

DEPARTMENT OF LABOR**Employment and Training
Administration****20 CFR Part 606****Federal-State Unemployment
Compensation Program; Tax Credits
Under the Federal Unemployment Tax
Act; Advances Under Title XII of the
Social Security Act**

AGENCY: Employment and Training
Administration, Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: With this notice the agency issues an invitation to comment on its proposal to adopt a new rule interpreting statutes under which the agency has delegated responsibilities concerning cap, avoidance, and waiver of tax credit reduction under the Federal Unemployment Tax Act and deferral and delay of payment of interest on advances made to States under Title XII of the Social Security Act. The agency proposes this informal rulemaking to place in the Code of Federal Regulations its previously announced and disseminated interpretations because the statutes in selected places require regulations and because some of the interpretations might be viewed as substantive in nature. This notice represents the first of a two-phase effort to issue comprehensive regulations concerning advances (loans), repayment of loans, interest payment, and relief from loan repayment and interest payment. The first phase includes regulations for relief provisions; the second phase will include the remaining issues.

DATE: Written comments must be received by the close of business on November 27, 1987.

ADDRESS: Submit comments to Carolyn M. Golding, Director, Unemployment Insurance Service, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: James H. Manning, Chief, Division of Actuarial Services, Unemployment Insurance Service, U.S. Department of Labor, 200 Constitution Avenue NW., Room S-4519, Washington, DC 20210, Telephone: (202) 535-0640 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Under section 3301 of the Federal Unemployment Tax Act (FUTA), employers in all States are assessed an excise tax at a rate of 6.2 percent on a taxable wage base of \$7,000. However, employers generally receive a maximum

FUTA tax credit of 5.4 percent, resulting in a net Federal tax rate of 0.8 percent.

States with insufficient reserves in their unemployment funds to meet State benefit obligations may borrow from the Federal Unemployment Account (FUA). If a State does not repay the advances (loans) it may have within a specified period of time, employers in the State begin to lose the FUTA tax credit in increments of at least 0.3 percent per year. Specifically, if a balance of advances is outstanding on two consecutive January firsts and is not fully repaid prior to the following November 10, the FUTA tax credit applicable for that year for the State's employers is reduced by 0.3 percent. For each succeeding year in which a balance of loans remains outstanding, the reduction increases by at least 0.3 percent (i.e., 0.6, 0.9, 1.2 percent, etc.).

Additional tax credit reduction may apply to a State beginning with the third and fifth taxable years if a balance is still outstanding and certain criteria are not met. Essentially, the additional tax credit reduction above the 0.6 percent minimum beginning with the third year is the difference between the national percentage of all wages subject to the FUTA (that 2.7 percent of taxable wages represents) and the State's average contribution rate on total wages. The additional tax credit reduction above the 1.2 percent minimum beginning with the fifth year is equal to the difference between the State's benefit cost rate on taxable wages (or 2.7 percent, whichever is higher) and the State's average employer contribution rate on taxable wages.

Public Laws 97-35, 97-248, and 98-21 made major changes in the loan and repayment provisions: Interest of up to 10 percent is charged on loans made on or after April 1, 1982 (except for cash flow loans); and States are permitted relief from automatic loan repayment (tax credit reduction) and payment of interest if certain requirements are met. Briefly, the provisions for relief include:

- Limitation or cap on tax credit reduction
- Avoidance of tax credit reduction
- Waiver of and substitution for fifth-year additional tax credit reduction
- May/September delay of interest payment
- High unemployment deferral of interest payment
- High unemployment delay of interest payment

Phases

The issuance of comprehensive regulations concerning loans, repayment of loans, interest payment, and relief

from loan repayment and interest payment will be undertaken in two phases. This notice of proposed rulemaking, the first phase, primarily includes the issues concerning relief noted above; the second phase will include the remaining issues.

**Amendments to the Federal
Unemployment Tax Act**

Subsection (f)(1)-(7) added to section 3302 of the Federal Unemployment Tax Act (FUTA) by section 2406 of Pub. L. 97-35 provides certain conditions under which there may be a limitation of tax credit reduction that applies to employers' FUTA tax liability in States with outstanding loans from the Federal Unemployment Account (FUA).

Subsection (g) added to section 3302 of the FUTA by section 272 of Pub. L. 97-248 provides certain conditions for avoiding tax credit reduction.

A provision added to subparagraph (C) of section 3302(c)(2) of the FUTA by section 273 of Pub. L. 97-248 provides certain conditions under which certain additional tax credit reduction may be waived and another substituted.

Amendments to the Social Security Act

Subsection (b) added to section 1202 of the Social Security Act (SSA) by section 2407 of Pub. L. 97-35 and amended by section 511(B) of Pub. L. 98-21 imposes interest on advances, under most conditions, made to States beginning April 1, 1982. Interest is not assessed on loans obtained January through September and repaid prior to October 1, provided no other loan is obtained from October 1 through December 31 of the same calendar year.

Subsection (b)(3)(B) added to section 1202 of the SSA by section 2407(a) of Pub. L. 97-35 allows for delaying payment of interest accrued on advances made from May through September and due prior to October 1.

Subparagraph (C) added to section 1202(b)(3) of the SSA by section 274 of Pub. L. 97-248 permits, under certain high unemployment conditions, a State to defer payment of a portion of interest otherwise due for a year.

Paragraph (9) added to section 1202(b) of the SSA by section 511(a) of Pub. L. 97-21 provides, under certain high unemployment conditions, for delaying payment of interest otherwise due for a year.

Legislative-action interest deferrals obtained under subsection (b)(8) (A)-(C), added to section 1202 of the SSA by section 511(a) of Pub. L. 98-21, are no longer available. Nevertheless, States must maintain their solvency effort with

respect to the deferrals previously approved under this subsection.

Section by Section Explanation

Subpart A—General

Section 606.1 Purpose and scope.

Public Laws 97-35, 97-248, and 98-21 made major changes in the Federal Unemployment Tax Act and the Social Security Act with respect to advances under Title XII of the Social Security Act and the repayment of such advances. The changes with accompanying Federal law citations are set forth in § 606.1.

Section 606.2 Total credits allowable.

Section 606.2 specifies that total credits allowed to an employer subject to the tax imposed by section 3301 of the Federal Unemployment Tax Act shall not exceed 5.4 percent with respect to taxable years beginning after December 31, 1984.

Section 606.3 Definitions.

Definitions of terms used in connection with advances (loans) to States, repayment of loans, interest on loans, and relief from loan repayment and interest payment are set forth in § 606.3.

Section 606.4 Redelegation of authority.

The redelegation of authority to the Director of the Unemployment Insurance Service for the purposes of making determinations required under sections (c), (d), (f), and (g) of the FUTA and under 1202 of the SSA is set forth in § 606.4. Further, the section specifies that the Governor of a State may delegate authority with respect to action required under sections (c), (d), (f), and (g) of the FUTA and under section 1202 of the SSA.

Section 606.5 Verification of estimates and review of determinations.

Section 606.5 specifies that all data and information provided by States with respect to loans, repayment of loans, interest, and relief from loan repayment and interest payment will be verified by the Department. Further, the section prescribes that States may seek review of determinations made by the Director of the Unemployment Insurance Service.

Section 606.6 Information, reports, and studies.

Section 606.6 indicates that States must submit all information that the Director of the Unemployment Insurance Service may require for making determinations.

Subpart B—Tax Credit Reduction [Reserved]

Subpart C—Relief from Tax Credit Reduction

Section 606.20 Cap on tax credit reduction.

Section 606.20 describes the requirements a State must meet in order to limit or cap the tax credit reduction, as provided under subsection (f) of section 3302 of the FUTA; the tax credit reduction is capped at the higher of 0.6 percent or the rate of reduction that was in effect for the State for the preceding calendar year. The cap provisions are designed to give States additional time to make legislative and administrative changes necessary to restore the State unemployment fund to solvency. These provisions lengthen the repayment period, but do not reduce a State's total liability. To qualify for the cap on the automatic tax credit reduction, a State must demonstrate that:

(a) The State has taken no action decreasing the State's unemployment compensation (UC) system tax effort;

(b) The State has taken no action by which the net solvency of its UC system has diminished

(c) The State's average tax rate (on total wages) for the calendar year equals or exceeds its average benefit cost create (on total wages) for the prior five calendar years; and

(d) The outstanding loan balance as of September 30 of the tax year in consideration is not greater than on September 30 of the third preceding taxable year.

Section 606.21 Criteria for cap.

Section 606.21 explains what action is considered in determining if there has been a reduction in unemployment tax effort and a net decrease in solvency. The section also prescribes the rounding procedure with respect to the State unemployment tax rate and the five-year average benefit cost rate.

Section 606.22 Application for cap.

Section 606.22 prescribes the application procedures to be used by States in applying for caps. The section further indicates the data and documentation the States must submit in support of requests for caps.

Section 606.23 Avoidance of tax credit reduction.

Section 606.23 describes the requirements which allow States the option of repaying on or before November 9 a portion of its outstanding loans each year through transfer of a specified amount from its unemployment fund to the FUA, as provided under

subsection (g) of section 3302 of the FUTA. The transfer to FUA would be in lieu of the increase, attributable to the application of section 3302(c)(2) of FUTA, in the net Federal tax of 0.8 percent paid by employers in that State. The State must meet the following criteria in order to avoid the tax credit reduction:

(a) Repay all loans for the one-year period ending on November 9, plus the additional tax that otherwise would be due by reason of the reduced credit provisions;

(b) Have sufficient funds remaining in the State unemployment fund after the transfer to pay benefits for at least three months from November 1 of the same year without receiving another Title XII advance; and

(c) Have taken action to increase the net solvency of its UC system and such net increase equals or exceeds the potential additional taxes for such taxable year.

Section 606.24 Application for avoidance.

Section 606.24 prescribes the application procedures to be used by States in applying for avoidance of tax credit reduction. The section further indicates the data and documentation the States must submit in support of requests for avoidance.

Section 606.25 Waiver of and substitution for additional tax credit reduction.

Section 606.25 describes the requirements which a State must meet in order for the additional tax credit reduction applicable under subparagraph (C) of section 3302(c)(2) of the FUTA to be waived and the additional credit applicable under subparagraph (B) to be substituted. The waiver may be granted if a State has taken no action to reduce the net solvency of its UC system during the 12-month period ending on September 30 of the year for which the waiver would be applicable, i.e., meets section 3302(f)(2)(B) of FUTA (see paragraph (b) under § 606.20 above). However, the tax credit reduction imposed by section 3302(c)(2)(B) of FUTA, additional tax credit reduction for the third and fourth years, is substituted.

Section 606.26 Application for waiver and substitution.

Section 606.26 prescribes the application procedures to be used by States in applying for waiver and substitution of additional tax credit reduction.

Subpart D—Interest on Advances.**Section 606.30** *Interest rates on advances.*

Section 606.30 prescribes the interest rate which is imposed, under most conditions, on advances to States under Title XII of the Social Security Act; the maximum rate which can be imposed is 10 percent

Section 606.31 *Due dates for payment of interest. [Reserved]***Section 606.32** *Types of advances subject to interest.*

Section 606.32 describes which advances are subject to the imposition of interest. Subsections (b)(2) and (b)(3)(A) of section 1202 of the SSA provide that all advances received by a State between January 1 and September 30 and repaid in full prior to October 1 of the same calendar year (referred to as cash flow loans) are not subject to interest charges unless additional loans are obtained by the State after September 30, but before the end of the same calendar year. If an additional loan is obtained after September 30 and within the same calendar year, interest on loans prior to October 1 of the calendar year is due and payable the day after that day on which first additional borrowing occurs.

Section 606.33 *No payment of interest from unemployment fund. [Reserved]***Section 606.34** *Reports of interest payable. [Reserved]***Section 606.35** *Order of application of repayments. [Reserved]***Subpart E—Relief from Interest Payment****Section 606.40** *May/September delay.*

Section 606.40 explains the conditions under which a State may delay payment of interest on advances made during specific months. Subsection (b)(3)(B) of section 1202 of the Social Security Act (SSA) allows a State to delay payment of interest on advances made during the months May through September until no later than the last day of the next calendar year. A State may, at its option, pay the interest on such advances earlier than the due date. Interest will accrue on the delayed interest payment as through it were, and in the same manner as, an advance made on the day when payment of the interest otherwise would have been due (prior to October 1).

Section 606.41 *High unemployment deferral.*

Section 606.41 describes the unemployment conditions under which a

State may defer a portion of interest otherwise due. Subsection (b)(3)(C) of section 1202 of the SSA allows a State with high unemployment to defer payment of, and extend the payment for, 75 percent of interest charges due prior to October 1. The State must pay one-third of the deferred amount in each of the three years following the fiscal year for which it is due. To qualify for this deferral and extension of the payment period, the State insured unemployment rate (IUR), as determined for purposes of the Federal-State Extended Unemployment Compensation Act of 1970, must have equaled or exceeded 7.5 percent during the first six months of the preceding calendar year. Interest will not be charged on the interest for which payment is deferred.

Section 606.42 *High unemployment delay.*

Section 606.42 describes the unemployment conditions under which a State may delay payment of interest otherwise due. Subsection (b)(9) of section 1202 of the SSA allows a State to delay not in excess of nine months the payment of interest due prior to October 1 of any calendar year during which the average total unemployment rate (TUR) in the State was 13.5 percent or higher. The average total unemployment rate for a State is computed using the 12-month period for which the most recent information is available prior to the month in which the interest is due. Interest will not be charged against interest for which payment is delayed. Any interest delayed is not subject to either further delays or deferrals; the interest is due and payable prior to July 1 of the following year.

Section 606.43 *Maintenance of solvency efforts.*

While legislative-action interest deferrals are no longer available, States must maintain their solvency effort with respect to interest deferrals granted in 1983, 1984, and 1985. Failure to do so will result in the State being required to make immediate payment (prior to October 1 of the year under consideration) of all deferred interest. Accordingly, in order to receive continued relief for such deferrals, States must certify by July 1 of each subsequent year in the deferral period (through the third year after the deferral was initially approved) that no action has been taken to reduce solvency effort. Section 606.43 prescribes the method for determining if solvency effort has been maintained and the process for applying for maintenance.

Section 606.41 *Notification of determinations.*

Section 606.41 explains the procedures for notifying States of determinations with respect to relief from interest payment.

Drafting Information

This document was prepared under the direction and control of the Director of the Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone: (202) 535-0600 (this is not a toll-free number).

Classification—Executive Order 12291

The proposed rule in this document is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Paperwork Reduction Act

A request to revise the approval of the information collection requirements contained in these regulations has been submitted to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511). The data collection is currently approved under OMB No. 1205-0205, expiring September 30, 1990.

Regulatory Flexibility Act

The Department believes that this proposed rule will have no "significant economic impact on a substantial number of small entities" within the meaning of 5 U.S.C. 605(b), because this rule directly affects only States and States are not "small entities" as that term is defined in 5 U.S.C. 601. The Secretary of Labor has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. Accordingly, no regulatory flexibility analysis is required.

List of Subjects in 20 CFR Part 606

Labor, Unemployment compensation.

Catalogue of Federal Domestic Assistance Number

This program is listed in the Catalogue of Federal Domestic Assistance as No. 17.225, Unemployment Insurance.

Words of Issuance

For the reasons set out in the preamble, new Part 606 of Title 20 of the Code of Federal Regulations is proposed as set forth below.

Signed at Washington, DC, on October 21 1987.

Roger D. Semerad,
Assistant Secretary of Labor.

PART 606—ADVANCES TO STATES AND REPAYMENT OF ADVANCES IN THE FEDERAL-STATE UNEMPLOYMENT COMPENSATION PROGRAM

Subpart A—General

- Sec.
606.1 Purpose and scope.
606.2 Total credits allowable.
606.3 Definitions.
606.4 Redelegation of authority.
606.5 Verification of estimates and review of determinations.
606.6 Information, reports, and studies.

Subpart B—Tax Credit Reduction [Reserved]

Subpart C—Relief From Tax Credit Reduction

- 606.20 Cap on tax credit reduction.
606.21 Criteria for cap.
606.22 Application for cap.
606.23 Avoidance of tax credit reduction.
606.24 Application for avoidance.
606.25 Waiver of and substitution for additional tax credit reduction.
606.26 Application for waiver and substitution.

Subpart D—Interest on Advances

- 606.30 Interest rates on advances.
606.31 Due dates for payment of interest.
[Reserved]
606.32 Types of advances subject to interest.
606.33 No payment of interest from unemployment fund. [Reserved]
606.34 Reports of interest payable. [Reserved]
606.35 Order of application for repayments.
[Reserved]

Subpart E—Relief From Interest Payment

- 606.40 May/September delay.
606.41 High unemployment deferral.
606.42 High unemployment delay.
606.43 Maintenance of solvency effort.
606.44 Notification of determinations.

Authority: 42 U.S.C. 1102; 26 U.S.C. 7805; Secretary's Order No. 4-75 (40 FR 18515).

Subpart A—General

§ 606.1 Purpose and scope.

(a) *Cap on tax credit reduction.* The regulations in this Part are issued to implement the amendment to section

3302 of the Federal Unemployment Tax Act contained in subsection (f) thereof enacted in section 2406 of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35; 95 Stat. 876) with respect to a limitation (cap) on tax credit reduction otherwise applicable under section 3302(c).

(b) *Avoidance and waiver of tax credit reduction.* These regulations also are issued to implement the amendments to section 3302 contained in subsections (g) and (c)(2)(C) thereof enacted under sections 272 and 273 of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97-248; 96 Stat. 556-557) with respect to avoidance and waiver of tax credit reduction otherwise applicable under section 3302(c).

(c) *Imposition of interest on loans.* These regulations also are issued to implement the amendment to section 1202 of the Social Security Act contained in subsection (b) thereof enacted in section 2407 of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35; 95 Stat. 879-880) with respect to the imposition of interest on loans and loans not subject to interest charges.

(d) *May/September delay of interest payment.* These regulations also are issued to implement the amendment to section 1202 of the Social Security Act contained in subsection (b) thereof enacted in section 2407(a) of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35; 95 Stat. 879) with respect to delay of interest payment on advances made in May through September.

(e) *High unemployment deferral of interest payment.* These regulations also are issued to implement the amendment to section 1202 of the Social Security Act contained in subsection (b) thereof enacted in section 274 of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97-248; 96 Stat. 557-558) with respect to deferral of the interest payment otherwise due when the State meets certain high unemployment conditions.

(f) *High unemployment deferral of interest payment.* These regulations also are issued to implement the amendment to section 1202 of the Social Security Act contained in subsection (b) thereof enacted in section 511(a) of the Social Security Amendments of 1983 (Pub. L. 98-21; 97 Stat. 144-146) with respect to delay of the interest payment otherwise due when the State meets certain high unemployment conditions.

(g) *Maintenance of solvency.* These regulations also are issued to implement the amendment to section 1202 of the Social Security Act contained in subsection (b) thereof enacted in section

511(a) of the Social Security Amendments of 1983 (Pub. L. 98-21; 97 Stat. 144-145) with respect to maintenance of solvency for legislative-action deferrals previously approved.

§ 606.2 Total credits allowable.

The total credits allowed to an employer subject to the tax imposed by section 3301 of the Federal Unemployment Tax Act shall not exceed 5.4 percent with respect to taxable years beginning after December 31, 1984.

§ 606.3 Definitions.

For the purposes of the Acts cited and this Part—(a)(1) "1981 Act" means the Omnibus Budget Reconciliation Act of 1981, and sections 2406 and 2407 thereof (Pub. L. 97-35; Stat. 876-880), approved August 13, 1981.

(2) "1982 Act" means the Tax Equity and Fiscal Responsibility Act of 1982 and sections 272, 273, and 274 thereof (Pub. L. 97-248; 96 Stat. 556-558), approved September 3, 1982.

(3) "1983 Act" means the Social Security Amendments of 1983, and section 511 thereof (Pub. L. 98-21; 97 Stat. 144-146), approved April 20, 1983.

(b) "Advance" means a transfer of funds to a State unemployment fund, for the purpose of paying unemployment compensation, from the Federal unemployment account in the Unemployment Trust Fund.

(c) "Benefit-cost ratio" for cap purposes for a calendar year is the percentage obtained by dividing—

(1) The total sum of compensation paid (100 percent of regular and additional compensation paid, and 50 percent of compensation paid which is sharable compensation under section 204 of the Federal-State Extended Compensation Act of 1970, but excluding any such compensation which is attributable to services performed for a reimbursing employer) under the State law during such calendar year, and

(2) Any interest paid during such calendar year on any advance, by

(3) The total amount of remuneration subject to contributions under the State law with respect to such calendar year (determined without regard to any limitation on the amount of remuneration subject to contribution under the State law).

If any percentage determined by this computation is not a multiple of 0.1 percent, such percentage shall be reduced to the nearest multiple of 0.1 percent.

(d) "Contributions" means payments required by a State law to be made into an unemployment fund by any person

on account of having individuals in his employ, to the extent that such payments are made by him without being deducted or deductible from the remuneration of individuals in his employ.

(e) "Federal unemployment tax" means the excise tax imposed under section 3301 of the Federal Unemployment Tax Act on employers with respect to having individuals in their employ.

(f) "Fiscal year" means the Federal fiscal year which begins on October 1 of a year and ends on September 30 of the next succeeding year.

(g) "FUTA" refers to the Federal Unemployment Tax Act, 26 U.S.C. 3301-3311.

(h) "State unemployment fund" or "unemployment fund" means a special fund established under a State law for the payment of unemployment compensation to unemployed individuals, and which is an "unemployment fund" as defined in section 3306(f) of the Federal Unemployment Tax Act.

(i) "Taxable year" means the calendar year.

(j) "Unemployment tax rate" means, for any taxable year and with respect to any State, the percentage obtained by dividing the total amount of contributions paid into the State unemployment fund with respect to such taxable year by the total amount of remuneration subject to contributions under the State law with respect to such taxable year (determined without regard to any limitation on the amount or remuneration subject to contribution under the State law).

(k) "Wages, taxable" means wages subject to contributions under a State law.

(l) "Wages, total" means total remuneration subject to contributions under the State law with respect to such taxable year (determined without regard to any limitation on the amount of remuneration subject to contribution under the State law).

§ 606.4 Redelegation of authority.

(a) *Redelegation to UIS Director.* The Director, Unemployment Insurance Service (hereinafter "UIS Director"), is redelegated authority to make the determinations required under this part. This redelegation is contained in Employment and Training Order No. 1-84, published in the Federal Register on November 14, 1983 (48 FR 51870).

(b) *Delegation by Governor.* The Governor of a State, as used in this part, refers to the highest executive official of a State. Wherever in this part an action is required by or of the Governor of a

State, such action may be taken by the Governor or may be taken by a delegation of the Governor if the Department is furnished appropriate proof of an authoritative delegation of authority.

§ 606.5 Verification of estimates and review of determinations.

The Department of Labor (hereinafter "Department") shall verify all information and data provided by a State under this part, and the State shall comply with such provisions as the Department considers necessary to assure the correctness and verification of such information and data. The State agency of a State affected by a determination made by the UIS Director under this part may seek review of such determination by a higher level official of the Employment and Training Administration.

§ 606.6 Information, reports, and studies.

A State agency shall furnish to the Secretary of Labor such information and reports and conduct such studies as the Secretary determines are necessary or appropriate for carrying out the purposes of this part, including any additional information or data the UIS Director may require for the purposes of making determinations under Subparts C and E of this part.

Subpart B—Tax Credit Reduction [Reserved]

Subpart C—Relief from Tax Credit Reduction

§ 606.20 Cap on tax credit reduction.

(a) *Applicability.* Subsection (f) of section 3302 of FUTA, added by section 2406 of the 1981 Act, provides a limitation (cap) on the incremental reduction of tax credits by reason of an outstanding balance of advances if the UIS Director determines on or before November 10 of a taxable year that—

(1) No action was taken by the State during the 12-month period ending on September 30 of such taxable year which has resulted, or will result, in a reduction in the State's unemployment tax effort, as defined in § 606.21(a) of this subpart.

(2) No action was taken by the State during the 12-month period ending on September 30 of such taxable year which has resulted, or will result, in a net decrease in solvency of the State unemployment compensation system, as defined in § 606.21(b) of this subpart.

(3) The State unemployment tax rate, as defined in § 606.3(j) of this part, for the taxable year equals or exceeds the average benefit-cost ratio, as defined in § 606.3(c) of this part, for the calendar

years in the five-calendar year period ending with the calendar year immediately preceding the taxable year for which the cap is requested, under the rules specified in § 606.21(c) and (d) of this subpart, and

(4) The outstanding balance of advances to the State on September 30 of the taxable year was not greater than the outstanding balance of advances to the State on September 30 of the third preceding taxable year.

(b) *Maximum tax credit reduction.* If a State qualifies for a cap, the maximum tax credit reduction for the taxable year shall not exceed 0.6 percent or, if higher, the tax credit reduction that was in effect for the taxable year preceding the taxable year for which the cap is requested.

(c) *Year not taken into account.* If a State qualifies for a cap for any year, the year and January 1 of the year to which the cap applies will not be taken into account for purposes of determining reduction of tax credits for subsequent taxable years.

(d) *Partial caps.* Partial caps obtained under subsection (f)(8), added to section 3302 of FUTA by section 512 of the 1983 Act, are no longer available.

Nevertheless, partial cap credits earned will be taken into account for purposes of determining reduction of tax credits for subsequent taxable years within the same borrowing cycle. The year to which the partial cap applied will be taken into account for purposes of determining reduction of tax credits for subsequent taxable years.

§ 606.21 Criteria for cap.

(a) *Reduction in unemployment tax effort.* For purposes of paragraph (a)(1) of § 606.20, there will be deemed to be a reduction in a State's unemployment tax effort with respect to a taxable year if any action is or was taken (legislative, judicial, or administrative) that is effective during the 12-month period ending on September 30 of such taxable year which has resulted in or will result in a reduction of the amount of contributions paid or payable or the amounts that were or would have been paid but for such action. Actions that will be deemed a reduction in tax effort include, but are not limited to, a reduction in the taxable wage base, the tax rate schedule, tax rates, or taxes payable (including surtaxes) that would not have gone into effect but for the legislative, judicial, or administrative action taken. Notwithstanding the foregoing criterion, a reduction in unemployment tax effort resulting from any provision of the State law enacted prior to August 13, 1981, will not be

deemed disqualifying for a cap on reduction of tax credits.

(b) *Net decrease in solvency.* For purposes of paragraph (a)(2) of § 606.20, there will be deemed to be a net decrease in the solvency of the State's unemployment compensation system if any action is or was taken (legislative, judicial, or administrative) that is effective during the 12-month period ending on September 30 of such taxable year which has resulted in or will result in a net decrease in solvency; i.e., an increase in benefits without at least an equal increase in taxes, or a decrease in taxes without at least an equal decrease in benefits. Notwithstanding the foregoing criterion, a decrease in solvency resulting from any provision of the State law enacted prior to August 13, 1981, will not be deemed disqualifying for a cap on reduction of tax credits.

(c) *State unemployment tax rate.* For purposes of paragraph (a)(3) of § 606.20, the State unemployment tax rate is defined in § 606.3(j) of this Part. If such percentage is not a multiple of 0.1 percent, the percentage shall remain unrounded.

(d) *State five-year average benefit cost ratio.* For purposes of paragraph (a)(3) of § 606.20, the average benefit cost ratio for the five preceding calendar years is the percentage determined by dividing the sum of the benefit cost ratios for the five years by five. If such percentage is not a multiple of 0.1 percent, the percentage shall remain unrounded.

§ 606.22 Application for cap.

(a) *Application.* The Governor of the State shall make application, addressed to the Secretary of Labor, no later than July 1 of a taxable year with respect to which a State requests a cap on tax credit reduction. The Governor is required to notify the Department on or before October 15 of such taxable year of any action occurring after the date of the initial application and effective prior to October 1 of such year that would impact upon the State's application. The UIS Director will make a determination on the request on or before November 10 of such taxable year, will notify the Secretary of the Treasury of such determination, and will cause notice of such determination to be published in the **Federal Register**.

(b) *Anticipated impact statement.* In support of the application by the governor, there shall be submitted for the purposes of the criteria described in § 606.20(a) of this Subpart a description of all statutory provisions enacted or amended, regulations adopted or revised, administrative policies and procedures adopted or revised, and

judicial decisions effecting changes in contributions or benefits paid, effective during the 12-month period ending on September 30 of the taxable year for which a cap on tax credit reduction is requested, and an anticipated impact statement (AIS) for each program action in the following respects—

(1) The estimated dollar effect of each program action upon expenditures for compensation from the State unemployment fund and for the amounts of contributions paid or payable, including the effect of interaction among program actions.

(2) If a program action has no such dollar effect, an explanation of why there is or will be no such effect.

(3) A description of assumptions and methodology used and the basis for the financial estimate of the impact of each program action described in paragraphs (b) (1) and (2) of this section, and

(4) A comparison of the program actions described in paragraphs (b) (1) and (2) of the section with the program actions prior to the Federal fiscal year, as defined in § 606.3(f).

(c) *State contact person.* The Department may request additional information or clarification of information submitted bearing upon an application for a cap on tax credit reduction. To expedite requests for such information, the name and telephone number of an appropriate State official shall be included in the application by the Governor.

(d) *Unemployment tax rate.* With respect to the unemployment tax rate criterion described in § 606.20(a)(3), the application shall include an estimate for the taxable year with respect to which a cap on tax credit reduction is requested and actual data for the prior two years as follows:

(1) The amount of taxable wages as defined in § 603.3(k) of this part,

(2) The amount of total wages as defined in § 603.3(l) of this part, and

(3) The estimated distribution of taxable wages, as defined in § 603.3(k) of this part, by tax rate under the State law.

(e) *Benefit cost ratio.* With respect to the benefit cost ratio criterion described in § 606.20(a)(3) the application shall include for the five taxable years prior to the taxable year for which a cap on tax credit reduction is requested as follows:

(1) For each year the amount of regular and additional benefits paid which are attributable to contributing employers,

(2) For each year 50 percent of the total amount of sharable compensation

paid which is attributable to contributing employers,

(3) For each year the amount of interest actually paid on advances made to the State under Title XII of the Social Security Act, and

(4) For each year the amount of total wages as defined in § 606.3(l) of this part.

(f) *Documentation required.* Copies of the sources of or authority for each program action described in paragraph (b) of this section shall be submitted with each application for a cap on tax credit reduction. In addition, a notation shall be made on each AIS of where all figures referred to are contained in reports required by the Department.

§ 606.23 Avoidance of tax credit reduction.

(a) *Applicability.* Subsection (g) of section 3302 of FUTA, added by section 272 of the 1982 Act, allows a State to avoid a tax credit reduction for a year by meeting the three requirements of subsection (g). These requirements are met if the UIS Director determines that—

(1) Advances were repaid by the State during the one-year period ending on November 9 of the taxable year in an amount not less than the sum of—

(i) The potential additional taxes (as estimated by the UIS Director) that would be payable by the State's employers if paragraph (2) of section 3302(c) of the FUTA were applied for such taxable year (as determined with regard to the cap on tax credit reduction for which the State qualifies under section 3302(f) of the FUTA and Subpart C of this part with respect to such taxable year), and

(ii) Any advances made to such State during such one-year period under Title XII of the Social Security Act,

(2) There will be adequate funds in the State unemployment fund (as estimated by the UIS Director) sufficient to pay all benefits when due and payable under the State law during the three-month period beginning on November 1 of such taxable year without receiving any advance under Title XII of the Social Security Act, and

(3) There is a net increase (as determined by the UIS Director) in the solvency of the State unemployment compensation system for the taxable year and such net increase equals or exceeds the potential additional taxes for each taxable year as determined under paragraph (a)(1)(i) of this section.

(b) *Net increase in solvency.* (1) The net increase in solvency as determined under paragraph (a)(3) of this section must be attributable to changes

(legislative, judicial, or administrative) made in the State law after the later of—

(i) September 3, 1982, or

(ii) The date on which the first advance in the current borrowing cycle (consecutive January firsts on which the State has an outstanding balance of loans) is taken into account in determining the amount of the potential additional taxes.

(2) The UIS Director shall determine the net increase in solvency by first estimating the difference between revenue receipts and benefit outlays under the law in effect for the year for which avoidance is requested, as if the relevant changes in State law referred to in paragraph (b)(1) of this section were not in effect for such year. The UIS Director shall then estimate the difference between revenue receipts and benefit outlays under the law in effect for the year for which the avoidance is requested, taking into account the relevant changes in State law referred to in paragraph (b)(1) of this section. The amount (if any) by which the second estimated difference exceeds the first estimated difference shall constitute the net increase in solvency for the purposes of this section.

(c) *Year taken into account.* If a State qualifies for avoidance for any year, that year and January 1 of that year to which the avoidance applies will be taken into account for purposes of determining reduction of tax credits for subsequent taxable years.

§ 606.24 Application for avoidance.

(a) *Application.* (1) The Governor of the State shall make application, addressed to the Secretary of Labor, no later than July 1 of a taxable year with respect to which a State requests avoidance of tax credit reduction. The Governor is required to notify the Department on or before October 15 of such taxable year of any action impacting upon the State's application occurring subsequent to the date of the initial application and on or before November 10.

(2) The UIS Director will make a determination on the request as of November 10 of such taxable year, will notify the Secretary of the Treasury of such determination, and will cause notice of such determination to be published in the Federal Register.

(b) *Information.* (1) The application shall include a statement of the amount of advances repaid and to be repaid during the one-year period ending on November 9 of the taxable year for which avoidance is requested. If the amount repaid as of the date of the application is less than the amount required to satisfy the provisions of

§ 606.23(a)(1), the Governor should provide a report later of any additional such repayments made in the remainder of the one-year period ending on November 9 of the taxable year.

(2) The application also shall include estimates of revenue receipts, benefit outlays, and end-of-month fund balance for each month in the period beginning with September of the taxable year for which avoidance is requested through the subsequent January. Actual data for the comparable period of the preceding year also shall be included in the application.

(3) The application also shall include a description of State law changes, effective for the taxable year for which the avoidance is requested, which resulted in a net increase in the solvency of the State unemployment compensation system, and documentation which supports the State's estimate of the net increase in solvency for such taxable year.

§ 606.25 Waiver of and substitution for additional tax credit reduction.

A provision of subsection (c)(2) of section 3302 of FUTA, added by section 273 of the 1982 Act, allows the additional tax credit reduction applicable under subparagraph (C), beginning with the fifth consecutive year of a balance of outstanding advances, to be waived and the additional tax credit reduction applicable under subparagraph (B) to be substituted. The waiver and substitution are granted if the UIS Director determines that the State has taken no action, effective during the 12-month period ending on September 30 of the year for which the waiver and substitution are requested, which has resulted or will result in a net decrease in the solvency of the State unemployment compensation system as determined for the purposes of § 606.21(b) of this Subpart.

§ 606.26 Application for waiver and substitution.

A State need not apply for the waiver and substitution provided in § 606.25 if it is applying for, with respect to the same taxable year, a cap on tax credit reduction under § 606.22 or for avoidance of tax credit reduction under § 606.24. Otherwise, the Governor of the State should address to the Secretary of Labor a request for waiver and substitution containing information in support thereof as provided in § 606.21(b) of this Part no later than July 1 of the taxable year for which the waiver and substitution are requested. The Governor is required to notify the Department on or before October 15 of such taxable year of action occurring

after the date of the initial application and effective prior to October 1 of such year that would impact upon the State's application. The UIS Director will make a determination thereon on or before November 10 of the taxable year, will notify the Secretary of the Treasury of the resulting tax credit reduction to be applied, and will cause notice of the result of such determination to be published in the Federal Register.

Subpart D—Interest on Advances

§ 606.30 Interest rates on advances.

Advances made to States pursuant to Title XII of the Social Security Act on or after April 1, 1982, shall be subject to interest under conditions specified in § 606.31. The interest rate for a calendar year, when applicable, will be the lesser of 10 percent or the rate paid by the Secretary of the Treasury on State balances in their unemployment funds for the last quarter of the calendar year immediately preceding the calendar year in which interest is assessed.

§ 606.31 Due dates for payment of interest. [Reserved]

§ 606.32 Types of advances subject to interest.

(a) *Payment of interest.* Except as otherwise provided in paragraph (b) of this section each state shall pay interest on any advance made to such State under Title XII of the Social Security Act.

(b) *Cash flow loans.* Advances repaid in full prior to October 1 of the calendar year in which made are deemed cash flow loans and shall be free of interest; provided, that the State does not receive an additional advance after September 30 of the same calendar year. If such additional advance is received by the State, interest on the completely repaid earlier advance(s) shall be due and payable not later than the day following the date of the first such additional advance. The administrator of the State agency shall notify the Secretary of Labor no later than September 10 of those loans deemed to be cash flow loans and not subject to interest. This notification shall include the date and amount of each loan made January through September and a copy of documentation sent to the Secretary of the Treasury requesting loan repayment transfer(s) from the State's account in the Unemployment Trust Fund to the Federal unemployment account in such Fund.

§ 606.33 No payment of interest from unemployment fund. [Reserved]

§ 606.34 Reports of interest payable. [Reserved]

§ 606.35 Order of application for repayments. [Reserved]

Subpart E—Relief from Interest Payment

§ 606.40 May/September delay.

Subsection (b)(3)(B), added to section 1202 of the Social Security Act by section 2407(a) of the 1981 Act permits a State to delay payment of interest accrued on advances made during the last five months of the Federal fiscal year (May, June, July, August, and September) to no later than December 31 of the next succeeding calendar year. If the payment is delayed, interest on the delayed payment will accrue from the normal due date (prior to October 1) and in the same manner as if the interest due on the advance(s) was an advance made on such due date. The Governor of a State which has decided to delay such interest payment shall notify the Secretary of Labor no later than September 1 of the year with respect to which the delay is applicable.

§ 606.41 High unemployment deferral.

(a) *Applicability.* Subsection (b)(3)(C), added to section 1202 of the Social Security Act by section 274 of the 1982 Act, permits a State to defer payment of, and extend the payment for, 75 percent of interest charges otherwise due prior to October 1 of a year if the UIS Director determines that high unemployment conditions existed in the State.

(b) *High unemployment defined.* For purposes of this section, high unemployment conditions existed in the State if the State's rate of insured unemployment (as determined for purposes of 20 CFR 615.12) under the State law with respect to the period consisting of the first six months of the preceding calendar year equalled or exceeded 7.5 percent; this means that in weeks 1 through 26 of such preceding calendar year, the rate of insured unemployment reported by the State and accepted by the Department under 20 CFR Part 615 may not have been less than 7.5 percent.

(c) *Schedule of deferred payments.* The State must pay prior to October 1 one-fourth of the interest due, and must pay a minimum of one-third of the deferred amount prior to October 1 in each of the three years following the year in which deferral was granted; at the State's option payment of deferred interest may be accelerated.

(d) *Related criteria.* Timely payment of one-fourth of the interest due prior to October 1 is a precondition to obtaining deferral of payment of 75 percent of the interest due. No interest shall accrue on such deferred interest.

(e) *Application for deferral and determination.* The Governor of a State which has decided to request deferral of such interest shall apply to the Secretary of labor no later than July 1 of the taxable year for which the deferral is requested. The UIS Director will determine whether deferral is or is not granted on the basis of the Department's records of reports of the rates of insured unemployment and information obtained from the Department of the Treasury as to the timely and full payment of one-fourth of the interest due.

§ 606.42 High unemployment delay.

(a) *Applicability.* Paragraph (9), added to section 1202(b) of the Social Security Act, by section 511(a) of the 1983 Act, permits a State to delay for a period not exceeding nine months the interest payment due prior to October 1, if, for the most recent 12-month period prior to such October 1 for which data are available, the State had an average total unemployment rate of 13.5 percent or greater.

(b) *Delayed due date.* An interest payment delayed under paragraph (9) must be paid in full not later than the last official Federal business day prior to the following July 1: at the State's option payment of delayed interest may be accelerated. No interest shall accrue on such delayed payment.

(c) *Application for delay in payment and determination.* The Governor of a State which has decided to request delay in payment of interest under paragraph (9) shall apply to the Secretary of labor no later than July 1 of the taxable year for which the delay is requested. The UIS Director will determine whether delay is or is not granted on the basis of total unemployment rate data published by the Department's Bureau of labor Statistics.

§ 606.43 Maintenance of solvency effort.

(a) *Applicability.* Legislative-action interest deferrals obtained under subsection (b)(8)(A)–(C), added to section 1202 of the Social Security Act by section 511(a) of the 1983 Act, are no longer available. Nevertheless, States must maintain their solvency effort with respect to any such deferrals approved in 1983, 1984, and 1985 in order for the deferral to continue to apply in each subsequent year of deferral.

(b) *Determination regarding maintenance of solvency effort.* The UIS Director shall determine if there is a net reduction in solvency effort by first estimating the difference between revenue receipts and benefit outlays under the law in effect for the 12-month period ending on September 30 of the year prior to the year for which the continuation of deferral is requested as if the law were in effect in the year for which the continuation of deferral is requested. The UIS Director shall then estimate the difference between revenue receipts and benefit outlays under the law in effect in the 12-month period ending on September 30 of the year for which the continuation of deferral is requested. If the amount of the second estimated difference is equal to or greater than the first estimated difference, the State will be deemed to have maintained its solvency effort, but if less, then a reduction in solvency effort will be deemed to have occurred.

(c) *Effect of determination.* (1) If the UIS Director determines that a State has maintained its solvency effort, continuation of deferral will be granted, and the State will be required to timely pay the deferred interest payable prior to October 1 of the year with respect to which such determination is made.

(2) If the UIS Director determines that a State failed to maintain its solvency effort, all deferred interest shall be due and payable prior to October 1 of the year with respect to which such determination is made.

(d) *Application and information.* (1) The Governor of a State which has decided to request continuation of a previously approved deferral of interest payments shall apply to the Secretary of labor no later than July 1 of the year for which continuation is requested. The governor is required to notify the Department on or before September 1 of such taxable year of any action impacting upon the State's application occurring subsequent to the date of the initial application and on or before September 30.

(2) In support of the application by the Governor, there shall be submitted for the purposes of the estimates required in paragraph (b) of this section documentation as specified in § 606.22(b)(1)–(4), (c) and (f) of this part and bearing upon the application for continuation of deferral.

§ 606.44 Notification of determinations.

The UIS Director will make determinations under §§ 606.41, 606.42, and 606.43 on or before September 10 of the taxable year, will promptly notify the appropriate Governors and the

Secretary of the Treasury of such determinations, and will cause notice of such determinations to be published in the *Federal Register*. The UIS Director also will inform the Secretary of the Treasury and cause notice to be published in the *Federal Register* of determinations with respect to delayed payment of interest as provided in § 606.40.

[FR Doc. 87-24777 Filed 10-27-87; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 840 and 842

Extension of Public Comment Period; Surface Coal Mining and Reclamation Operations; Initial and Permanent Regulatory Programs; Abandoned Sites

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

ACTION: Proposed rule; Extension of public comment period.

SUMMARY: On August 28, 1987, the Office of Surface Mining Reclamation and Enforcement (OSMRE) published a proposed rule which would amend its regulations to define "abandoned site" and to change the inspection frequency for such sites. The comment period closes on November 6, 1987. OSMRE is now extending the comment period for the proposed rule until November 30, 1987.

DATE: The comment period on the proposed rule is extended until November 30, 1987.

ADDRESSES: Written comments may be mailed to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131-L, 1951 Constitution Avenue, NW., Washington, DC 20240; or hand-delivered to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131, 1100 L St., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: George Stone, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: 202-343-4295 (Commercial or FTS).

SUPPLEMENTARY INFORMATION: OSMRE previously published the proposed rule on August 28, 1987. 52 FR 32758. The comment period is open until November 6, 1987. OSMRE received a request to extend the comment period and is hereby granting the request by

extending the comment period until November 30 1987.

The proposed rule would amend OSMRE's regulations to define an "abandoned site" and to change the inspection frequency for such sites. These revisions would enable the regulatory authorities to eliminate numerous ineffective inspections, and thus transfer inspectors to operations where enforcement would achieve the intended results.

The proposed rule would also change the inspection frequency for abandoned sites to "as necessary to monitor for changes of environmental conditions or operational status" at the site. For further information, consult the preamble to the proposed rule, cited above.

Date: October 22, 1987.

Jed D. Christensen,
Director, Office of Surface Mining
Reclamation and Enforcement.

[FR Doc. 87-24909 Filed 10-27-87; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 913

Permanent State Regulatory Program for Illinois

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

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing procedures for a public comment period and for a public hearing on the substantive adequacy of amendments, submitted by Illinois as a modification to the State's permanent regulatory program (hereinafter referred to as the Illinois program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The proposed amendments are in response to a letter dated June 9, 1987 from OSMRE notifying Illinois or required program changes resulting from Federal regulation changes pertaining to historic properties.

This notice sets forth the times and locations that the proposed amendments will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments and the procedures that will be followed for the public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 p.m. on November 27, 1987 if requested, a public hearing on the proposed amendment is scheduled for 1:00 p.m. November 23, 1987 and requests to present oral

testimony at the hearing must be received on or before 4:00 p.m. November 12, 1987.

ADDRESSES: Written comments and requests to testify at the hearing should be directed to the Springfield Field Office, Office of Surface Mining Reclamation and Enforcement, Room 20, 600 East Monroe Street, Springfield, IL 62701; Telephone (217) 492-4495. If a hearing is requested it will be held in Room 17 at the same address.

Copies of the Illinois program, the proposed amendments, and all written comments received in response to this notice will be available for public review at the following locations during normal business hours Monday through Friday, excluding holidays:

Office of Surface Mining Reclamation and Enforcement, Room 5131, 1100 L Street, NW., Washington, DC 20240.

Office of Surface Mining Reclamation and Enforcement, Eastern Field Operations, Ten Parkway Center, Pittsburgh, PA 15220

Office of Surface Mining Reclamation and Enforcement, Springfield Field Office, Room 20, 600 E. Monroe Street, Springfield, IL 62701

Illinois Department of Mines and Minerals, 227 South 7th Street, Room 201, Springfield, IL 62706

Each requester may receive, free of charge, one single copy of the proposed amendments by contacting the OSMRE Springfield Field Office.

FOR FURTHER INFORMATION CONTACT: Mr. James Fulton, Director, Springfield Field Office, Office of Surface Mining and Reclamation and Enforcement, 600 E. Monroe Street, Room 20, Springfield, Illinois 62701; Telephone (217) 492-4495.

SUPPLEMENTARY INFORMATION:

I. Background on the Illinois Program

The Illinois program was conditionally approved by the Secretary of the Interior on June 1, 1982. Information pertinent to the general background, revisions, modifications, and amendments to the Illinois program submissions, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Illinois program can be found in the June 1, 1982 *Federal Register* (47 FR 23883). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 913.11 and 913.15.

II. Discussion of the Proposed Amendments

By letter dated September 16, 1987 (Administrative Record No. IL-1058), the