

Three copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 24, 1995.

**Ronald G. Chesemore,**

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 95-21480 Filed 8-25-95; 11:05 am]

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 40

[PS-8-95]

RIN 1545-AT25

#### Deposits of Excise Taxes

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking by cross-reference to temporary regulations.

**SUMMARY:** In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to deposits of excise taxes. The text of those temporary regulations also serves as the text of these proposed regulations.

**DATES:** Written comments and requests for a public hearing must be received by November 27, 1995.

**ADDRESSES:** Send submissions to: CC:DOM:CORP:T:R (PS-8-95), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (PS-8-95), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Concerning submissions, the Regulations Unit, (202) 622-7180; concerning the regulations, Ruth Hoffman, (202) 622-3130 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### Background

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Excise Tax Procedural Regulations (26 CFR part 40) relating to deposits of excise

taxes under section 6302. The temporary regulations contain special safe harbor rules for the additional deposit of taxes due in September of each year.

The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

#### Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

#### Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time and place for the hearing will be published in the **Federal Register**.

#### Drafting Information

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

#### List of Subjects in 26 CFR Part 40

Excise taxes, Reporting and recordkeeping requirements.

#### Proposed Amendments to the Regulations

Accordingly, 26 CFR part 40 is proposed to be amended as follows:

## PART 40—EXCISE TAX PROCEDURAL REGULATIONS

*Paragraph 1.* The authority citation for part 40 continues to read in part as follows:

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

**Par. 2.** Section 40.6302(c)-5 is added to read as follows:

#### § 40.6302(c)-5 Use of Government depositaries; rules under sections 6302(e) and (f).

[The text of this proposed section is the same as the text of § 40.6302(c)-5T published elsewhere in this issue of the **Federal Register**.]

**Margaret Milner Richardson,**

*Commissioner of Internal Revenue.*

[FR Doc. 95-21439 Filed 8-28-95; 8:45 am]

BILLING CODE 4830-01-U

## DEPARTMENT OF JUSTICE

### 28 CFR Part 16

[AAG/A Order No. 107-95]

#### Exemption of Records System Under the Privacy Act

**AGENCY:** Department of Justice.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Justice proposes to exempt a Privacy Act system of records from subsections (c) (3) and (4), (d), (e) (1), (2), (3), (5), and (8), and (g) of the Privacy Act, 5 U.S.C. 552a. This system of records is the "Bureau of Prisons, Office of Internal Affairs Investigative Records, Justice/BOP-012." Information in this system relates to official Federal investigations and law enforcement matters of the Office of Internal Affairs (OIA) of the Federal Bureau of Prisons (BOP), pursuant to the Inspector General Act of 1978, 5 U.S.C. App., as amended by the Inspector General Act amendments of 1988. The exemptions are necessary to avoid interference with the law enforcement functions of the BOP. Specifically, the exemptions are necessary to prevent subjects of investigations from frustrating the investigatory process; to preclude the disclosure of investigative techniques; to protect the identities and physical safety of confidential informants and of law enforcement personnel; to ensure OIA's ability to obtain information from information sources; to protect the privacy of third parties; and to safeguard classified information as required by Executive Order 12356.

**DATES:** Submit any comments by September 28, 1995.

**ADDRESSES:** Address all comments to Patricia E. Neely, Program Analyst, Systems Policy Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 850, WCTR Building).

**FOR FURTHER INFORMATION CONTACT:** Patricia E. Neely 202-616-0178.

**SUPPLEMENTARY INFORMATION:** In the notice section of today's **Federal Register**, the Department of Justice provides a description of the "Bureau of Prisons, Office of Internal Affairs Investigative Records, JUSTICE/BOP-012."

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, it is hereby stated that the order will not have "a significant economic impact on a substantial number of small entities."

#### List of Subject in Part 16

Administrative Practices and Procedures, Courts, Freedom of Information Act, Government in the Sunshine Act, and the Privacy Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793-78, it is proposed to amend 28 CFR part 16 by amending § 16.97, as set forth below.

Dated: August 15, 1995.

**Stephen R. Colgate,**  
*Assistant Attorney General for Administration.*

1. The authority for part 16 continues to read as follows:

**Authority:** 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

2. It is proposed to amend 28 CFR 16.97 by adding paragraphs (g) and (h) to read as follows:

#### 16.97 Exemption of the Federal Bureau of Prisons Systems-Limited Access.

\* \* \* \* \*

(g) The following system of records is exempt pursuant to the provisions of 5 U.S.C. 552a(j)(2) from subsections (c)(3) and (4), (d), (e)(1), (2), (3), (5) and (8) and (g) of 5 U.S.C. 552a. In addition, the following system of records is exempt pursuant to the provisions of 5 U.S.C. 552a(k)(1) and (k)(2) from subsections (c)(3), (d), and (e)(1) of 5 U.S.C. 552a:

Bureau of Prisons, Office of Internal Affairs Investigative Records, JUSTICE/BOP-012.

(h) These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2), (k)(1), and (k)(2). Where compliance would not appear to

interfere with or adversely affect the law enforcement process, and/or where it may be appropriate to permit individuals to contest the accuracy of the information collected, e.g., public source materials, the applicable exemption may be waived, either partially or totally, by the Office of Internal Affairs (OIA). Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because release of disclosure accounting could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of the investigation and the fact that they are subjects of the investigation, and reveal investigative interest by not only the OIA but also by the recipient agency. Since release of such information to the subjects of an investigation would provide them with significant information concerning the nature of the investigation, release could result in activities that would impede or compromise law enforcement such as: the destruction of documentary evidence; improper influencing of witnesses; endangerment of the physical safety of confidential sources, witnesses, and law enforcement personnel; fabrication of testimony; and flight of the subject from the area. In addition, release of disclosure accounting could result in the release of properly classified information which could compromise the national defense or disrupt foreign policy.

(2) From subsection (c)(4) because this system is exempt from the access provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

(3) From the access and amendment provisions of subsection (d) because access to the records contained in this system of records could provide the subject of an investigation with information concerning law enforcement activities such as that relating to an actual or potential criminal, civil or regulatory violation; the existence of an investigation; the nature and scope of the information and evidence obtained as to his activities; the identity of confidential sources, witnesses, and law enforcement personnel; and information that may enable the subject to avoid detection or apprehension. Such disclosure would present a serious impediment to effective law enforcement where they prevent the successful completion of the investigation; endanger the physical safety of confidential sources, witnesses, and law enforcement personnel; and/or lead to the improper influencing of witnesses, the destruction of evidence,

or the fabrication of testimony. In addition, granting access to such information could disclose security-sensitive or confidential business information or information that would constitute an unwarranted invasion of the personnel privacy of third parties. Finally, access to the records could result in the release of properly classified information which could compromise the national defense or disrupt foreign policy. Amendment of the records would interfere with ongoing investigations and law enforcement activities and impose an impossible administrative burden by requiring investigations to be continuously reinvestigated.

(4) From subsection (e)(1) because the application of this provision could impair investigations and interfere with the law enforcement responsibilities of the OIA for the following reasons:

(i) It is not possible to detect relevance or necessity of specific information in the early stages of a civil, criminal or other law enforcement investigation, case, or matter, including investigations in which use is made of properly classified information. Relevance and necessity are questions of judgment and timing, and it is only after the information is evaluated that the relevance and necessity of such information can be established.

(ii) During the course of any investigation, the OIA may obtain information concerning actual or potential violations of laws other than those within the scope of its jurisdiction. In the interest of effective law enforcement, the OIA should retain this information as it may aid in establishing patterns of criminal activity, and can provide valuable leads for Federal and other law enforcement agencies.

(iii) In interviewing individuals or obtaining other forms of evidence during an investigation, information may be supplied to an investigator which relates to matters incidental to the primary purpose of the investigation but which may relate also to matters under the investigative jurisdiction of another agency. Such information cannot readily be segregated.

(5) From subsection (e)(2) because, in some instances, the application of this provision would present a serious impediment to law enforcement for the following reasons:

(i) The subject of an investigation would be placed on notice as to the existence of an investigation and would therefore be able to avoid detection or apprehension, to improperly influence witnesses, to destroy evidence, or to fabricate testimony.

(ii) In certain circumstances the subject of an investigation cannot be required to provide information to investigators, and information relating to a subject's illegal acts, violations of rules of conduct, or any other misconduct must be obtained from other sources.

(iii) In any investigation it is necessary to obtain evidence from a variety of sources other than the subject of the investigation in order to verify the evidence necessary for successful litigation.

(6) From subsection (e)(3) because the application of this provision would provide the subject of an investigation with substantial information which could impede or compromise the investigation. Providing such notice to a subject of an investigation could interfere with an undercover investigation by revealing its existence, and could endanger the physical safety of confidential sources, witnesses, and investigators by revealing their identities.

(7) From subsection (e)(5) because the application of this provision would prevent the collection of any data not shown to be accurate, relevant, timely, and complete at the moment it is collected. In the collection of information for law enforcement purposes, it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Material which may seem unrelated, irrelevant, or incomplete when collected may take on added meaning or significance as an investigation progresses. The restrictions of this provision could interfere with the preparation of a complete investigation report, and thereby impede effective law enforcement.

(8) From subsection (e)(8) because the application of this provision could prematurely reveal an ongoing criminal investigation to the subject of the investigation, and could reveal investigation techniques, procedures, and/or evidence.

(9) From subsection (g) to the extent that this system is exempt from the access and amendment provisions of subsection (d) pursuant to subsections (j)(2), (k)(1) and (k)(2) of the Privacy Act. [FR Doc. 95-21342 Filed 8-28-95; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 51 and 93

[FRL-5284-5]

RIN 2060-AF95

#### Transportation Conformity Rule Amendments: Miscellaneous Revisions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes in this action to make several changes to its current regulation requiring certain transportation actions to conform to the state's air quality plan. This action proposes to amend the November 24, 1993, transportation conformity rule in order to allow transportation control measures (TCMs) to proceed even if the conformity status of the transportation plan and program has lapsed, provided the TCM is included in an approved state implementation plan or federal implementation plan and was included in a previously conforming transportation plan and program. Such TCMs would be halted under the existing transportation conformity rule should a conformity lapse occur.

This proposal would also extend the grace period before which areas must determine conformity to a submitted control strategy implementation plan. This extension would provide relief most immediately to some moderate and above ozone nonattainment areas, for which conformity otherwise would lapse on November 15, 1995, should such areas fail to demonstrate conformity.

This action proposes to align the date of conformity lapse with the date of application of Clean Air Act highway sanctions for any failure to submit or submission of an incomplete control strategy state implementation plan (SIP).

This proposal would also correct the nitrogen oxides (NO<sub>x</sub>) provisions of the transportation conformity rule consistent with previous commitments made by EPA in **Federal Register** notices concerning transportation conformity NO<sub>x</sub> waivers. This proposal to change the statutory authority for NO<sub>x</sub> waivers is also published as an interim final rule in the final rule section of today's **Federal Register**, and is effective immediately.

Finally, this action proposes to establish a grace period before which transportation plan and program conformity must be determined in newly designated nonattainment areas;

clarify certain wording; and make certain technical corrections.

EPA proposes that a transportation conformity SIP revision consistent with these amendments would be required to be submitted to EPA by 12 months following the date of publication of the final rule.

**DATES:** Comments on this action must be received by September 28, 1995.

**ADDRESSES:** Interested parties may submit written comments (in duplicate, if possible) to: Air and Radiation Docket and Information Center, U.S.

Environmental Protection Agency, Attention: Docket No. A-95-05, 401 M Street, S.W., Washington, DC 20460.

Materials relevant to this proposal have been placed in Public Docket A-95-05 by EPA. The docket is located at the above address in room M-1500 Waterside Mall (ground floor) and may be inspected from 8 a.m. to 4 p.m., Monday through Friday, including all non-government holidays.

**FOR FURTHER INFORMATION CONTACT:** Kathryn Sargeant, Emission Control Strategies Branch, Emission Planning and Strategies Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105. (313) 668-4441.

**SUPPLEMENTARY INFORMATION:** The contents of this preamble are listed in the following outline:

- I. Background on Transportation Conformity Rule
- II. Transportation Control Measures (TCMs)
- III. Requirement to Redetermine Conformity to Submitted Control Strategy SIP
- IV. Grace Period for Use of Submitted Motor Vehicle Emissions Budgets
- V. Alignment With Clean Air Act Highway Sanctions
- VI. Applicability of Nitrogen Oxides (NO<sub>x</sub>) Provisions
- VII. Grace Period for Newly Designated Nonattainment Areas
- VIII. Wording Clarifications to 40 CFR 51.448 and 93.128
- IX. Technical Corrections to 40 CFR 51.452 and 93.130
- X. Conformity SIPs
- XI. Administrative Requirements

#### I. Background on Transportation Conformity Rule

The transportation conformity rule, "Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act," was published November 24, 1993, (58 FR 62188) and amended 40 CFR parts 51 and 93. The Notice of Proposed Rulemaking was published on January 11, 1993 (58 FR 3768).