, Sunday, or a legal holiday, apply to the time limits for the mailings described in A–5, A–6, A–52, A–53, and A–55 of § 35a.9999–1?

A–3. Yes. For example, a mailing that must be sent on or before Saturday, December 31, 1983, will be considered timely if sent on or before Tuesday, January 3, 1984.

Q–4. Are trustees, custodians, or other fiduciaries subject to the due diligence standard?

A–4. The due diligence standard does not apply to a trustee, custodian, or other fiduciary, unless such person is a payor of reportable interest or dividends. A trustee, custodian, or other fiduciary is not a payor of reportable interest of dividends simply because the trustee, custodian, or fiduciary receives a payment of reportable interest or dividends. If a trust is considered a payor of reportable interest or dividends under A–20, below, however, the due diligence standard applies.

Q–5. Is a payor required to send the mailings described in A–5 and A–6 of § 35a.9999–1 by first-class mail, if it is the practice of the payor not to send correspondence to the payee by first-class mail, but rather to deliver personally, or to use intra-office mail to communicate with the payee?

A–5. No. A payor may send the mailing or mailings by first-class mail, by personal delivery, or by intra-office mail, provided that the mailing or mailings are delivered by the same method used by the payor in sending account activity and balance information and other correspondence to the payee.

Q–6. Must a payor affix postage to the return envelope to satisfy the requirement of including a postage-prepaid reply envelope in the mailings described in A–5 and A–6 of § 35a.9999–1?

A–6. The requirement that a payor must include a postage-prepaid reply envelope will be satisfied by the use of a "postage-prepaid envelope," a "business reply mail envelope," or by affixing the required postage to a self-addressed reply envelope. (A "business reply mail envelope" involves an arrangement in which postage is charged only when a customer returns the reply envelope.)

Q–7. Must a payor who sends the mailings described in A–5 and A–6 of § 35a.9999–1 to a foreign address affix postage to the reply envelope?

A–7. No. A payor is required to include only a self-addressed reply envelope in a mailing to a foreign address. A payor is not required to affix postage to a reply envelope included in a mailing to a foreign address, regardless of whether the payee is a United States citizen, a United States resident, or a non-resident alien.

Q–8. Will a payor who sends the mailings described in A–5, A–6, A–52, A–53, and A–55 of § 35a.9999–1 violate the separate mailing requirement if the payor sends both a form W–9 (or substitute form) and a Form W–8 (or substitute form) in the same mailing?

A–8. No. The payor may include in any separate mailing both a solicitation of the payee's taxpayer identification number (Form W–9) and a solicitation of a certification of the payee's foreign status (Form W–8).

Q–9. Do "window transactions," as defined in Q–42 of § 35a.9999–1, include payments on Treasury bills and other instruments not in definitive form?

A–9. No. Because Treasury bills are not in definitive form, payments upon Treasury bills are not treated as window transactions. Similarly, payments upon other instruments not in definitive form are not treated as window transactions. The special rules for window transactions set forth in A–42 of § 35a.9999–1 thus apply only to redemptions of United States savings bonds, and to payments upon interest coupons, commercial paper, and banker's acceptances, if such instruments are in definitive form. The due diligence requirements set forth in A–5 and A–6 of § 35a.9999–1 are thus applicable to payors of payments on Treasury bills and other instruments not in definitive form, if those instruments are considered to have been acquired before 1984, and mature after December 31, 1983. In addition, the certification requirements set forth in A–32 of § 35a.9999–1 and all other relevant backup withholding requirements apply to payments on Treasury bills and other instruments not in definitive form.

Requirement of Backup Withholding

Q–10. Does backup withholding apply to reportable payments other than reportable interest and dividend payments?

A–10. Yes. Backup withholding also applies to payments that are subject to reporting under sections 6041(a) or (b),

6041A(a), and 6045, and to certain payments reportable under section 6050A ("other reportable payments"). Backup withholding applies to other reportable payments, other than payments reportable under section 6045, only if: (1) The payee fails to furnish a taxpayer identification number to the payor; or (2) the Internal Revenue Service notifies the payor that the taxpayer identification number furnished by the payee is not correct. Except in the case of payments reportable under section 6045, a payee of other reportable payments is not required to make any certifications under penalties of perjury, unless the payee seeks to claim the exemption from withholding while waiting for receipt of a taxpayer identification number (as explained in A–18, below). See A–12 and A–13, below, for rules regarding the application of backup withholding to transactions subject to reporting under section 6045.

Q–11. Under what circumstances is a payor of payments reportable under section 6041 or section 6041A(a) required to impose backup withholding?

A–11. A payor is required to withhold on reportable payments under sections 6041 and 6041A(a) only if: (1) A payee is subject to backup withholding under A–10, above, (*i.e.*, the payee fails to furnish a taxpayer identification number to the payor or the Internal Revenue Service notifies the payor that the taxpayer identification number furnished by the payee is not correct); and (2) any one of the following three conditions is satisfied: (a) Reportable payments to the payee aggregate $600 or more during the calendar year; (b) the payor was required to file an information return under section 6041 or section 6041A(a), whichever is applicable, with respect to that payee for the preceding calendar year (*i.e.*, payments subject to reporting under section 6041 or section 6041A(a), whichever is applicable, aggregated $600 or more to the payee for the preceding calendar year); or (c) the payor was required to impose backup withholding on payments made to the payee during the preceding calendar year (and the payments subject to backup withholding were of a type reportable under section 6041 or section 6041A(a), whichever is applicable).

If a payor pays amounts aggregating $600 or more to a payee during a calendar year (condition (a) above), the amount subject to withholding is: (1) The amount of the payment that causes the aggregate payments to the payee during the calendar year to total $600 or more (assuming that the payor made no payments during the preceding calendar year that were subject to either reporting under section 6041 or section 6041A(a), whichever is applicable, or backup withholding); and (2) the amount of any additional payments of a type subject to reporting under section 6041 or section 6041A(a), whichever is applicable, made to the payee before the payee provides a taxpayer identification number to the payor of after the Internal Revenue Service notifies the payor that the taxpayer identification number furnished by the payee is not correct. For example, if a payor made payments of $200 each on March 31, 1984, June 30, 1984, and September 30, 1984, to a payee, which were reportable under section 6041, the payments on March 31, and June 30 would not be subject to backup withholding, because the $600 threshold would not have been reached as a result of making either of those payments (assuming that payments made to the payee during 1983 did not aggregate $600 or more and were thus not subject to reporting). However, the payor would be required to withhold 20 percent of the $200 payment made on September 30, if the payee did not furnish a taxpayer identification number to the payor, or the Internal Revenue Service notified the payor that the number provided by the payee is incorrect, prior to the payment date (September 30). If the payor made a $50 payment of a type reportable under section 6041, on December 31, 1984, to the same payee, the payor would be required to withhold 20 percent of the $50 payment, if the payee had not provided a taxpayer identification number, or the Internal Revenue Service notified the payor that the number provided by the payee is incorrect, prior to the date of payment (December 31).

If, in the preceding calendar year, a payor was required to file an information return with respect to payments to the payee under section 6041 or section 6041A(a) (condition (b) above), or a payor is required to impose backup withholding with respect to payments of a type that were reportable under such sections (condition (c) above), the payor is required to withhold 20 percent of any payment of a type reportable under section 6041 or section 6041A(a) made to the payee during the following year, regardless of the amount of the payment, if, prior to the date of the payment, the payee fails to provide a taxpayer identification number to the payor, or the Internal Revenue Service notifies the payor that the number provided by the payee was not correct. Assume, for example, that a payor made reportable payments under section 6041 to a payee that aggregated $600 or more during 1983, so that the payor was required to file an information return with respect to the payments for 1983. If the payor paid $300 to the payee on January 31, 1984, and the payment was of a type reportable under section 6041, the payor would be required to withhold 20 percent of the $300 payment, if, prior to January 31, 1984, the payee did not provide a taxpayer identification number to the payor, or the Internal Revenue Service notified the payor that the number provided by the payee was not correct. Moreover, because payments during 1984 to the payee, or a type subject to reporting under section 6041, would be subject to backup withholding, the payor would be required to withhold 20 percent of any payment of a type reportable under section 6041 that was made to the payee in 1985, unless the payee provided a taxpayer identification number prior to the payment date, or corrected the number provided, if the payor was notified by the Service that the previous number was not correct.

In making the determination of whether payments to a payee aggregate $600 or more during a calendar year or whether condition (b) or condition (c) applies to a payee, the payor must aggregate and take into account payments of the same kind made to the same payee. Payments that are reportable under section 6041 are not required to be aggregated with payments reportable under section 6041A(a). Payors may, in their discretion, aggregate: (1) Payments not of the same kind to the same payee, reportable under section 6041 and 6041A(a), and (2) payments reportable under section 6041 with payments reportable under section 6041A(a).

Q–12. Does backup withholding apply to gross proceeds subject to reporting under section 6045?

A–12. Yes. Backup withholding applies to gross proceeds reportable by brokers, if the customer does not furnish a taxpayer identification number to the broker in the manner required, or the Internal Revenue Service notifies the broker that the number furnished by the customer was incorrect. With respect to a post-1983 account (as defined in A–41 of § 35a.999–1), the taxpayer identification number provided by a customer must be certified under penalties of perjury. With respect to all other accounts, the customer's taxpayer identification number is not required to be certified under penalties of perjury. For example, if a customer who had no prior relationship with a broker opens an account, arranges for the broker to sell readily tradable securities for $100

during 1984, and the sale is required to be reported under section 6045, the gross proceeds of the sale are subject to backup withholding, if the customer does not provide: (1) His taxpayer identification number to the broker and certify it under penalties of perjury; or (2) an awaiting TIN certification (described in A–18, below).

Special rules governing backup withholding with respect to commodity futures contracts, margin account transactions, and short sale transactions will be issued in the near future.

Q–13. Does backup withholding apply to barter exchanges that are subject to reporting under section 6045?

A–13. Yes. If the barter exchange is required to report an exchange under section 6045, it is required to impose backup withholding if a member of the barter exchange does not provide a taxpayer identification number in the manner required or the Internal Revenue Service notifies the barter exchange that the number provided by the member is incorrect. With respect to an account or ongoing relationship established between a barter exchange and a member after December 31, 1983, the member is required to provide a taxpayer identification number to the barter exchange under penalties of perjury. With respect to all other accounts, the member's number is not required to be certified under penalties of perjury.

Q–14. What action is a payor of reportable interest or dividends required to take with respect to payments made on a readily tradable instrument held by a payee, if: (1) Additional readily tradable instruments of the same issue are purchased by the same payee, (2) it is the practice of the payor to combine in one account all the readily tradable instruments of the same issue owned by the same payee (and to make a single aggregate payment with respect to all readily tradable instruments of the same issue included in the account), and (3) certain of the readily tradable instruments of the same issue owned by the payee are subject to backup withholding and others are not subject to backup withholding?

A–14. If it is the practice of a payor to combine in one account all readily tradable instruments of the same issue owned by a payee and if certain of those instruments are subject to backup withholding and others are not subject to backup withholding, the payor is required to withhold 20 percent of the aggregate payment made with respect to all the instruments in the account. If it is not the practice of the payor to combine in one account all readily tradable instruments of the same issue owned by a payee, the payor is required only to withhold 20 percent of the payment made on the instrument or instruments with respect to which the payee is subject to backup withholding.

For example, assume that a payee, prior to 1984, held a readily tradable instrument and that a taxpayer identification number had been provided to the payor. Assume further, during 1984: (1) The payee acquired another readily tradable instrument of the same issue through a post-1983 brokerage relationship, (2) the broker notified the payor that the payee failed to certify that he was not subject to backup withholding due to notified payee underreporting, and (3) the payor, in accordance with its customary practice, combined in one account both readily tradable instruments of the same issue owned by the payee and made an aggregate payment with respect to both instruments in the account. In the circumstance, the payor would be required to withhold 20 percent of the aggregate payment made with respect to both of the instruments of the same issue owned by the payee.

Q–15. Does backup withholding apply to original issue discount?

A–15. Yes. Original issue discount is treated as a payment of interest reportable under section 6049. Thus, original issue discount is subject to backup withholding in the same circumstances in which backup withholding applies to an actual payment of interest. In determining the timing and amount of original issue discount subject to backup withholding, rules consistent with § 31.3455(b)–1 of the Employment Taxes and Collection of Income Tax at Source Regulations shall apply. Thus, the amount to be withheld is limited to the amount of cash paid.

Q–16. If an exempt recipient files a Form W–9 (or a substitute form) in order to be exempt from backup withholding, may the payor rely on the form if the payee fails to include its taxpayer identification number on the form?

A–16. No. A Form W–9 (or substitute form) may be relied upon by a payor only if it includes the payee's taxpayer identification number. Thus, if the Form W–9 (or substitute form) provided by the payee does not contain a taxpayer identification number, the payor must withhold 20 percent of all payments made to the payee. If, however, they payor treats the payee as an exempt recipient under A–29 of § 35a.9999–1 and § 31.3452(c)–1 (b) through (p) of the Employment Taxes and Collection of Income Tax at Source Regulations without requiring the payee to file a Form W–9 (or substitute form), the payor is not required to withhold, even though the payee has not furnished a taxpayer identification number to the payor. This exception, however, is not available to barter exchanges subject to reporting under section 6045.

Q–17. In determining whether a payee failed to provide a taxpayer identification number to a payor, within what period of time must a payor treat a taxpayer identification number or an "awaiting TIN certification" (as defined in A–18, below) provided by a payee as having been received?

A–17. As provided in A–31 of § 35a.9999–1, a payor is required to process a taxpayer identification number within 30 days after the payor receives the taxpayer identification number from the payee. Thus, for example, if a payor of a payment reportable under section 6041 or section 6041A(a) receives a taxpayer identification number on January 16, 1984, the payor must process the number on or before February 15, 1984. As a result, the payor should commence backup withholding with respect to payments made to the payee after January 16, 1984, if the payee were subject to backup withholding under A–10 and A–11, above, but the payor must cease backup withholding by February 15, 1984. The payor may, however, treat the taxpayer identification number as having been received at any time within 30 days after it is provided, so that backup withholding in the example outlined above would not have to be imposed on any payment if the payor processed the number prior to making the payment.

A payor also has 30 days after delivery by a payee of an awaiting TIN certification (as defined in A–18, below) to treat the certificate as having been received.

Exceptions To Backup Withholding

Q–18. Is a payor required to impose backup withholding during a period when a payee is waiting for receipt of a taxpayer identification number?

A–18. In general, if a payee does not provide a taxpayer identification number to a payor, the payor must withhold 20 percent of all payments made to the payee on or after January 1, 1984. However, the payee will not be subject to backup withholding for a period of 60 days, if the payee is waiting for receipt of a taxpayer identification number. In order to be entitled to the 60 day exemption, the payee must comply with the requirements of this A–18.

A payee shall be treated as if he provided a certified taxpayer identification number for a period of 60 days following the day the payor

receives a certificate signed under penalties of perjury (an "awaiting TIN certification"). (See A–17, above, for rules related to the day on which an awaiting TIN certification may be treated as having been received.) If the payor does not receive a taxpayer identification number within 60 days after the payee delivers the awaiting TIN certification to the payor, the payor must withhold 20 percent of all payments made to the payee, until the payee provides a taxpayer identification number to the payor. The awaiting TIN certification must contain statements: (1) That the payee has not been issued a taxpayer identification number, (2) that the payee has applied for a number or intends to apply for a number in the near future, and (3) that the payee understands that if the payee does not provide a taxpayer identification number to the payor within 60 days, the payor is required to withhold 20 percent of any payments made thereafter to the payee until a number is provided. Language that is substantially similar to the following will satisfy this requirement:

> I certify, under penalties of perjury, that a taxpayer identification number has not been issued to me, and that I mailed or delivered an application to receive a taxpayer identification number to the appropriate Internal Revenue Service Center or Social Security Administration Office (or I intend to mail or deliver an application in the near future). I understand that if I do not provide a taxpayer identification number to the payor within 60 days, the payor is required to withhold 20 percent of all reportable payments thereafter made to me until I provide a number.

The foregoing certification, at the discretion of the payor, may be included on the same form as the certifications required by A–32 of § 35a.9999–1.

The payor may use Form W–9, as currently issued by the Internal Revenue Service, to satisfy the requirements of this A–18. If the Form W–9 is used, the payee should write "Applied For" in the space reserved for the taxpayer identification number. The payor also should inform the payee, in supplemental instructions or orally, "that if a taxpayer identification number is not received by the payor within 60 days, the payor is required to withhold 20 percent of all reportable payments thereafter made to the payee until the payor receives a number from the payee." Future editions of the Form W–9 will contain the supplemental instruction.

A payee who seeks to qualify for the 60 day exemption from backup withholding also must certify, under penalties of perjury, that the payee is not subject to backup withholding due to notified payee underreporting, when required to do so by A–32 of § 35a.9999–1 or A–12 or A–13, above. Thus, a payee who establishes an account or acquires an instrument after December 31, 1983, will be subject to backup withholding irrespective of whether the payee certifies that the payee is waiting for receipt of a taxpayer identification number, if the payee fails to make the certification described in A–32 of § 35a.9999–1 or A–12 or A–13, above, concerning notified payee underreporting.

When a payee who opens an account or acquires an instrument after December 31, 1983, and who qualifies for this 60 day exemption furnishes a taxpayer identification number to the payor, the payee is required to certify under penalties of perjury, in accordance with A–32 of § 35a.9999–1 or A–12 or A–13, above, that the taxpayer identification number provided is correct. If no such certification is provided, the payor must institute backup withholding.

A special rule is provided for accounts that are established, or instruments that are acquired (in the case of reportable interest or dividend payments) or relationships established (in the case of other reportable payments) before January 1, 1984. All payees of such accounts, instruments, or relationships will be treated as if they are waiting for receipt of a taxpayer identification number, without any action on their part, until January 16, 1984. The payor must withhold 20 percent of any payment made after January 16, 1984, unless: (1) The payee has certified, as required by this A–18, that the payee is waiting for receipt of a taxpayer identification number or (2) the payor receives a taxpayer identification number from the payee. If, however, a payor has been provided with a Form W–9 (or substitute form) with an "Applied For" designation, by a payee of an account, instrument, or relationship established before January 1, 1984, the form will be valid for 60 days, notwithstanding the fact that the supplemental instruction referred to above was not provided to the payee.

Assume, for example, that the payee of an account established before January 1, 1984, delivered an awaiting TIN certification to the payor on December 30, 1983 and the payor processed the certification that day. The payor should not impose backup withholding on payments made to the payee prior to February 29, 1984, because the payee is treated under this A–18 as having provided a taxpayer identification number during that period. If the payor did not receive a number from the payee prior to February 29, the payor would be required to withhold 20 percent of any payment made to the payee on or after February 29, and before the payee provided a number. (See A–17, above, however, for the rules relating to the date on which the payor may be treated as having received the awaiting TIN certification or a taxpayer identification number.) As another example, assume that a payee of an account established before January 1, 1984, delivered an awaiting TIN certification to the payor on January 12, 1984 and processed it that day. The payor should not impose backup withholding on payments made between January 1 and January 12, because the payee would be treated during that period as if he had provided a taxpayer identification number under the rule set forth above. Moreover, backup withholding would not apply to payments made during the 60 days following January 12, because the payee on that date delivered an awaiting TIN certification. Backup withholding would begin only if the payor had not received a taxpayer identification number within that 60 day period. (See A–17, above, however, for the rules relating to the dates on which the payor may be treated as having received the certificate or the taxpayer identification number.)

The 60 day exemption applicable when a payee provides an awaiting TIN certification applies to payments made on readily tradable instruments only if the instrument is acquired directly from the payor (including a broker that holds the instrument in street name), unless the payee provides an awaiting TIN certification directly to the payor. Thus, if a broker opens a new account after 1983 and acquires a readily tradable instrument for a payee who has no taxpayer identification number, and the instrument is not held in street name, the broker must advise the payor that the payee failed to provide a taxpayer identification number under penalties of perjury, regardless of whether an awaiting TIN certification is provided to the broker. The payor in such a situation, however, must include in the notice sent to a payee (as required by A–39 of § 35a.9999–1) a statement informing the payee that, if the payee does not have a taxpayer identification number, the payee will be exempt from backup withholding for a period of 60 days following the payor's receipt of an awaiting TIN certification, provided that the payee signs an awaiting TIN certification and returns it to the payor. (See A–17, above, for the rules relating to the date on which the payor may be

treated as having received the certificate.) An awaiting TIN certification, in a form permitted by this A–18, should be included with the notice. The form of the notice described in A–39 of § 35a.9999–1 and this A–18 is set forth in the Appendix to this temporary regulation.

Neither the 60 day exemption nor the special presumption applicable to accounts, instruments, and relationships established before January 1, 1984 applies to window transactions, as defined a A–9, above, and Q–42 of § 35a.9999–1. Therefore, a payor is required to withhold 20 percent of any window transaction payment whenever a payee of such a payment does not provide a taxpayer identification number of the payor.

Q–19. Are payors required to withhold on payments that are less than $10, or that, if determined on an annualized basis, would be less than $10 (a "minimal payment")?

A–19. A payor of reportable interest or dividends has the option not to withhold on minimal payments, or, alternatively, to withhold on payments of any amount. The principles of § 31.3452(d)–1 of the Employment Taxes and Collection of Income Tax at Source Regulations shall be utilized in determining whether a reportable interest or dividend payment may be treated as a minimal payment with respect to which backup withholding is not required.

The annualization requirement of § 31.3452(d)–1 of the Employment Taxes and Collection of Income Tax at Source Regulations shall not apply to window transaction payments. A payor may choose not to withhold on any window transaction payment that is less than $10. However, all window transaction payments made at the same time must be aggregated.

The $10 minimal payment exception does not apply to other reportable payments (*i.e.*, payments other than reportable interest or dividends), except payments reportable under section 6045. Payments reportable under section 6045, like reportable interest and dividends, are subject to backup withholding, at the payor's option, only if the reportable amount exceeds $10. The annualization rule of § 31.3452(d)–1 of the Employment Taxes and Collection of Income Tax at Source Regulations is inapplicable to payments reportable under section 6045.

Q–20. Are beneficiaries of trusts or estates subject to backup withholding on distributions from the trust or estate?

A–20. A beneficiary of a trust or estate is subject to backup withholding only if the trust or estate is a payor of a reportable payment. If a trust or estate receives a payment of interest, dividends or any other reportable amount, and if the trust or estate is not a grantor trust (and thus reports receipt of the reportable amount on a Form 1041 (see § 1.671–4 of the Income Tax Regulations)), distributions by the trust or estate to the beneficiaries will not be considered to be a payment of interest, dividends or other reportable amounts.

Special rules are provided, however, with respect to trusts when a grantor is considered the owner of all or a portion of the trust (and there are included in computing the grantor's tax liability those items of income attributable to that portion of the trust) (a "grantor trust"). The special rules applicable to such trusts do not affect payors of payments made to a grantor trust. Rather, the payments to the trust are subject to the general rules of backup withholding. Payments between a grantor trust and its grantors, however, are subject to the special rules, which differ depending on the number of grantors.

If a trust has ten or fewer grantors, payments of interest, dividends or other reportable amounts (except gross proceeds reportable under section 6045) made to the trust are considered payments of the same kind made by the trust (as payor) to each grantor (as payee), in proportion to each grantor's ownership ot the trust. Each grantor of such a trust is treated as having received his or her proportionate share of the reportable payment on the day the payment is received by the trust. Accordingly, any reportable payments made to the trust are treated as reportable payments made by the trust to the grantor or grantors and are subject to all applicable backup withholding requirements. If, for example, a grantor of a trust having 10 or fewer grantors had not provided a taxpayer identification number to the trust in the manner required, the trustee would be required to withhold and remit 20 percent of the reportable payment. In addition, the trustee of a grantor trust having ten or fewer grantors, established on or after January 1, 1984, may not certify either that the trust is not subject to backup withholding due to notified payee underreporting or that the taxpayer identification number provided is correct, unless each grantor has furnished the trustee with such a certification signed under penalties of perjury.

If a grantor trust has more than ten grantors, the trustee is required to treat payments of interest, dividends or other reportable payments (except gross proceeds reportable under section 6045) made to the trust as payments of the same kind made by the trust to each grantor, in an amount equal to the distribution made by the trust to each grantor, on the date on which the distribution to the grantor is paid or credited. The trust is thus treated as a payor of the same types of payments received by the trust, for the purpose of the backup withholding requirements. The trustee of such a trust is required to withhold 20 percent of amounts paid or credited to any grantor who is subject to backup withholding if: (1) The grantor fails to provide a taxpayer identification number to the trust, (2) the grantor fails to provide a certification required by A–32 of § 35a.9999–1, (3) the trust is required to impose backup withholding under the special rules applicable to readily tradable instruments (A–40 of § 35a.9999–1), or (4) the Internal Revenue Service notifies the trustee that the grantor provided an incorrect taxpayer identification number. If the reportable amount of the distribution is greater than the amount distributed, the trustee may, in its discretion subject the entire reportable amount to backup withholding.

For example, if a grantor trust having 100 grantors received a reportable interest payment of $100,000, which was of a type reportable under section 6049, and made a cash distribution of $900 to each grantor (after deducting certain expenses), the trustee would be required to withhold 20 percent of the $900 payment made to any grantor who was subject to backup withholding. Similarly, if a grantor trust having 100 grantors received an oil royalty payment of $100,000, which was of a type reportable under section 6041, and the trust made a cash distribution of $8,000 to each grantor (after deducting certain production related taxes and expenses), the trustee would be required to withhold 20 percent of the $8,000 payment made to any payee who had not provided a taxpayer identification to the trust. Because the certifications required by A–32 of § 35a.9999–1 do not apply to payments of a type reportable under section 6041, grantors of the trust would not be subject to backup withholding if they failed to make such certifications.

In addition, the trustee of a grantor trust having more than ten grantors may certify that the trust's taxpayer identification number is correct and that the trust is not subject to backup withholding due to notified payee underreporting, without regard to the status of the individual grantors of the trust.

Q–21. Are reportable payments made to exempt recipients subject to backup withholding?

A–21. Answer 29 (A–29) of § 35a.9999–1 provides that a payor of reportable interest of dividends is not required to withhold on payment made to exempt recipients. Backup withholding also is not required with respect to any other reportable payment (except barter exchange transactions reportable under section 6045) made to an exempt recipient described in § 31.3452(c)–1 (b) through (p) of the Employment Taxes and Collection of Income Tax at Source Regulations. A middleman, however, shall include only a nominee or custodian known generally in the investment community as a nominee or listed in the most recent publication of the American Society of Corporate Secretaries, Inc. Nominee List. The exempt recipients described in this A–21 shall also be so treated for purposes of § 1.6045–1(e)(3)(i) of the Income Tax Regulations.

Foreign Persons

Q–22. Will a form relating to exemptions for foreign persons be issued by the Internal Revenue Service?

A–22. The Service is currently preparing Form W–8, on which a payee may sign, under penalties of perjury, the statement described in § 1.6049–5(b)(2)(iv) and § 1.6045–1(g)(1) of the Income Tax Regulations, whichever is applicable. See A–51, A–52 and A–55 of § 35a.9999–1 for other requirements. The Form W–8, however, may not be available prior to the time that payors intend to make the mailing or mailings required by A–52 or A–55 of § 35a.9999–1. Accordingly, payors should use the substitute form described in § 1.6049–5(b)(2)(iv) or § 1.6045–1(g)(1), whichever is applicable, on which a payee may make the certifications concerning the payee's foreign status and provide his name, address, and taxpayer identification number (if any). If a payor sends a substitute Form W–9 to a payee, the payor may incorporate the required foreign status certification on the substitute Form W–9.

Record Retention

Q–23. Under what circumstances are payors required to retain the documents they receive from payees?

A–23. With respect to a pre-1984 account or instrument (as defined in A–34 of § 35a.9999–1) or any brokerage relationship that is not a post-1938 account (as defined in A–41 of § 35a.9999–1), the payor is not required to retain either: (1) A form on which a payee certified concerning the correctness of a taxpayer identification number, or (2) an awaiting TIN certification, if the payor can establish the existence of procedures that are reasonably calculated to ensure that a payee who so certified is accurately identified in the payor's records. With respect to all other accounts or instruments, however, payors are required to retain all certification documents in the same manner and for the same period of time that the payor retains other account-creation or instrument-purchase documents.

Appendix

The notice required by A–39 of § 35a.9999–1 and A–18, above, shall be substantially in the form provided below:

Recently, you purchased [identify security acquired]. Because of the existence of one or more of the following conditions, payments of interest, dividends, and other reportable amounts that are made to you will be subject to backup withholding of tax at a 20 percent rate: [specify the condition or conditions applicable]

(1) You failed to provide a taxpayer identification number, or failed to provide such number under penalties of perjury, in connection with the purchase of the acquired security. (An individual's taxpayer identification number is his social security number.)

(2) The taxpayer identification number that you provided is not your correct number.

(3) You are subject to backup withholding due to notified payee underreporting (section 3406(a)(1)(C) of the Internal Revenue Code).

(4) You failed to certify that you are not subject to backup withholding due to notified payee underreporting (section 3406(a)(1)(D) of the Internal Revenue Code).

If condition (1) or (2) applies, you may stop withholding by providing your taxpayer identification number on the enclosed Form W–9, signing the form, and returning it to us. If you do not have a taxpayer identification number, but have (or will soon) apply for one, you may so indicate on the Form W–9; in that case, you will not be subject to withholding for a period of 60 days, but you must provide us with your taxpayer identification number promptly after you receive it in order to avoid withholding after the end of the 60-day period. Certain persons, described on the enclosed Form W–9, are exempt from withholding. Follow the instructions on that form if applicable to you.

If condition (3) applies, and you do not believe you are subject to withholding due to notified payee underreporting, please contact your local Internal Revenue Service office.

If condition (4) applies, you may stop withholding by certifying on the enclosed Form W–9 that you are not subject to backup withholding due to notified payee underreporting, signing the form, and returning it to us.

If more than one condition applies, you must remove *all* applicable conditions to stop withholding.

Please address any questions concerning this notice to:

[Insert Payor Identifying Information]

(Do not address questions to the broker who purchased the securities for you.)

Par. 2. Question 42 (Q–42) of § 35a.9999–1 is amended by removing the phrase "Treasury bills," in the question thereof.

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue it with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

This Treasury decision is issued under the authority contained in section 3406 (a), (b), (c), (e), (g), (h), and (i), section 6041, section 6041A(a), section 6042(a), section 6044(a), section 6045, section 6049 (a), (b), and (d), section 6103(q), section 6109, section 6302(c), section 6676, and section 7805 of the Internal Revenue Code of 1954 (97 Stat. 371, 372, 373, 376, 377, 378, 379; 26 U.S.C. 3406 (a), (b), (c), (e), (g), (h), and (i), 68A Stat. 745; 26 U.S.C. 6041, 96 Stat. 601; 26 U.S.C. 6041A(a), 96 Stat. 587; 26 U.S.C. 6042(a), 96 Stat. 587; 26 U.S.C. 6044(a), 96 Stat. 600, 26 U.S.C. 6045, 96 Stat. 592, 594, 26 U.S.C. 6049 (a), (b), and (d), 90 Stat. 1667, 26 U.S.C. 6103(q), 75 Stat. 828; 26 U.S.C. 6109, 68A Stat. 775, 26 U.S.C. 6302(c), 68A Stat. 917; 26 U.S.C. 7805) and in sections 104, 105, and 108 of the Interest and Dividend Tax Compliance Act of 1983 (97 Stat. 369, 371, 380, and 383).

M. Eddie Heironimus,

Acting Commissioner of Internal Revenue.

Approved:

Ronald A. Pearlman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 83–31748 Filed 11–22–83; 3:39 pm]

BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Approval of Modification of the Kentucky Permanent Regulatory Program Under the Surface Mining Control and Reclamation Act of 1977

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

ACTION: Interim final rule.

SUMMARY: OSM is announcing interim final approval of a modification of the Kentucky permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) which will subject surface coal mining operations affecting two acres or less to

Kentucky's revised regulations. The State's modification clarifies the criteria that operations must meet in order for a site to qualify for a two acre exemption pursuant to SMCRA. By letter dated October 31, 1983, Kentucky submitted proposed program amendment consisting of amendments to 405 KAR 7:020E and 7:030E.

DATES: This action is effective November 25, 1983. Public comment is invited on the action set forth herein. Written comments must be received on or before 4:00 p.m. on December 27, 1983 to be considered.

ADDRESSES: Written comments should be mailed or hand delivered to: W. H. Tipton, Director, Lexington Field Office, Office of Surface Mining, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504, Telephone: (606) 233–7327.

Copies of the Kentucky program, the October 31, 1983, letter containing the modification to the program, and all written comments received in response to this notice will be available for review at the OSM Offices and the Office of the State regulatory authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays:

Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5315, 1100 "L" Street, N.W., Washington, D.C. 20240

Lexington Field Office, Office of Surface Mining, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504

Bureau of Surface Mining, Reclamation and Enforcement, Capitol Plaza Tower, Third Floor, Frankfort, Kentucky 40601

FOR FURTHER INFORMATION CONTACT: W. H. Tipton, Director, Lexington Field Office, Office of Surface Mining, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504, Telephone: (606) 233–7327.

SUPPLEMENTARY INFORMATION:

Background

The Kentucky program was conditionally approved by the Secretary of the Interior on May 18, 1982 (47 FR 21404–21435). Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Kentucky program can be found in the May 18, 1982 **Federal Register** notice.

Section 528(2) of the SMCRA, exempts from the requirements of the Act "the extraction of coal for commercial purposes where the surface mining operation affects two acres or less . . ." Regulations implementing this provision (30 CFR 700.11(b)) were originally published on March 13, 1979 (44 FR 15311). When Kentucky's permanent regulatory program was conditionally approved on May 18, 1982, the Secretary found that Kentucky's regulations (405 KAR 7:020E and 7:030E) were no less effective than the Federal standard pertaining to two-acre or less operations.

Since the approval of the Kentucky program, OSM has revised its regulations (47 FR 33424 and 48 FR 14814) pertaining to two-acre operations to clarify the criteria that must be met in order for a site to qualify for an exemption. As a result of its oversight activities, OSM had reason to believe that some sites for which Kentucky had granted a two-acre exemption involved questionable determinations regarding apparent haul roads being classified and approved as county roads, which would be inconsistent with OSM's new rules. Therefore, in a letter dated September 6, 1983, OSM notified Kentucky that pursuant to 30 CFR 732.17(e), a State program amendment was required because conditions or events indicated that the Kentucky program no longer met the requirements of SMCRA and the revised Federal regulations.

OSM also urged Kentucky to proceed with emergency rulemaking to promulgate a rule implementing the new Federal standards and thereby bringing all operators into compliance with SMCRA at the earliest possible time. Therefore, Kentucky promulgated by emergency rulemaking revised regulations intended to bring the Kentucky program into compliance with the current Federal standards. In a letter ot OSM date October 31, 1983, Kentucky submitted these regulations as a program amendment.

Also, in the October 31, 1983 letter, Kentucky submitted additional revisions to its regulations intended to satisfy conditions (d), (i), (j), (k), (o) and (p) imposed by the Secretary. These additional amendments are the subject of a separate **Federal Register** notice.

Findings

The Director finds, in accordance with SMCRA and 30 CFR 732.17 and 732.15, that the program amendment, which subjects two-acre or less operations in Kentucky to the revisions promulgated to its regulations (405 KAR 7:020E and 7:030E), meets the requirements of SMCRA and 30 CFR Part VII.

OSM has reviewed the revised regulations submitted by Kentucky pertaining to two-acre or less operations and finds that Kentucky's new rules are no less effective than OSM's new rules and will bring sites that might otherwise be exempted into compliance with applicable permitting and performance standards. Kentucky's new rule defines "affected area" in a manner essentially identical to OSM's rule except that the phrase "underground workings" is modified by the phrase "associated with underground mining activities, auger mining or in situ mining." Kentucky's rule also modifies the 250 ton removal threshold by the phrase "within 12 successive calendar months." In all other respects, the Kentucky rule is essentially identical to OSM's rule.

The approval of this amendment is effective November 25, 1983. The reason for the immediate effectiveness of this approval is that otherwise mining operations required to be regulated under SMCRA would be unregulated in Kentucky.

To satisfy the public participation requirements for approval or disapproval of State program amendments, the Director is inviting public comment for 30 days on the action set forth herein and will reconsider today's approval in light of those comments. Comments should focus on the issue of whether Kentucky's new rules are no less effective than OSM's regulations. Comments received after December 27, 1983 or at locations other than Lexington, Kentucky, will not necessarily be considered and included in the Administrative Record for the final rulemaking.

Following OSM's review of the comments received, OSM will issue a final rule to announce the Director's final decision on this modification of the Kentucky program.

Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a

significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 917

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Accordingly, 30 CFR Part 917 is amended as set forth herein.

Dated: November 17, 1983.

Dean Hunt,

Acting Director, Office of Surface Mining.

PART 917—KENTUCKY

30 CFR 917.15 is amended by adding paragraph (f) to read as follows:

§ 917.15 Approval of amendments to State regulatory program.

* * * * *

(f) The following amendment is approved effective on November 25, 1983. Revisions submitted on October 31, 1983, to 405 KAR 7:020E and 7:030E.

Authority: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*)

[FR Doc. 83-31506 Filed 11-23-83; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD11-83-105]

Special Local Regulations; Lake Havasu Classic Regatta

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the Lake Havasu Classic sponsored by the Havasu Sports Federation on the Colorado River. This event will be held within Thompson Bay, Lake Havasu, Arizona on November 23 through 26, 1983.

The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATES: These regulations become effective on 23 November 1983 and terminate 26 November 1983. Should weather cause a postponement the above regulations will be in effect from 8:00 AM to 5:30 PM on 27 November 1983. Postponement information will be available from the sponsoring organization and the race patrol boats.

FOR FURTHER INFORMATION CONTACT: LTJG J. N. ARROYO, Commander(bb), Eleventh Coast Guard District, 400 Oceangate, Long Beach, California 90822, (213) 590-2331.

SUPPLEMENTARY INFORMATION: A notice of proposed rule making has not been published for these regulations and was impracticable as they are being made effective in less than 30 days from the date of publication. Following normal rule making procedures would have been impracticable. Although the application to hold the event was received on 7 June 1983, the city council of Lake Havasu did not approve the event in its final form until 2 September 1983. There was insufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are LTJG J. N. ARROYO, Chief, Boating Affairs Branch, Eleventh Coast Guard District, and LT JOSEPH R. McFAUL, Project Attorney, Legal Office, Eleventh Coast Guard District.

Discussion of Regulations

The Havasu Sports Federation's "Lake Havasu Classic" will be conducted on the Colorado River beginning 23 November 1983, east of Spectator Point in Thompson Bay, Lake Havasu. This event will have 75 16- to 20-foot tunnel and pleasure/modified V-bottom outboard boats that could pose a hazard to navigation. Vessels desiring to transit the regulated area may do so only with clearance from a patrolling law enforcement vessel or an event committee boat.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

PART 100—[AMENDED]

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended by adding a temporary § 100.35-11-105 to read as follows:

§ 100.35-11-105 Havasu Sports Federation/Lake Havasu Classic.

(a) *Regulated Area.* That portion of Thompson Bay, Lake Havasu, Arizona starting approximately 100 yards on a bearing of 130°T off Spectator Point, thence due north approximately 1110 yards, thence 140°T approximately 2200 yards, thence due west approximately 2400 yards, then back to the starting point.

(b) *Effective Date.* The controlled traffic area will be in effect during the following times: 8:00 AM to 5:30 PM each day on 23 through 26 November 1983. Should weather cause a postponement the above regulations will be in effect from 8:00 AM to 5:30 PM on 27 November 1983. Postponement information will be available from the sponsoring organization and the race patrol boats.

(c) *Special Local Regulations.* No vessels, other than participants, U.S. Coast Guard operated and employed small craft, public vessels, state and local law enforcement agencies and the sponsor's vessels shall enter the Regulated Area during the above hours unless cleared for such entry by or through a patrolling law enforcement vessel or event committee boat.

(2) When hailed by Coast Guard or Coast Guard Auxiliary vessels patrolling the event area, a vessel shall come to an immediate stop. Vessels shall comply with all directions of the designated Coast Guard Regatta Patrol.

(3) These regulations are temporary in nature and shall cease to be in effect or further enforced at the end of the period set forth. (46 U.S.C. 454; 49 U.S.C. 1655(b)(1); 49 CFR 1.46(b)); 33 CFR 100.35)

Dated: November 16, 1983.

F. P. Schubert,

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

[FR Doc. 83-31644 Filed 11-23-83; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD13 83-04]

Drawbridge Operation Regulations; Lake Washington, Wash.

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Washington State Department of Transportation, the Coast Guard is changing the regulations governing the Evergreen Point Floating Bridge across Lake Washington, Washington, by permitting the draw to remain closed between the hours of 6:00 a.m. and 10:00 a.m., and between 2:00 p.m. and 7:00 p.m., Monday through Friday, except federal holidays, for any vessel or other watercraft of less than 2,000 gross tons, unless such vessel has in tow a vessel of 2,000 gross tons or over, or a piledriver